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Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
3/6/2007 08:45:18.08



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**AFTER RECORDING RETURN TO:**

Sullivan's Restaurants of Nebraska, Inc.  
224 East Douglas, Suite 700  
Wichita, KS 67202  
attn: Karon Perrill

**LEASE SUBORDINATION, NON-DISTURBANCE  
AND ATTORNMENT AGREEMENT**

This agreement ("Lease Subordination, Non-Disturbance and Attornment Agreement" or "Agreement") is made as of the 22<sup>nd</sup> day of December, 2006, among BANK OF AMERICA, N.A., a national banking association organized under the laws of the United States, and having a place of business at Suite 800, Mail Stop: RI 1 102 08 01, 111 Westminster Street, Providence, Rhode Island 02903, as Agent (the "Agent") for the Lenders (as that term is or is to be defined in a certain Loan Agreement entered into or to be entered into by and between the hereinafter defined Borrower, the Agent and the Lenders), SECURITY NATIONAL PROPERTIES FUNDING, LLC, an Alaska limited liability company, having a place of business at 323 Fifth Street, Eureka, CA 95502 ("Landlord" or "Borrower"), and SULLIVAN'S RESTAURANTS OF NEBRASKA, Inc., a Nebraska corporation, having a place of business at 224 East Douglas, Suite 700, Wichita, Kansas 67202 ("Tenant").

**Introductory Provisions**

A. Agent and the Lenders are relying on this Agreement as an inducement to Lenders in making and maintaining a loan ("Loan") secured by, among other things, a Mortgage/Deed of Trust, Security Agreement and Fixture Filing ("Mortgage") given by Borrower to Agent covering property commonly known as 222 South 15<sup>th</sup> Street, Omaha, Nebraska in the County of Douglas, State of Nebraska and which is further described in Exhibit A attached hereto ("the Property"). In addition, Agent is the "Assignee" under an Assignment of Leases and Rents ("Assignment") from Borrower with respect to the Property.

B. Tenant is the tenant under that certain lease ("Lease") dated January 9, 2006, made with Landlord, covering certain premises ("Premises") at the Property as more particularly described in the Lease [and in the "Notice of Lease" dated January 9, 2006 which has been recorded on October 5, 2006 in the Records of Douglas County as Instrument No. 2006114916.

FEE \_\_\_\_\_ FB \_\_\_\_\_  
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C. Intentionally Deleted.

D. Lenders require, as a condition to the making and maintaining of the Loan, that the Mortgage be and remain superior to the Lease and that Agent's rights under the Assignment be recognized.

E. Tenant requires as a condition to the Lease being subordinate to the Mortgage that its rights under the Lease be recognized.

F. Agent, Borrower, and Tenant desire to confirm their understanding with respect to the Mortgage and the Lease.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements contained herein, and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, and with the understanding by Tenant that Lenders shall rely hereon in making and maintaining the Loan, Agent, Landlord, and Tenant agree as follows:

1. Subordination. The Lease and the rights of Tenant thereunder are subordinate and inferior to the lien of the Mortgage and the lien of any amendment, renewal, substitution, extension or replacement thereof and each advance made thereunder as though the Mortgage, and each such amendment, renewal, substitution, extension or replacement were executed and recorded, and the advance made, before the execution of the Lease.

2. Non-Disturbance. So long as Tenant is not in default (beyond any period expressed in the Lease within which Tenant may cure such default) in the payment of rent or in the performance or observance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed or observed, (i) Tenant's occupancy of the Premises shall not be disturbed by Agent in the exercise of any of its rights under the Mortgage during the term of the Lease, or any extension or renewal thereof made in accordance with the terms of the Lease, and (ii) Agent will not join Tenant as a party defendant in any action or proceeding for the purpose of terminating Tenant's interest and estate under the Lease because of any default under the Mortgage.

3. Attornment and Certificates. In the event Agent succeeds to the interest of Borrower as Landlord under the Lease, or if the Property or the Premises are sold pursuant to any foreclosure of the Mortgage, Tenant shall attorn to Agent, or a purchaser upon any such foreclosure sale, and shall recognize Agent, or such purchaser, thereafter as the Landlord under the Lease. Such attornment shall be effective and self-operative without the execution of any further instrument. Tenant agrees, however, to execute and deliver at any time and from time to time, upon the request of any holder(s) of any of the indebtedness or other obligations secured by the Mortgage, or upon request of any such purchaser, (a) any instrument or certificate which, in the reasonable judgment of such holder(s), or such purchaser, may be

necessary or appropriate in any such foreclosure proceeding or otherwise to evidence such attornment, and (b) an instrument or certificate regarding the status of the Lease, consisting of statements, if true (and if not true, specifying in what respect), (i) that the Lease is in full force and effect, (ii) the date through which rentals have been paid, (iii) the duration and date of the commencement of the term of the Lease, (iv) the nature of any amendments or modifications to the Lease, (v) that no default, or state of facts, which with the passage of time, or notice, or both, would constitute a default, exists on the part of either party to the Lease, and (vi) the dates on which payments of additional rent, if any, are due under the Lease.

4. Limitations. If Agent exercises any of its rights under the Assignment or the Mortgage, or if Agent shall succeed to the interest of Landlord under the Lease in any manner, or if any purchaser acquires the Property, or the Premises, upon or after any foreclosure of the Mortgage, or any deed in lieu thereof, Agent or such purchaser, as the case may be, shall have the same remedies by entry, action or otherwise in the event of any default by Tenant (beyond any period expressed in the Lease within which Tenant may cure such default) in the payment of rent or in the performance or observance of any of the terms, covenants and conditions of the Lease on Tenant's part to be paid, performed or observed that the Landlord had or would have had if Agent or such purchaser had not succeeded to the interest of the present Landlord. From and after any such attornment, Agent or such purchaser shall be bound to Tenant under all the terms, covenants and conditions of the Lease, and Tenant shall, from and after such attornment to Agent, or to such purchaser, have the same remedies against Agent, or such purchaser, for the breach of an agreement contained in the Lease that Tenant might have had under the Lease against Landlord, if Agent or such purchaser had not succeeded to the interest of Landlord. Provided, however, that Agent or such purchaser shall only be bound during the period of its ownership, and that in the case of the exercise by Agent of its rights under the Mortgage, or the Assignment, or any combination thereof, or a foreclosure, or deed in lieu of foreclosure, all Tenant claims shall be satisfied only out of the interest, if any, of Agent, or such purchaser, in the Property, and Agent and such purchaser shall not be (a) liable for any act or omission of any prior landlord (including the Landlord); or (b) liable for or incur any obligation with respect to the construction of the Property or any improvements of the Premises or the Property; or (c) subject to any offsets or defenses which Tenant might have against any prior landlord (including the Landlord); or (d) bound by any rent or additional rent which Tenant might have paid for more than the then current rental period to any prior landlord (including the Landlord); or (e) bound by any amendment or modification of the Lease that is made without Agent's prior written consent; or (f) bound by any assignment of the Lease or any encumbrance of Tenant's interest thereunder or any sublet thereunder (except if expressly permitted without Landlord's consent under the terms of the Lease) that is made without Agent's prior written consent; or (g) bound by or responsible for any security deposit not actually received by Agent; or (h) liable for or incur any obligation with respect to any breach of warranties or representations of any nature under the Lease or otherwise including without limitation any warranties or representations respecting use, compliance with zoning, landlord's title, landlord's authority, habitability and/or fitness for any purpose, or possession; or (i) liable for

consequential damages. The foregoing shall not, however: (i) relieve Agent or such purchaser, of the obligation to remedy or cure any conditions at the Premises the existence of which constitutes a Landlord default under the Lease and which continue at the time of such succession or acquisition, or (ii) deprive the Tenant of the right to terminate the Lease for a breach of Landlord covenant which is not cured as provided for herein and in the Lease and as a result of which there is a material interference with Tenant's permitted use and occupation of the Premises or any permitted business conducted therein.

5. Rights Reserved. Nothing herein contained is intended, nor shall it be construed, to abridge or adversely affect any right or remedy of: (a) the Landlord under the Lease, or any subsequent Landlord, against the Tenant in the event of any default by Tenant (beyond any period expressed in the Lease within which Tenant may cure such default) in the payment of rent or in the performance or observance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed or observed; or (b) the Tenant under the Lease against the original or any prior Landlord in the event of any default by the original Landlord to pursue claims against such original or prior Landlord whether or not such claim is barred against Agent or a subsequent purchaser.

6. Notice and Right to Cure. Tenant agrees to provide Agent with a copy of each notice of default given to Landlord under the Lease, at the same time as such notice of default is given to the Landlord, and that in the event of any default by the Landlord under the Lease, Tenant will take no action to terminate the Lease (a) if the default is not curable by Agent (so long as the default does not interfere with Tenant's use and occupation of the Premises), or (b) if the default is curable by Agent, unless the default remains uncured for a period of thirty (30) days after written notice thereof shall have been given, postage prepaid, to Agent at the address provided in Section 7 below; provided, however, that if any such default is such that it reasonably cannot be cured within such thirty (30) day period, such period shall be extended for such additional period of time as shall be reasonably necessary (including, without limitation, a reasonable period of time to obtain possession of the Property and to foreclose the Mortgage), if Agent gives Tenant written notice within such thirty (30) day period of Agent's election to undertake the cure of the default and if curative action (including, without limitation, action to obtain possession and foreclose) is instituted within a reasonable period of time and is thereafter diligently pursued but in no event longer than ninety (90) days. Agent shall have no obligation to cure any default under the Lease.

7. Notices. Any notice or communication required or permitted hereunder shall be in writing, and shall be given or delivered: (i) by United States mail, registered or certified, postage fully prepaid, return receipt requested, or (ii) by recognized courier service or recognized overnight delivery service; and in any event addressed to the party for which it is intended at its address set forth below:

To Agent: Bank of America, N.A., as Agent  
Suite 800  
Mail Stop: RI 1 102 08 01  
111 Westminster Street  
Providence, Rhode Island 02903  
Attention: Commercial Real Estate Loan Administration

To Tenant: Sullivan's Restaurants of Nebraska, Inc.  
224 East Douglas  
Suite 700  
Wichita, Kansas 67202  
Attention: Legal Department

or such other address as such party may have previously specified by notice given or delivered in accordance with the foregoing. Any such notice shall be deemed to have been given and received on the date delivered or tendered for delivery during normal business hours as herein provided.

8. Payment of Rent To Agent. Tenant acknowledges that it has notice that the Lease and the rent and all sums due thereunder have been assigned to Agent as part of the security for the obligations secured by the Mortgage. In the event Agent notifies Tenant of a default under the Loan and demands that Tenant pay its rent and all other sums due under the Lease to Agent, Tenant agrees that it will honor such demand and pay its rent and all other sums due under the Lease to Agent, or Agent's designated agent, until otherwise notified in writing by Agent. Borrower unconditionally authorizes and directs Tenant to make rental payments directly to Agent following receipt of such notice and Borrower further agrees that Tenant may rely upon such notice without any obligation to further inquire as to whether or not any default exists under the Mortgage or the Assignment and notwithstanding any notice from or claim of Borrower to the contrary. Borrower shall have no right or claim against Tenant for or by reason of any payments of rent or other charges made by Tenant to Agent following Tenant's receipt of any such notice.

9. No Waiver. This Agreement does not:

- (a) constitute a waiver by Agent of any of its rights under the Mortgage or any of the other Loan Documents (as defined in the Mortgage); or
- (b) in any way release Borrower from its obligations to comply with the terms, provisions, conditions, covenants and agreements and clauses of the Mortgage and other Loan Documents.

10. Borrower Compliance. The provisions of the Mortgage remain in full force and effect and must be complied with by Borrower.

11. Captions. Captions and headings of sections are not parts of this Agreement and shall not be deemed to affect the meaning or construction of any of the provisions of this Agreement.

12. Counterparts. This Agreement may be executed in several counterparts each of which when executed and delivered is an original, but all of which together shall constitute one instrument.

13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State where the Property is located.

14. No Oral Change. 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.

15. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon Agent, Lenders, Tenant and Borrower and their respective heirs, personal representatives, successors and assigns, and any purchaser or purchasers at foreclosure of the Property or any portion thereof, and their respective heirs, personal representatives, successors and assigns.

[Signatures on Following Page(s).]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, as a sealed instrument, as of the date first above written.

AGENT:

BANK OF AMERICA, N.A., as Agent

By: Deborah T Jennings  
Name: Deborah T Jennings  
Title: SVP

Date executed by Agent: 12/22, 2006

TENANT:

SULLIVAN'S RESTAURANTS OF NEBRASKA, INC.

By: John D. White  
Name: John D. White  
Title: President

Date executed by Tenant: December 4, 2006

BORROWER/LANDLORD:

**\*\* FILED: AS IS**

SECURITY NATIONAL PROPERTIES FUNDIN, LLC

By: Brian P. Morrissey  
Name: ~~S. Blake Mendheim~~ Brian P. Morrissey  
Title: ~~Vice President Real Estate~~

Date executed by Landlord: 12/5, 2006



STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

In Providence, on the 22<sup>nd</sup> day of December, 2006, before me personally appeared Deborah T. Jennings, an SVP of Bank of America, N.A., to me known and known by me to be the party executing the foregoing instrument for and on behalf of Bank of America, N.A. and he/she acknowledged said instrument by him/her executed to be his/her free act and deed and the free act and deed of said Bank of America, N.A.

Alisa M. Moretti

Notary Public

Print Name: Alisa M. Moretti

My Commission expires: 5/19/2007

**NOTARIAL SEAL  
REGISTER OF DEEDS**

STATE OF KANSAS  
COUNTY OF SEDGWICK

In Sedgwick ("County"), on the 4<sup>th</sup> day of Dec, 2006, before me personally appeared John D. White, President of Sullivan's Restaurants of Nebraska, Inc. to me known and known by me to be the party executing the foregoing instrument for and on behalf of Sullivan's Restaurants of Nebraska, Inc. and he acknowledged said instrument by him executed to be his free act and deed and for and on behalf of the corporation.

Karon Perrill

Notary Public

Print Name: KARON Perrill

My Commission expires: 6-23-09



STATE OF CALIFORNIA  
COUNTY OF HUMBOLT

In HUMBOLT, on the 5 day of Dec, 2006, before me personally appeared Brian Morrissey, a SRVP of Security National Properties Funding, LLC, to me known and known by me to be the party executing the foregoing instrument for and on behalf of Security National Properties Funding, LLC and he/she acknowledged said instrument by him/her executed to be his/her free act and deed and the free act and deed of said Security National Properties Funding, LLC.



Christina Davis  
Notary Public  
Print Name: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

## EXHIBIT A

The East 154.45 feet of Block 118, in the Original City of Omaha, as surveyed and lithographed in Douglas County, Nebraska, together with the vacated West 2.5 feet of 15<sup>th</sup> Street from Douglas Street to Farnam Street, the vacated North 2 feet of Farnam Street from 2.5 feet East of the former West right of way line of 15<sup>th</sup> Street to 154.45 feet West of the former West right of way line of 15<sup>th</sup> Street, and vacated South 1.5 feet of Douglas street from 2.5 feet East of the former West right of way line of 15<sup>th</sup> Street to 154.45 feet West of the former West right of way line of 15<sup>th</sup> Street abutted by Lots 1, 2, part of 3, part of 6, Lot 7 and Lot 8, Block 118 Original City of Omaha.