

FILED SARPY CO. NE.
INSTRUMENT NUMBER
2007-18645

2007 JUN 22 P 2:25 B

Stacy J. Dowling

COUNTER ah B.E. a
VERIFY P B.E. P
PROOF P B.E. P
FEES \$ 35.50
CHECK # 751349
CHG NLS-S-00 CASH _____
REFUND _____ CREDIT _____
SHORT _____ NCR _____

After recording, return to:
Merrill Lynch Mortgage Lending, Inc.
250 Vesey Street, 16th Floor
New York, New York 10080
Attn: _____

REGISTER OF DEEDS
SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT dated this 19 day of June, 2007, among TACO BELL CORP., a California corporation, (hereinafter called "Lessee"), WILTHAM PLACE LIMITED PARTNERSHIP, a Nebraska limited partnership (hereinafter called "Lessor"), and MERRILL LYNCH MORTGAGE LENDING, INC., its successors and/or assigns, (hereinafter "Mortgagee").

WITNESSETH:

WHEREAS, Lessee has leased a portion of the premises described in Exhibit "A" attached hereto and made a part hereof (the "Premises") and more commonly known as 8013 South 84th Street, La Vista, Nebraska 68128, under that certain Lease dated March 24, 1996, as amended (the "Lease"); and

WHEREAS, the Premises is part of a larger property which is described on Exhibit "B" attached hereto and by this reference incorporated herein (the "Real Property"), which Lessor has pledged as collateral in order for Mortgagee to extend a loan; and

WHEREAS, Mortgagee holds the mortgage (the "Mortgage") on the Real Property (which encompasses the Premises) to secure the sum of Six million two hundred 00 & 11/100 Dollars U.S. (\$ 6,250,000) which Mortgage is dated 6-18-07, and recorded the 22 day of June, 2007, in Book *, Page _____, of the Public Records of Sarpy County, Nebraska.

** Instrument number 2007-~~18645~~/
18647*

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the undersigned Mortgagee, Lessor and Lessee agree as follows:

1. Lessee hereby subordinates its rights under the aforesaid Lease to the lien of Mortgagee as evidenced by that certain Mortgage, so that for all purposes, the lien of said Mortgage shall be deemed to be superior to all rights of Lessee in the Premises.
2. The subordination of Lessee's interest shall not alter, diminish or modify Lessee's rights or interest in the Premises, except as provided for in this Agreement.
3. The Mortgagee does hereby covenant and agree that Mortgagee shall not disturb Lessee's and its successors' or assigns' quiet possession of the Premises under said Lease nor deprive Lessee of any of its rights, privileges or immunities thereunder including its ownership

NCS

A

of the buildings and improvements thereon if the Lease so provides and shall not impose any additional obligations upon Lessee not specifically provided for in the Lease, provided that Lessee, its successors or assigns, is not in default thereunder beyond the expiration of all applicable grace, notice and cure periods, and so long as Lessee, its successors and assigns, shall pay the rent and observe and perform all of the provisions of the Lease as therein provided, unless the Lease is otherwise terminated pursuant to its terms.

4. Except as herein specifically modified and amended, all the covenants, agreements, restrictions, rights, privileges and obligations of the aforesaid Mortgage and Lease shall remain in full force and effect.

5. If the interest of the Lessor shall be transferred to and owned by Mortgagee by reason of foreclosure or other proceedings brought by Mortgagee, or by any other manner, and Mortgagee succeeds to the interest of the Lessor under the Lease, Mortgagee shall be bound to Lessee under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining, and any extensions or renewals thereof which may be effected in accordance with any option therefore in the Lease and Lessee does hereby agree to attorn to Mortgagee as its Lessor, should Mortgagee require such attornment. However, Lessee shall be under no obligation to pay rent to Mortgagee until Lessee receives written notice from Mortgagee that Mortgagee has succeeded to the interest of the Lessor under the Lease. The respective rights and obligations of the Lessee and Mortgagee upon such attornment, to the extent of the then remaining balance of the terms of the Lease and any such extensions and renewals, shall be and are the same as now set forth therein; it being the intention of the parties hereto for this purpose to incorporate the Lease in the Agreement by reference with the same force and effect as if set forth at length herein.

6. Mortgagee shall not name Lessee as a party defendant in any action or proceeding to foreclose the Mortgage, and any foreclosure sale pursuant to the Mortgage shall be subject to the Lease.

7. This Agreement is to be governed and construed by the laws of the state where the Premises are situated.

8. Any notices which any party hereto may desire to or may be required to give to any other party shall be in writing and the mailing thereof by Certified Mail to the following addresses or to such other places any party hereto may by notice in writing designate, shall constitute service of notice hereunder.

LESSEE: TACO BELL CORP.
c/o YUM! Brands, Inc.
1441 Gardiner Lane
Louisville, Kentucky 40213
Attn: Law Department (Store #18728)

B

LESSOR: WILTHAM PLACE LIMITED PARTNERSHIP
1227 South 113th Plaza
Omaha, Nebraska 68144
Attn: Sue Millward

MORTGAGEE: MERRILL LYNCH MORTGAGE LENDING, INC.
250 Vesey Street, 16th Floor
New York, New York 10080
Attn: _____

9. This Agreement and each and every covenant and other provision hereof, shall be binding upon and be for the benefit of the parties hereto and their heirs, executors, administrators, representatives, successors, assigns and sub-lessees.

10. This Agreement may be executed in multiple counterparts by the parties hereto and each executed counterpart shall be considered an original, but all of the counterparts shall be construed together as one original Agreement between the parties.

THIS SPACE INTENTIONALLY LEFT BLANK

C


IN WITNESS WHEREOF, the undersigned has executed this Agreement this 26th day of April, 2007.

LESSEE:

TACO BELL CORP., a California

ATTEST/WITNESS:


Print Name: Rita A. Mac Neill

By: 
Melanie A. Bootes
Attorney-in-Fact, Taco Bell Corp

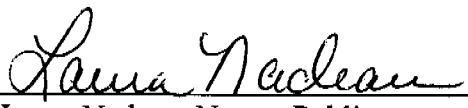
ram

COMMONWEALTH OF KENTUCKY)
 :
COUNTY OF JEFFERSON)

BEFORE ME, the undersigned authority, personally appeared Melanie A. Bootes, known to me to be the individual described in and who executed the foregoing instrument as Attorney-in-Fact of **TACO BELL CORP.**, a California corporation, and acknowledged to and before me that she executed such instrument as such Attorney-in-Fact of said corporation.

WITNESS my hand and official seal this 26th day of April, 2007.

[SEAL]


Laura Nadeau, Notary Public
State at Large, Kentucky
My Commission Expires: May 4, 2010

D

IN WITNESS WHEREOF, the undersigned has executed this Agreement this B day of May, 2007.

LESSOR:

^{Place}
WILTHAM ~~PLAZA~~ LIMITED PARTNERSHIP,
a Nebraska limited partnership

ATTEST/WITNESS:

[Signature]

By: Willard I. Friedman
Printed Name: WILLARD I. FRIEDMAN
Title: PRESIDENT
OF Willard Investment Co. Inc.
General Partner

STATE OF NEBRASKA)
COUNTY OF Douglas)

BEFORE ME, the undersigned authority, personally appeared Willard I. Friedman, known to me to be the individual described in and who executed the foregoing instrument as President of **WILTHAM ^{Place} ~~PLAZA~~ LIMITED PARTNERSHIP**, a Nebraska limited partnership, and acknowledged to and before me that he/she executed such instrument as such General Partner of said limited partnership.

WITNESS my hand and official seal this 8th day of May, 2007.

[SEAL]



[Signature]
Notary Public

My Commission Expires: 03/26/2009

E

IN WITNESS WHEREOF, the undersigned has executed this Agreement this 29 day of May, 2007.

MORTGAGEE:

MERRILL LYNCH MORTGAGE LENDING, INC.

ATTEST/WITNESS:

Len A. Lovelace

By: Amanda Demers
Printed Name: Amanda Demers
Title: Vice-President

STATE OF NEW YORK)
)
COUNTY OF NY)

BEFORE ME, the undersigned authority, personally appeared Amanda Demers, known to me to be the individual described in and who executed the foregoing instrument as V.P. of **MERRILL LYNCH MORTGAGE LENDING, INC.**, and acknowledged to and before me that he/she executed such instrument as such _____ of said corporation.

WITNESS my hand and official seal this 29 day of May, 2007.

[SEAL]

Valencia Love
Notary Public

My Commission Expires: _____

VALENCIA LOVE
NOTARY PUBLIC, STATE OF NEW YORK
No. 01LO6110507
QUALIFIED IN KINGS COUNTY
MY COMMISSION EXPIRES MAY 24, 2008

EXHIBIT "A"

~~97-00264C~~
2007-18645F

LEGAL DESCRIPTION

LOT 3, WILTHAM PLACE REPLAT 1, A SUBDIVISION LOCATED IN THE SW1/4 OF SECTION 14, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 3, WILTHAM PLACE REPLAT 1; THENCE N05°09'58"E (ASSUMED BEARING) ALONG THE WEST LINE OF SAID LOT 3, WILTHAM PLACE REPLAT 1, SAID LINE ALSO BEING THE EAST RIGHT-OF-WAY LINE OF 84TH STREET, A DISTANCE OF 40.80 FEET; THENCE N06°38'24"W ALONG SAID WEST LINE OF LOT 3, WILTHAM PLACE REPLAT 1, SAID LINE ALSO BEING SAID EAST RIGHT-OF-WAY LINE OF 84TH STREET, A DISTANCE OF 132.86 FEET; THENCE N00°00'57"E ALONG SAID WEST LINE OF LOT 3, WILTHAM PLACE REPLAT 1, SAID LINE ALSO BEING SAID EAST RIGHT-OF-WAY LINE OF 84TH STREET, A DISTANCE OF 37.08 FEET TO THE NORTHWEST CORNER OF SAID LOT 3, WILTHAM PLACE REPLAT 1; THENCE N89°54'57"E ALONG THE NORTH LINE OF SAID LOT 3, WILTHAM PLACE REPLAT 1, A DISTANCE OF 206.19 FEET TO THE NORTHEAST CORNER OF SAID LOT 3, WILTHAM PLACE REPLAT 1; THENCE S00°05'03"E ALONG THE EAST LINE OF SAID LOT 3, WILTHAM PLACE REPLAT 1, A DISTANCE OF 209.70 FEET TO THE SOUTHEAST CORNER OF SAID LOT 3, WILTHAM PLACE REPLAT 1; THENCE S89°54'57"W ALONG THE SOUTH LINE OF SAID LOT 3, WILTHAM PLACE REPLAT 1, A DISTANCE OF 194.82 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS AN AREA OF 41,709 SQUARE FEET OR 0.958 ACRES, MORE OR LESS.