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Skagit County Auditor

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LAND TITLE OF SKAGIT COUNTY

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

This Subordination, Non-disturbance and Attornment Agreement ("Agreement") is made as of the 3<sup>rd</sup> day of March, 2006, between DENNY'S, INC., a California corporation ("Tenant") and SKAGIT CAPITAL, LLC, a Delaware limited liability company ("Landlord") and WACHOVIA BANK, NATIONAL ASSOCIATION, a National Banking Association ("Lender").

Preliminary Statement

Lender is the owner and holder of a mortgage recorded in Book: 200603310305 *Instrument #* Page \_\_\_\_\_ of the real estate records of Skagit County, Washington (the mortgage and all increases, modifications, participations, replacements and extensions of the instrument or the secured debt are collectively called the "Security Instrument"). Tenant entered into a lease dated January 9, 1991 (the "Lease") for property (the "Property") described in the Lease.\* The Lease and Property are part of the collateral under the Security Instrument. That the Lease referred to above is the complete agreement concerning Tenant's occupancy of the leased premises, that there are no amendments, modifications or extensions of or to the Lease.

\* Recorded under Auditors # 9107220007

The Lease provides for the Tenant's leasehold interest to be subordinate to the Security Instrument so long as Lender assures Tenant that Tenant's possession of the Property and rights under the Lease will not be disturbed. The parties agree to carry out these provisions as set forth in this Agreement.

Agreement

NOW, THEREFORE, for \$10.00 and other valuable consideration exchanged between Lender and Tenant, the receipt and sufficiency of which are acknowledged, Lender and Tenant agree as follows:

- 1. Subordination.** Tenant subordinates the priority of its leasehold estate under the Lease to the lien of the Security Instrument (but not to any other interest in the Property arising after the Lease) as if the Security Instrument had been executed and recorded prior to the Lease. Tenant does not subordinate any other rights arising

under the Lease or other agreements with Landlord, including easements in other property, restrictive covenants against other property, options or rights of first refusal. Tenant agrees to waive any options or rights of first refusal as to any Transfer of Ownership, but these rights shall remain in force for transactions by the successor landlord after the Transfer of Ownership. This Agreement does not modify the Lease in any way, including without limitation any provisions relating to proceeds of insurance or condemnation.

**2. Non-disturbance Agreement.** As long as Tenant is not in default beyond any applicable grace period in the payment of rent, additional rent or other charges or in the performance of any of the terms or conditions of the Lease, Tenant's rights under the Lease and its possession of the Premises will be recognized and will not be interfered with or disturbed by Lender, by the purchaser at a foreclosure sale, or by the grantee of a deed in lieu of foreclosure (as applicable, a "Transfer of Ownership") or by their respective successors and assigns.

**3. Attornment Agreement.** If a Transfer of Ownership occurs, the new owner and Tenant will be bound to each other, as landlord and tenant, respectively, under all of the terms and conditions of the Lease for the balance of its term (including any renewal or extension term). Tenant attorns to the new owner as its landlord immediately upon a Transfer of Ownership, such attornment to be effective and self-operative, without the execution of any other instruments by either party.

**4. Rent.** Tenant has notice that the Lease and the rents and all other sums due thereunder have been assigned to Lender as security for the loan secured by the Security Instrument. In the event Lender notifies Tenant of the occurrence of a default under the Security Instrument and demands that Tenant pay its rents and all other sums due or to become due under the Lease directly to Lender, Tenant shall honor such demand and pay its rent and all other sums due under the Lease directly to Lender or as otherwise authorized in writing by Lender. Landlord hereby irrevocably authorizes Tenant to make the foregoing payments to Lender upon such notice and demand.

**5. Notices.** Tenant shall notify Lender of any default by Landlord under the Lease and agrees that Lender shall have the right but not the obligation to cure such default within the time period to cure defaults given in the Lease.

All notices or other written communication hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt acknowledged by the recipient thereof; (ii) one (1) Business Day (hereinafter defined) after having been deposited for overnight delivery with any reputable overnight courier service; or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U. S. Post Office and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to the receiving party at its address as follows:



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D.I. #2049  
Mt. Vernon, WA

If to Tenant:

Denny's, Inc.  
203 East Main Street  
Spartanburg, South Carolina 29319  
Attn: Legal Department, P-12-03

If to Lender:

Wachovia Bank, National Association  
Commercial Real Estate Services  
8739 Research Drive URP-4  
NC 1075  
Charlotte, NC 28262  
Loan Number 50-2854958  
Attention: Portfolio Management

If to Landlord:

Real Property Investors, LLC  
c/o Pacific Asset Advisors, Inc.  
600 108<sup>th</sup> Avenue NE, Suite 530  
Bellevue, Washington 98004

For purposes of this Paragraph 5, the term "Business Day" shall mean any day other than Saturday, Sunday or any other day on which banks are required or authorized to close.

**6. Binding Effect.** This Agreement shall be binding on and shall inure to the benefit of the parties and their successors and assigns.

**7. Attorney's Fees.** In the event any legal action or proceeding is commenced to interpret or enforce, the terms of, or obligations arising out of this Agreement, or to recover damages for the breach thereof; the party prevailing in any such action or proceeding shall be entitled to recover from the nonprevailing party all reasonable attorney's fees, costs and expenses incurred by the prevailing party as shall be plead and proven by such party and awarded by a court of competent jurisdiction.

**8. Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

**9. Headings.** The headings of this Agreement are for convenience of reference only.



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**10. Termination.** From and after payment in full of the loan secured by the Mortgage without the transfer of the Property to Lender as a purchaser, this Agreement shall become void and of no further force and effect.

IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first above written. If this agreement is executed in advance of the effective date of the Security Instrument, then it shall become effective at the same time, and any party is authorized to complete information to identify the Security Instrument as recorded.

If Tenant has not received a fully executed copy of this agreement within thirty (30) days of Tenant's execution, this agreement shall be null and void.

LANDLORD:

SKAGIT CAPITAL, LLC

By: *[Signature]*  
JOHN SAFI  
Its: president

TENANT:

DENNY'S, INC., a California corporation

By: *[Signature]*  
Timothy E. Flemming, Vice President

LENDER:

WACHOVIA BANK, NA

By: *[Signature]*  
Its: \_\_\_\_\_



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DENNY'S, INC.  
CORPORATE ACKNOWLEDGMENT  
(For use in all states except LA)

STATE OF SOUTH CAROLINA         )  
  ) SS  
COUNTY OF SPARTANBURG         )

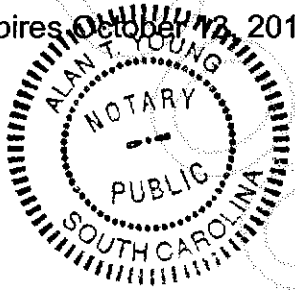
On March 21, 2006, before me, the undersigned officer, personally appeared Timothy E. Flemming of Spartanburg, South Carolina personally known and acknowledged himself to me to be the Vice President of Denny's, Inc., a California corporation, and that as such officer being duly authorized to do so pursuant to its bylaws or a resolution of its board of directors, executed and acknowledged the foregoing instrument for the purposes therein contained, by signing the name of the Corporation by himself as such officer as his free and voluntary act and deed and the free and voluntary act and deed of said Corporation.

IN WITNESS WHEREOF, I hereunder set my hand and official seal.

*Alan T. Young*  
Alan T. Young, Notary Public

My commission expires October 2, 2010

NOTARY SEAL



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ALL PURPOSE  
CORPORATE ACKNOWLEDGMENT  
(For use in all states except LA)

STATE OF New York )  
 ) SS  
COUNTY OF New York )

On May 11, 2006, before me, the undersigned officer, personally appeared Terry P. Livingston personally known and acknowledged himself to me to be the Managing Director Wachovia, and that as such officer being duly authorized to do so pursuant to its bylaws or a resolution of its board of directors, executed and acknowledged the foregoing instrument for the purposes therein contained, by signing the name of the Corporation by himself as such officer as his free and voluntary act and deed and the free and voluntary act and deed of said Corporation.

IN WITNESS WHEREOF, I hereunder set my hand and official seal.

Madeline Zorrilla  
\_\_\_\_\_, Notary Public

My commission expires \_\_\_\_\_

NOTARY SEAL

MADELINE ZORRILLA  
Notary Public, State of New York  
No. 01706043997  
Qualified in Westchester County  
My Commission Expires June 26, 2007



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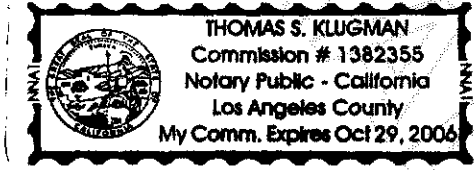
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ALL-PURPOSE ACKNOWLEDGEMENT

State of CALIFORNIA )  
County of LOS ANGELES ) ss.

On the 28<sup>TH</sup> day of MARCH, 2006, before me, personally appeared JOHN SAFI, personally known to me -or-        proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/~~she~~ executed the same in their authorized capacity, and that by their signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.



[Signature]  
Notary Public for CALIFORNIA  
My Commission Expires: OCTOBER 29, 2006

DOCUMENT



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