

REQUESTED BY  
**Stewart Title of Douglas County**  
IN OFFICIAL RECORDS OF  
DOUGLAS CO., NEVADA

2003 JUL 10 PM 3:35

WERNER CHRISTEN  
RECORDER

\$ 45<sup>00</sup> PAID KJ DEPUTY

APN 1320-04-001-016

Return to:  
Affinity Bank  
101 So. Chestnut St.  
Ventura, CA 93001  
Attn: Funding Dept.

030501046

(Space above this line for Recorder's Use only)

**SUBORDINATION, NON-DISTURBANCE AND  
ATTORNMEN T AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN T AGREEMENT is dated this 19<sup>th</sup> day of May, 2003, between AFFINITY BANK, a California corporation ("Lender"), THE DAVIS FAMILY Trust dated MAY\* "Landlord") and Next Proteins, Inc. "Tenant").

\*4, 1992

**RECITALS:**

A. Tenant has entered into a certain lease (the "Lease") dated 6-6-02, with the Landlord, of a certain parcel of land and building commonly known as 2842 Business Parkway #1 & 2, \*\*. The leased premises described in the Lease are hereinafter referred to as the Demised Premises.  
\*\* Minden, NV 89423

B. Lender has made [or will make] a loan to Landlord, which loan is secured by a Deed of Trust dated July 3, 2003 (the "Deed") to be recorded herewith with respect with the Demised Premises, and;

C. Lender has made [or will make] a loan to Landlord, which loan is secured by an Assignments of Rents and Leases dated July 3, 2003 (the "Assignment") to be recorded herewith with respect with the Demised Premises.

NOW, THEREFORE, for mutual consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Tenant agrees that the lien of the Lease is and shall be subject and subordinate to the lien of the Deed and to the lien of the Assignment and to all renewals, amendments, modifications, consolidations, replacements and extensions thereof, now or hereafter executed, to the full extent of all amounts secured thereby, said subordination to have the same force and effect as if the Deed, the Assignment, and such renewals, modifications, consolidations, replacements and

extensions thereof had been executed, acknowledged, delivered and recorded prior to the Lease, and amendments or modifications or any notice thereof. Provided, however, that the foregoing subordination provision shall not be deemed or construed as limiting Tenant's rights under the Lease and/or Landlord's obligations there under.

2. Lender agrees that Tenant shall not be named or joined as a party defendant in any action, suit or proceeding which may be instituted by Lender to foreclose or seek other remedies under the Deed or the Assignment by reason of a default or event of default under the Deed or the Assignment, unless applicable law requires Tenant to be made a party thereto as a condition to Lender's proceeding against Landlord or prosecuting such rights and remedies. Lender further agrees that, in the event of any entry by Lender pursuant to the Deed, a foreclosure of the Deed or the exercise by Lender of any of its rights under the Deed or Assignment, Lender shall not disturb Tenant's right of possession of the Demised Premises under the terms of the Lease so long as Tenant is not in default beyond any applicable grace period of any term, covenant or condition of the Lease.

3. Tenant agrees that, in the event of a foreclosure of the Deed by Lender, the acceptance of a deed in lieu of foreclosure by Lender, or Lender's exercise of any of its rights under the Deed or Assignment, Tenant will attorn to and recognize Lender as its landlord under the Lease for the remainder of the term of the Lease (including all extension periods which have been or are hereafter exercised) upon the same terms and conditions as are set forth in the Lease, and Tenant hereby agrees to perform all of the obligations of Tenant pursuant to the Lease.

4. Tenant agrees that, in the event Lender succeeds to the interest of Landlord under the Lease:

(a) Lender shall not be liable in damages for any act or omission of any prior landlord (including Landlord), provided nothing herein shall derogate from the obligation of Lender to perform all of the obligations of Landlord pursuant to the Lease once Lender succeeds to the interest of Landlord under the Lease;

(b) As provided in California Civil Code section 1950.7, the Lender shall not be liable for the return of any security deposit unless such security deposit is actually received by Lender.

(c) Lender shall not be bound by any rent or additional rent, which Tenant might have prepaid for more than one (1) month in advance under the Lease (unless so required under the Lease).

(d) Lender shall not be bound by any amendments or modifications of the Lease (which has the effect of reducing rent, decreasing the term or canceling the Lease prior to its expiration except as the result of either the exercise of a right to terminate as set forth in the Lease or as provided by law, or as a result of a default of Landlord) made without the consent of Lender, which consent shall not be unreasonably withheld, delayed or conditioned; and

(e) Lender shall not be subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord) except in cases where Lender has received written notice of the event or circumstances giving rise to such damages, offsets or defenses and the same period of time to cure as is provided to Landlord under the Lease.

Landlord shall be responsible for any notifications or approvals required by Lender pursuant to Section 4(d)

5. Lender hereby approves of, and consents to, the Lease. Notwithstanding anything to the contrary contained in the Deed or the Assignment, Tenant shall be entitled to use and occupy the Demised Premises and exercise all its rights under the Lease, and the Lease and Landlord's and Tenant's performance thereunder shall not constitute a default under the Deed or Assignment. Tenant agrees to give Lender a copy of any notice of default under the Lease served upon Landlord at the same time as such notice is given to Landlord. Prior to terminating the Lease due to a default by Landlord thereunder, Tenant agrees to notify Lender of such default and give Lender the opportunity to cure such default within thirty (30) days of Lender's receipt of such notice (or, if such default cannot reasonably be cured within such thirty (30) day period, Lender shall have such longer time as may be necessary to cure the default; provided that Lender commences the cure within such period and diligently pursues the cure thereafter).

6. The terms and provisions of this agreement shall be automatic and self-operative without execution of any further instruments on the part of any of the parties hereto. Without limiting the foregoing, Lender and Tenant agree, within thirty (30) days after request therefor by the other party, to execute an instrument in confirmation of the foregoing provisions, in form and substance reasonably satisfactory to Lender and Tenant, pursuant to which the parties shall acknowledge the continued effectiveness of the Lease in the event of such foreclosure or other exercise of rights.

7. Any notice to be delivered hereunder shall be in writing and shall be sent registered or certified mail, return receipt requested, postage prepaid, or overnight delivery by Federal Express, United Parcel Service, U.S. Postal Service Express Mail or similar overnight courier which delivers only upon signed receipt of the addressee, or its agent. The time of the giving of any notice shall be the time of receipt thereof by the addressee or any agent of the addressee, except that in the event that the addressee shall refuse to receive any notice, or there shall be no person available (during normal business hours) to receive such notice, the time of giving notice shall be deemed to be the time of such refusal or attempted delivery as the case may be. All notices addressed to Lender or Tenant as the case may be, shall be delivered to the respective addresses set forth opposite their names below, or such other addresses as they may hereafter specify by written notice delivered in accordance herewith:

If to Tenant:

Williamk. Dix  
General Counsel  
Next Proteins Inc,  
2283 Cosmos Ct.  
Camlsbad, CA 92009

If to Landlord:

DAVID + Sharon Davis  
P.O. Box 1360  
Gardnerville, NV 89410

If to Lender:

Affinity Bank  
101 South Chestnut Street  
Ventura, CA 93001  
Loan Number 01-5090383-17

8. The term "Lender" as used herein includes any direct or more remote successor or assign of the named Lender herein, including without limitation, any purchaser at a foreclosure sale, and any successor or assign thereof, and the term "Tenant" as used herein includes any direct or more remote successor and assign of the named Tenant herein.

TENANT: Next Proteins, Inc

By: William K. Dix

Name: \_\_\_\_\_

Title: General Counsel

State of California )

County of San Diego )

ss.

On 5/29/03, before me, Tammy L. Pearson, Notary Public

Name and Title of Officer (e.g., Jane Doe, Notary

Public)

personally appeared William K. Dix

- personally known to me
- proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Tammy L. Pearson  
Signature of Notary Public

Place Notary Seal Above

LENDER:

AFFINITY BANK

By: *Edward W. Summers*

Name: EDWARD W. SUMMERS

Title: SENIOR VICE PRESIDENT

State of California )

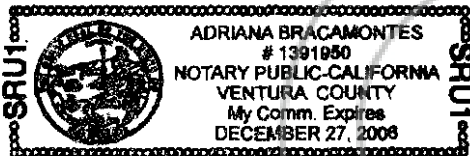
County of VENTURA )

ss.

On July 3, 2003, before me, ADRIANA BRACAMONTES, Notary Public  
Name and Title of Officer (e.g., Jane Doe, Notary Public)  
personally appeared Edward W. Summers

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/het/their authorized capacity(ies), and that by his/het/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

*Adriana Bracamontes*

Signature of Notary Public

Place Notary Seal Above

By: David B. Davis  
Name: DAVID B. DAVIS  
Title: Trustee

LANDLORD THE DAVIS FAMILY  
Trust dated MAY 4, 1992  
By: Sharon Lynn Davis  
Name: Sharon Lynn Davis  
Title: Trustee

State of ~~California~~ Nevada )  
County of Douglas )

ss.

On June 4, 2003, before me, Donna S. Kruger  
Name and Title of Officer (e.g., Jane Doe, Notary Public)

personally appeared David B. + Sharon Lynn Davis

- personally known to me  
 proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Place Notary Seal Above

Donna S. Kruger  
Signature of Notary Public

