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**PREPARED BY AND AFTER
RECORDING RETURN TO:**

Aronberg Goldgehn
330 North Wabash, Suite 1700
Chicago, Illinois 60611
Attn: Ned S. Robertson



Doc#: 1323522023 Fee: \$60.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 08/23/2013 10:20 AM Pg: 1 of 12

Address: 959 East Oakton
Des Plaines, Illinois 60018

P.I.N.s 09-29-101-001-0000, 09-29-101-002-0000
09-29-101-003-0000, 09-29-101-004-0000 and
09-29-101-005-0000

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** (this "Agreement") dated this 15th day of August, 2013, is made by and among **JOE CAPUTO AND SONS, INC.**, an Illinois corporation ("Tenant"), **THE CAPUTO FAMILY LIMITED PARTNERSHIP**, an Illinois limited partnership ("Landlord"), and **COLE TAYLOR BANK**, an Illinois state bank ("Lender").

WHEREAS, Lender has agreed to make certain a loan to Foxfire, an affiliate of Mortgagor, in the maximum principal amount of Seven Million Two Hundred Fifty Thousand and 00/100 Dollars (\$7,250,000.00) (the "Foxfire Loan"). The Foxfire Loan is evidenced by that certain Promissory Note dated as of even date herewith in the principal amount of Seven Million Two Hundred Fifty Thousand and 00/100 Dollars (\$7,250,000.00) from Foxfire payable to the order of Lender ("Foxfire Note").

WHEREAS, Lender has also agreed to make a loan to Randall, and an affiliate of Mortgagor, in the maximum principal amount of Seven Million Two Hundred Fifty Thousand and 00/100 Dollars (\$7,250,000.00) (the "Randall Loan" which together with the Foxfire Loan are sometimes referred to herein as the "Loans"). The Randall Loan is evidenced by that certain Promissory Note of even date herewith in the principal amount of Seven Million Two Hundred Fifty Thousand and 00/100 Dollars (\$7,250,000.00) from Randall payable to the order of Lender (the "Randall Note" which together with the Foxfire Note are sometimes referred to herein as the "Notes").

WHEREAS, The Notes are secured by, among other things, a Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents (herein, as may from time to time be extended, amended, restated or supplemented, the "Mortgage"), covering, among other property, the land (the "Land") described in **Exhibit A** which is attached hereto and incorporated herein by reference, and the improvements thereon ("Improvements") (such Land and Improvements being herein together called the "Property") from Landlord to Lender of even date herewith;

WHEREAS, Tenant is the tenant under that certain Commercial Lease with Landlord (or Landlord's predecessor in ownership of the Property) dated as of September 1, 2009 (herein, as

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BOX 333-CT

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may from time to time be extended, amended, restated or supplemented, the "Lease"), covering a portion of the Property (said portion being herein referred to as the "Premises"); and

WHEREAS, the term "Landlord" as used herein means the present landlord under the Lease or, if the landlord's interest is transferred in any manner, the successor(s) or assign(s) occupying the position of landlord under the Lease at the time in question.

NOW, THEREFORE, in consideration of the mutual agreements herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Subordination. Tenant agrees and covenants, subject to the terms of this Agreement, that the Lease and the rights of Tenant thereunder, all of Tenant's right, title and interest in and to the property covered by the Lease, and any lease thereafter executed by Tenant covering any part of the Property, are and shall be subject, subordinate and inferior in all respects to (a) the Mortgage and the rights of Lender thereunder, and all right, title and interest of Lender in and to the Property, and (b) all other loan documents now or hereafter securing payment of any indebtedness of Landlord (or any prior landlord) to Lender which cover or affect all or any portion of the Property (collectively, the "Loan Documents"). This Agreement is not intended and shall not be construed to subordinate the Lease to any mortgage, deed of trust or other security document other than those referred to in the immediately preceding sentence, securing the indebtedness owing to Lender. Without limiting the generality of the foregoing subordination provision, Tenant hereby agrees that any of its right, title and interest in and to insurance proceeds and condemnation awards (or other similar awards arising from eminent domain proceedings) with respect to damage to or the condemnation (or similar taking) of any of the Property, shall be subject and subordinate to Lender's right, title and interest in and to such proceeds and awards pursuant to the Loan Documents.

2. Non-Disturbance. Lender agrees that so long as the Lease is in full force and effect and Tenant is not in default in the payment of rent, additional rent or other payments due under the Lease or in the performance of any of the other terms, covenants or conditions of the Lease on Tenant's part to be performed (beyond the period, if any, specified in the Lease within which Tenant may cure such default),

(a) Tenant's possession of the Premises under the Lease shall not be disturbed or interfered with by Lender in the exercise of any of its foreclosure rights under the Mortgage or in connection with the conveyance of the Property by deed in lieu of foreclosure, and

(b) Lender will not join Tenant as a party defendant for the purpose of terminating Tenant's interest and estate under the Lease in any proceeding for foreclosure of the Mortgage.

3. Attornment.

(a) Tenant covenants and agrees that in the event of the foreclosure of the Mortgage, whether by power of sale or by court action, or upon a transfer of the Property by a deed in lieu of foreclosure (each being referred to herein as the "Transfer Date") (the

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purchaser at foreclosure or the transferee in such deed in lieu of foreclosure, including Lender if it is such purchaser or transferee, being herein called the "New Owner"), Tenant shall attorn to the New Owner as Tenant's new landlord, and agrees that the Lease shall continue in full force and effect as a direct lease between Tenant and New Owner upon all of the terms, covenants, conditions and agreements set forth in the Lease and this Agreement, except for provisions which are impossible for New Owner to perform; provided, however, that in no event shall the New Owner be:

(i) liable for any act, omission, default, misrepresentation, or breach of warranty, of any previous landlord (including Landlord) or obligations accruing prior to New Owner's actual ownership of the Property;

(ii) subject to any offset, defense, claim or counterclaim which Tenant might be entitled to assert against any previous landlord (including Landlord) unless Tenant shall have provided Lender with (A) notice of the applicable default that gave rise to such offset or defense, and (B) the opportunity to cure the same, all in accordance with the terms of Section 4(b) below;

(iii) bound by any payment of rent, additional rent or other payments, made by Tenant to any previous landlord (including Landlord) for more than one (1) month in advance of the date when due under the Lease;

(iv) bound by any amendment or modification of the Lease hereafter made, without the written consent of Lender; or

(v) liable for any deposit that Tenant may have given to any previous landlord (including Landlord) which has not been transferred to New Owner.

(b) The provisions of this Agreement regarding attornment by Tenant shall be self-operative and effective without the necessity of execution of any new lease or other document on the part of any party hereto or the respective heirs, legal representatives, successors or assigns of any such party. Tenant agrees, however, to execute and deliver upon the request of New Owner, any reasonable instrument or certificate which in the reasonable judgment of New Owner may be necessary or appropriate to evidence such attornment, including a new lease of the Premises on the same terms and conditions as set forth in the Lease for the unexpired term of the Lease.

4. Acknowledgment and Agreement by Tenant. Tenant acknowledges and agrees as follows:

(a) Tenant will not amend, alter or waive any provision of, or consent to the amendment, alteration or waiver of any provision of the Lease without the prior written consent of Lender, unless such amendment is permitted pursuant to the Loan Documents. Tenant shall not prepay any rents or other sums due under the lease for more than one (1) month in advance of the due date therefor. Tenant acknowledges that Lender will rely upon this instrument in connection with the financing being made by Lender and secured, in part, by the Mortgage.

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(b) From and after the date hereof, in the event of a default by Landlord which would give Tenant the right, either immediately or after the lapse of time, to terminate the Lease or to claim a partial or total eviction, Tenant will not exercise any such right (i) until it has given written notice of such act or omission to the Lender; and (ii) until Tenant has given Lender a period of thirty (30) days after the expiration of Landlord's applicable cure period to cure such default, or such longer period of time as may be necessary to cure or remedy such default, during which period of time Lender shall be permitted to cure or remedy such default; provided, however, that Lender shall have no duty or obligation to cure or remedy any default. It is specifically agreed that Tenant shall not, as to Lender, require cure of any such default which is personal to Landlord, and therefore not susceptible to cure by Lender.

(c) In the event that Lender notifies Tenant of a default under the Mortgage or Loan Documents and demands that Tenant pay its rent and all other sums due under the Lease directly to Lender, Tenant shall honor such demand and pay the full amount of its rent and all other sums due under the Lease directly to Lender, without offset, or as otherwise required pursuant to such notice beginning with the payment next due after such notice of default, without inquiry as to whether a default actually exists under the Mortgage or other Loan Documents, and notwithstanding any contrary instructions of or demands from Landlord.

(d) Tenant has no right or option of any nature whatsoever, whether pursuant to the Lease or otherwise, to purchase the Premises or the Property, or any portion thereof or any interest therein, and to the extent that Tenant has had, or hereafter acquires, any such right or option, the same is hereby acknowledged to be subject and subordinate to the Mortgage and is hereby waived and released as against Lender and New Owner.

(e) Lender and any New Owner shall have no obligation nor incur any liability with respect to the erection or completion of any improvements in which the Premises are located or for completion of the Premises or any improvements for Tenant's use and occupancy, either at the commencement of the term of the Lease or upon any renewal or extension thereof or upon the addition of additional space, pursuant to any expansion rights contained in the Lease.

(f) Lender and any New Owner shall have no obligation nor incur any liability with respect to any warranties of any nature whatsoever, whether pursuant to the Lease or otherwise, including, without limitation, any warranties respecting use, compliance with zoning, Landlord's title, Landlord's authority, habitability, fitness for purpose or possession provided that to the extent that the breach of any such warranty shall give Tenant the right to terminate the Lease pursuant to the terms of the Lease, Tenant shall retain such right to terminate pursuant to the terms of the Lease.

(g) In the event that Lender or any New Owner shall acquire title to the Premises or the Property, Lender or such New Owner shall have no obligation, nor incur any liability, beyond Lender's or New Owner's then equity interest, if any, in the Property or the Premises, and Tenant shall look exclusively to such equity interest of Lender or New Owner, if any, for the payment and discharge of any obligations imposed upon

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Lender or New Owner hereunder or under the Lease or for recovery of any judgment from Lender, or New Owner, and in no event shall Lender, New Owner, nor any of their respective officers, directors, shareholders, agents, representatives, servants, employees or partners ever be personally liable for such judgment.

5. Acknowledgment and Agreement by Landlord. Landlord, as landlord under the Lease and grantor under the Mortgage, acknowledges and agrees for itself and its successors and assigns, that: (a) this Agreement does not constitute a waiver by Lender of any of its rights under the Mortgage or any of the other Loan Documents, or in any way release Landlord from its obligations to comply with the terms, provisions, conditions, covenants, agreements and clauses of the Mortgage and the other Loan Documents; (b) the provisions of the Mortgage and the other Loan Documents remain in full force and effect and must be complied with by Landlord; and (c) Tenant is hereby authorized to pay its rent and all other sums due under the Lease directly to Lender upon receipt of a notice as set forth in Subsection 4(c) above from Lender and that Tenant is not obligated to inquire as to whether a default actually exists under the Mortgage or any of the other Loan Documents. Landlord hereby releases and discharges Tenant of and from any liability to Landlord resulting from Tenant's payment to Lender in accordance with this Agreement. Landlord represents and warrants to Lender that a true and complete copy of the Lease has been delivered by Landlord to Lender.

6. Lease Status. Landlord and Tenant represent and warrant to Lender that neither Landlord nor Tenant has knowledge of any default on the part of the other under the Lease, that the Lease is bona fide and contains all of the agreements of the parties thereto with respect to the letting of the Premises and that all of the agreements and provisions therein contained are in full force and effect.

7. Notices. All notices, requests, consents, demands and other communications required or which any party desires to give hereunder shall be in writing and shall be deemed sufficiently given or furnished if delivered by personal delivery, by expedited delivery service with proof of delivery, or by registered or certified United States mail, postage prepaid, at the addresses specified at the end of this Agreement (unless changed by similar notice in writing given by the particular party whose address is to be changed). Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein. Notwithstanding the foregoing, no notice of change of address shall be effective except upon receipt by the parties hereto other than the particular party whose address is to be changed. This Section 7 shall not be construed in any way to affect or impair any waiver of notice or demand provided in this Agreement or in the Lease or in any document evidencing, securing or pertaining to the loan secured by the Mortgage or to require giving of notice or demand to or upon any person in any situation or for any reason.

8. Miscellaneous.

(a) This Agreement supersedes any inconsistent provision of the Lease.

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(b) Nothing contained in this Agreement shall be construed to derogate from or in any way impair, or affect the lien, security interest or provisions of the Mortgage or the other Loan Documents.

(c) This Agreement shall inure to the benefit of the parties hereto, their respective successors and permitted assigns, and any New Owner, and its heirs, personal representatives, successors and assigns; provided, however, that in the event of the assignment or transfer of the interest of Lender, all obligations and liabilities of the assigning Lender under this Agreement shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the party to whom Lender's interest is assigned or transferred.

(d) THIS AGREEMENT AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION SHALL BE GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS AND APPLICABLE UNITED STATES FEDERAL LAW EXCEPT ONLY TO THE EXTENT, IF ANY, THAT THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED NECESSARILY CONTROL.

(e) The words "herein", "hereof", "hereunder" and other similar compounds of the word "here" as used in this Agreement refer to this entire Agreement and not to any particular section or provision.

(f) 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.

(g) If any provision of the Agreement shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not apply to or affect any other provision hereof, but this Agreement shall be construed as if such invalidity, illegality, or unenforceability did not exist.

(h) FORUM. TO INDUCE THE LENDER TO ACCEPT THIS AGREEMENT, TENANT IRREVOCABLY AGREES THAT AT THE ELECTION OF LENDER ALL ACTIONS OR PROCEEDINGS IN ANY WAY, MANNER OR RESPECT, ARISING OUT OF OR FROM OR RELATED TO THIS AGREEMENT SHALL BE LITIGATED IN COURTS HAVING SITUS WITHIN THE COUNTY OF COOK, STATE OF ILLINOIS. TENANT HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURTS LOCATED WITHIN SAID COUNTY AND STATE. TENANT HEREBY WAIVES ANY RIGHT IT MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT AGAINST IT BY LENDER IN ACCORDANCE WITH THIS PARAGRAPH.

(i) WAIVER OF JURY TRIAL. TENANT AND SENIOR LENDER, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, EACH KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE IRREVOCABLY, THE RIGHT TO TRIAL BY JURY WITH RESPECT TO

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ANY ACTION OR PROCEEDING WHICH PERTAINS DIRECTLY OR INDIRECTLY TO THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO LENDER GRANTING ANY FINANCIAL ACCOMMODATION TO BORROWER AND ENTERING INTO THIS AGREEMENT.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS]**

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IN WITNESS WHEREOF, the parties hereto have caused this Subordination Non-Disturbance and Attornment Agreement to be duly executed and sealed as of the date first above written.

ADDRESS OF LENDER:

9550 West Higgins Road
Rosemont, Illinois 60018
Attention: Eric J. Zaleski

LENDER:

COLE TAYLOR BANK,
an Illinois state bank

By: _____
Eric J. Zaleski, Senior Vice President

ADDRESS OF TENANT:

959 East Oakton
Des Plaines, Illinois 60018
Attention: Natale V. Caputo

TENANT:

JOE CAPUTO AND SONS, INC., an Illinois corporation

By: _____
Natale V. Caputo, President

ADDRESS OF LANDLORD:

959 East Oakton
Des Plaines, Illinois 60018
Attention: Natale V. Caputo

LANDLORD:

THE CAPUTO FAMILY LIMITED PARTNERSHIP, an Illinois limited partnership

By: **GAC PROPERTY CO., INC.,** its general partner

By: _____
Natale V. Caputo, President

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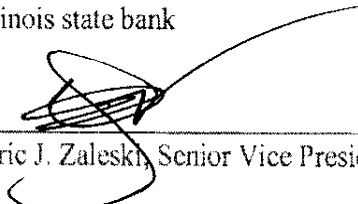
IN WITNESS WHEREOF, the parties hereto have caused this Subordination Non-Disturbance and Attornment Agreement to be duly executed and sealed as of the date first above written.

ADDRESS OF LENDER:

9550 West Higgins Road
Rosemont, Illinois 60018
Attention: Eric J. Zaleski

LENDER:

COLE TAYLOR BANK,
an Illinois state bank

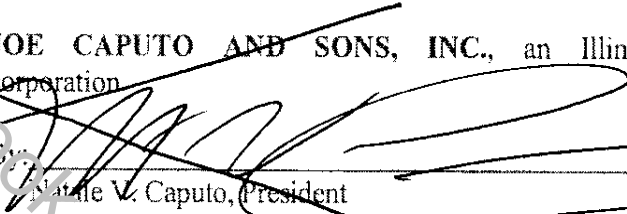
By: 
Eric J. Zaleski, Senior Vice President

ADDRESS OF TENANT:

959 East Oakton
Des Plaines, Illinois 60018
Attention: Natale V. Caputo

TENANT:

JOE CAPUTO AND SONS, INC., an Illinois corporation

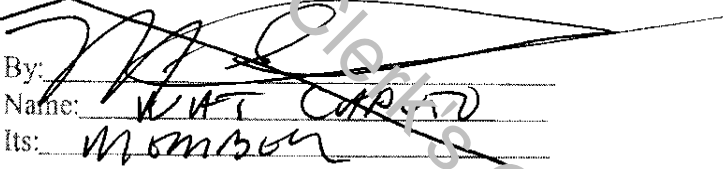
By: 
Natale V. Caputo, President

ADDRESS OF LANDLORD:

959 East Oakton
Des Plaines, Illinois 60018
Attention: Natale V. Caputo

LANDLORD:

THE CAPUTO FAMILY LIMITED PARTNERSHIP, an Illinois limited partnership

By: 
Name: Natale V. Caputo
Its: Member

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STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

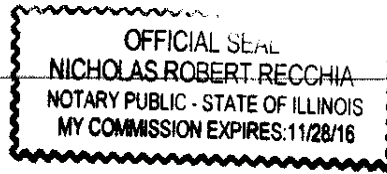
The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Natale V. Caputo, President of **GAC PROPERTY CO., INC.**, general partner of **THE CAPUTO FAMILY LIMITED PARTNERSHIP**, an Illinois limited partnership, who is personally known to me to be the same persons whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited partnership, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 14th day of August, 2013.

Nicholas R. Recchia

Notary Public

My Commission Expires:

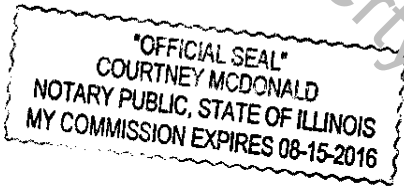


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STATE OF Illinois)
) SS.
COUNTY OF Cook)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DOES HEREBY CERTIFY that Eric J. Zaleski, a Senior Vice President of **COLE TAYLOR BANK**, an Illinois state bank, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 13 day of August, 2013.



Courtney McDonald
Notary Public

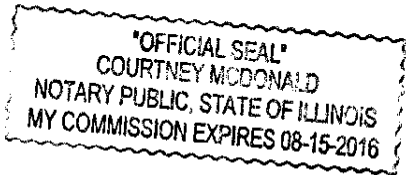
My Commission Expires:

8-15-16

STATE OF Illinois)
) SS.
COUNTY OF Cook)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DOES HEREBY CERTIFY that Natale V. Caputo, the President of **JOE CAPUTO AND SONS, INC.**, an Illinois corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 13 day of August, 2013.



Courtney McDonald
Notary Public

My Commission Expires:

8-15-16

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EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOTS 88, 89, 90, 91 AND 92 IN OAKTON GARDENS, A SUBDIVISION OF THE EAST 1/2 OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address: 959 East Oakton, Des Plaines, Illinois 60018

P.I.N.s 09-29-101-001-0000, 09-29-101-002-0000, 09-29-101-003-0000,
09-29-101-004-0000 and 09-29-101-005-0000

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