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Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 10/15/2013 01:53 PM Pg: 1 of 14

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Kaye Schrier LLP  
425 Park Avenue  
New York, New York 10022  
Attention: Aaron Lehrfield, Esq.

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

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KS DRAFT: 7/11/13

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

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**THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** ("**Agreement**") is entered into as of July <sup>Aug</sup> [ / ], 2013 (the "**Effective Date**") by and between **PFP HOLDING COMPANY III, LLC**, a Delaware limited liability company (together with its successors and assigns, the "**Mortgagee**") and **PIZZA HUT OF AMERICA, INC.**, a Delaware corporation (the "**Tenant**"), with reference to the following facts:

A. **IRVING-HARLEM VENTURE, LIMITED**, an Illinois limited partnership, as successor in interest to Chicago Title Land Trust Company, as successor trustee to LaSalle Bank National Association, fka LaSalle National Bank, as successor trustee to LaSalle National Trust, N.A., not personally, but as Trustee under Trust Agreement dated February 1, 1974 and known as Trust No. 45786 (the "**Landlord**"), owns fee simple title to the real property described in Exhibit "A" attached hereto and commonly referred to as Norridge Commons (the "**Property**").

B. Mortgagee has made or intends to make a loan to Landlord (the "**Loan**").

C. To secure the Loan, Landlord has or will encumber the Property by entering into a mortgage in favor of Mortgagee (as amended, increased, renewed, extended, spread, consolidated, severed, restated, or otherwise changed from time to time, the "**Mortgage**") to be recorded in the Recorder's Office in and for the County of Cook, State of Illinois.

D. Pursuant to the Lease effective June 22, 2007 (the "**Lease**"), Landlord demised to Tenant a portion of the Property described in the Lease (the "**Leased Premises**").

E. Tenant and Mortgagee desire to agree upon the relative priorities of their interests in the Property and their rights and obligations if certain events occur.

NOW, THEREFORE, for good and sufficient consideration, Tenant and Mortgagee agree:

1. **Definitions.** The following terms shall have the following meanings for purposes of this Agreement.

a. **Foreclosure Event.** A "**Foreclosure Event**" means: (i) foreclosure under the Mortgage; (ii) any other exercise by Mortgagee of rights and remedies (whether under the Mortgage or under applicable law, including bankruptcy law) as holder of the Loan and/or the Mortgage, as a result of which a Mortgagee becomes owner of the Property; or (iii) delivery by Landlord to Mortgagee (or its designee or nominee) of a deed or other conveyance of Landlord's interest in the Property in lieu of any of the foregoing.

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b. Former Landlord. A “**Former Landlord**” means Landlord and any other party that was landlord under the Lease at any time before the occurrence of any attornment under this Agreement.

c. Offset Right. An “**Offset Right**” means any right or alleged right of Tenant to any offset, defense (other than one arising from actual payment and performance, which payment and performance would bind a Successor Landlord pursuant to this Agreement), claim, counterclaim, reduction, deduction, or abatement against Tenant’s payment of Rent or performance of Tenant’s other obligations under the Lease, arising (whether under the Lease or under applicable law) from Landlord’s breach or default under the Lease.

d. Rent. The “**Rent**” means any fixed rent, base rent or additional rent under the Lease.

e. Successor Landlord. A “**Successor Landlord**” means any party that becomes owner of the Property as the result of a Foreclosure Event.

f. Termination Right. A “**Termination Right**” means any right of Tenant to cancel or terminate the Lease or to claim a partial or total eviction arising (whether under the Lease or under applicable law) from Landlord’s breach or default under the Lease.

g. Other Capitalized Terms. If any capitalized term is used in this Agreement and no separate definition is contained in this Agreement, then such term shall have the same respective definition as set forth in the Lease.

2. Subordination. The Lease, as the same may hereafter be modified, amended or extended, shall be, and shall at all times remain, subject and subordinate to the terms conditions and provisions of the Mortgage, the lien imposed by the Mortgage, and all advances made under the Mortgage. Notwithstanding the foregoing, Mortgagee may elect, in its sole and absolute discretion, to subordinate the lien of the Mortgage to the Lease.

### 3. Nondisturbance, Recognition and Attornment.

a. No Exercise of Mortgage Remedies Against Tenant. So long as the Tenant is not in default under this Agreement or under the Lease beyond any applicable grace or cure periods (an “**Event of Default**”), Mortgagee (i) shall not terminate or disturb Tenant’s possession of the Leased Premises under the Lease, except in accordance with the terms of the Lease and this Agreement and (ii) shall not name or join Tenant as a defendant in any exercise of Mortgagee’s rights and remedies arising upon a default under the Mortgage unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or prosecuting such rights and remedies. In the latter case, Mortgagee may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant’s rights under the Lease or this Agreement in such action.

b. Recognition and Attornment. Upon Successor Landlord taking title to the Property (i) Successor Landlord shall be bound to Tenant under all the terms and conditions of the Lease (except as provided in this Agreement); (ii) Tenant shall recognize and attorn to Successor Landlord as Tenant’s direct landlord under the Lease as affected by this Agreement; and (iii) the Lease shall continue in full force and effect as a direct lease, in accordance with its terms (except

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as provided in this Agreement), between Successor Landlord and Tenant. Tenant hereby acknowledges notice that pursuant to the Mortgage and assignment of rents, leases and profits, Landlord has granted to the Mortgagee an absolute, present assignment of the Lease and Rents which provides that Tenant continue making payments of Rents and other amounts owed by Tenant under the Lease to the Landlord and to recognize the rights of Landlord under the Lease until notified otherwise in writing by the Mortgagee. After receipt of such notice from Mortgagee, the Tenant shall thereafter make all such payments directly to the Mortgagee or as the Mortgagee may otherwise direct, without any further inquiry on the part of the Tenant. Landlord consents to the foregoing and waives any right, claim or demand which Landlord may have against Tenant by reason of such payments to Mortgagee or as Mortgagee directs.

c. Further Documentation. The provisions of this Article 3 shall be effective and self-operative without any need for Successor Landlord or Tenant to execute any further documents. Tenant and Successor Landlord shall, however, confirm the provisions of this Article 3 in writing upon request by either of them within ten (10) days of such request.

4. Protection of Successor Landlord. Notwithstanding anything to the contrary in the Lease or the Mortgage, Successor Landlord shall not be liable for or bound by any of the following matters:

a. Claims Against Former Landlord. Any Offset Right that Tenant may have against any Former Landlord relating to any event or occurrence before the date of attornment, including any claim for damages of any kind whatsoever as the result of any breach by Former Landlord that occurred before the date of attornment. The foregoing shall not limit either (i) Tenant's right to exercise against Successor Landlord any Offset Right otherwise available to Tenant because of events occurring after the date of attornment or (ii) Successor Landlord's obligation to correct any conditions that existed as of the date of attornment and violate Successor Landlord's obligations as landlord under the Lease.

b. Prepayments. Any payment of Rent that Tenant may have made to Former Landlord more than thirty (30) days before the date such Rent was first due and payable under the Lease with respect to any period after the date of attornment other than, and only to the extent that, the Lease expressly required such a prepayment.

c. Payment; Security Deposit; Work. Any obligation: (i) to pay Tenant any sum(s) that any Former Landlord owed to Tenant unless such sums, if any, shall have been actually delivered to Mortgagee by way of an assumption of escrow accounts or otherwise; (ii) with respect to any security deposited with Former Landlord, unless such security was actually delivered to Mortgagee; (iii) to commence or complete any initial construction of improvements in the Leased Premises or any expansion or rehabilitation of existing improvements thereon; (iv) to reconstruct or repair improvements following a fire, casualty or condemnation; or (v) arising from representations and warranties related to Former Landlord.

d. Modification, Amendment or Waiver. Any modification or amendment of the Lease, or any waiver of the terms of the Lease, made without Mortgagee's written consent.

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e. Surrender, Etc. Any consensual or negotiated surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant, unless effected unilaterally by Tenant pursuant to the express terms of the Lease.

5. Exculpation of Successor Landlord. Notwithstanding anything to the contrary in this Agreement or the Lease, Successor Landlord's obligations and liability under the Lease shall never extend beyond Successor Landlord's (or its successors' or assigns') interest, if any, in the Property from time to time, including insurance and condemnation proceeds, security deposits, escrows, Successor Landlord's interest in the Lease, and the proceeds from any sale, lease or other disposition of the Property (or any portion thereof) by Successor Landlord (collectively, the "**Successor Landlord's Interest**"). Tenant shall look exclusively to Successor Landlord's Interest (or that of its successors and assigns) for payment or discharge of any obligations of Successor Landlord under the Lease as affected by this Agreement. If Tenant obtains any money judgment against Successor Landlord with respect to the Lease or the relationship between Successor Landlord and Tenant, then Tenant shall look solely to Successor Landlord's Interest (or that of its successors and assigns) to collect such judgment. Tenant shall not collect or attempt to collect any such judgment out of any other assets of Successor Landlord.

6. Mortgagee's Right to Cure. Notwithstanding anything to the contrary in the Lease or this Agreement, before exercising any Offset Right or Termination Right:

a. Notice to Mortgagee. Tenant shall provide Mortgagee with notice of the breach or default by Landlord giving rise to same (the "**Default Notice**") and, thereafter, the opportunity to cure such breach or default as provided for below.

b. Mortgagee's Cure Period. After Mortgagee receives a Default Notice, Mortgagee shall have a period of thirty (30) days beyond the time available to Landlord under the Lease in which to cure the breach or default by Landlord. Mortgagee shall have no obligation to cure (and shall have no liability or obligation for not curing) any breach or default by Landlord, except to the extent that Mortgagee agrees or undertakes otherwise in writing. In addition, as to any breach or default by Landlord the cure of which requires possession and control of the Property, provided that Mortgagee undertakes by written notice to Tenant to exercise reasonable efforts to cure or cause to be cured by a receiver such breach or default within the period permitted by this paragraph, Mortgagee's cure period shall continue for such additional time as Mortgagee may reasonably require to either: (i) obtain possession and control of the Property with due diligence and thereafter cure the breach or default with reasonable diligence and continuity; or (ii) obtain the appointment of a receiver and give such receiver a reasonable period of time in which to cure the default.

7. Miscellaneous.

a. Notices. Any notice or request given or demand made under this Agreement by one party to the other shall be in writing, and may be given or be served by hand delivered personal service, or by depositing the same with a reliable overnight courier service or by deposit in the United States mail, postpaid, registered or certified mail, and addressed to the party to be notified, with return receipt requested or by telefax transmission, with the original machine-generated transmit confirmation report as evidence of transmission. Notice deposited in the mail

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in the manner hereinabove described shall be effective from and after the expiration of three (3) days after it is so deposited; however, delivery by overnight courier service shall be deemed effective on the next succeeding business day after it is so deposited and notice by personal service or telefax transmission shall be deemed effective when delivered to its addressee or within two (2) hours after its transmission unless given after 3:00 p.m. on a business day, in which case it shall be deemed effective at 9:00 a.m. on the next business day. For purposes of notice, the addresses and telefax number of the parties shall, until changed as herein provided, be as follows:

i. If to the Mortgagee, at:

c/o Prime Finance Partners  
233 North Michigan, Suite 2318  
Chicago, Illinois 60601  
Attr: Steve Gerstung  
Telecopy No. (312) 276-9649

with a copy to:

Kaye Scholer LLP  
425 Park Avenue  
New York, New York 10022  
Attention: Aaron Lehrfield, Esq.  
Telecopier: (212) 836-6705

ii. If to the Tenant, at:<sup>1</sup>  
P.O. Box 1428  
Houlton, Me 04730  
Attn: Dwight Fraser  
Telecopy No.: (506) 328-9408

b. Successors and Assigns. This Agreement shall bind and benefit the parties, their successors and assigns, any Successor Landlord, and its successors and assigns. If Mortgagee assigns the Mortgage, then upon delivery to Tenant of written notice thereof accompanied by the assignee's written assumption of all obligations under this Agreement, all liability of the assignor shall terminate.

c. Entire Agreement. This Agreement constitutes the entire agreement between Mortgagee and Tenant regarding the subordination of the Lease to the Mortgage and the rights and obligations of Tenant and Mortgagee as to the subject matter of this Agreement.

d. Interaction with Lease and with Mortgage. If this Agreement conflicts with the Lease, then this Agreement shall govern as between the parties and any Successor Landlord, including upon any attornment pursuant to this Agreement. This Agreement supersedes, and

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<sup>1</sup> Tenant to provide notice address.

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constitutes full compliance with, any provisions in the Lease that provide for subordination of the Lease to, or for delivery of nondisturbance agreements by the holder of, the Mortgage.

e. Mortgagee's Rights and Obligations. Except as expressly provided for in this Agreement, Mortgagee shall have no obligations to Tenant with respect to the Lease. If an attornment occurs pursuant to this Agreement, then all rights and obligations of Mortgagee under this Agreement shall terminate, without thereby affecting in any way the rights and obligations of Successor Landlord provided for in this Agreement.

f. Interpretation; Governing Law. The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the internal laws of the State in which the Leased Premises are located, excluding such State's principles of conflict of laws.

g. Amendments. This Agreement may be amended, discharged or terminated, or any of its provisions waived, only by a written instrument executed by the party to be charged.

h. Due Authorization. Tenant represents to Mortgagee that it has full authority to enter into this Agreement, which has been duly authorized by all necessary actions. Mortgagee represents to Tenant that it has full authority to enter into this Agreement, which has been duly authorized by all necessary actions.

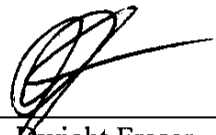
i. Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

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TENANT:

Franchise Management Investors US.,  
LLC

By:   
Name: Dwight Fraser  
Title: President

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[Signatures continue on following page]

**COOK COUNTY**  
**RECORDER OF DEEDS**  
**SCANNED BY \_\_\_\_\_**

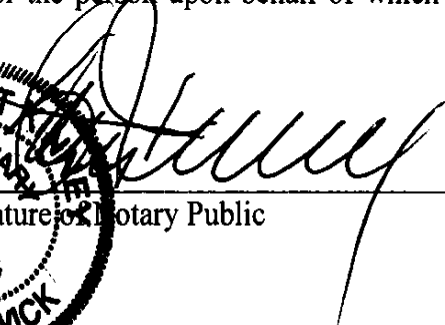


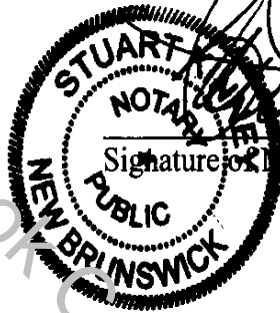
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## TENANT'S ACKNOWLEDGMENT

PROVINCE OF NEW BRUNSWICK) ) ss.  
COUNTY OF CARLETON )

On the 24<sup>th</sup> day of July in the year 2013 before me, the undersigned, a Notary Public in and for said Province, personally appeared Dwight Fraser, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Signature of Notary Public



Property of Cook County Clerk's Office

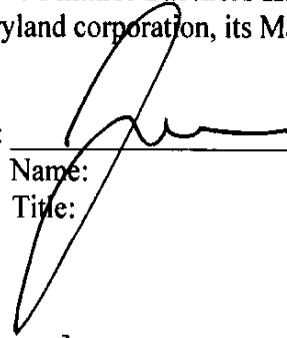
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IN WITNESS WHEREOF, the Mortgagee and Tenant have caused this Agreement to be executed as of the date first above written.

MORTGAGEE:

**PFP HOLDING COMPANY III, LLC**, a Delaware limited liability company

By: **Prime Finance Partners III, Inc.**, a Maryland corporation, its Managing Member

By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Signatures continue on following page]

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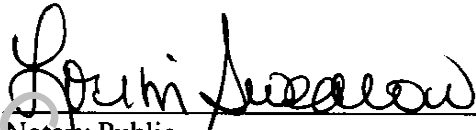
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## MORTGAGEE'S ACKNOWLEDGMENT

STATE OF NEW YORK    )  
  ) ss.  
COUNTY OF NEW YORK )

I, Lori M. Swedlow, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Jon W. Brayshaw, the Vice President of Prime Finance Partners III, Inc., the managing member of PFP Holding Company III, LLC, who is personally known to me to be the same person whose name in subscribed to the foregoing instrument, as such Vice President appeared before me this day in person and acknowledged that s/he signed and delivered said instrument as her/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 1st day of August, 2013.

  
\_\_\_\_\_  
Notary Public

Lori M. Swedlow  
NOTARY PUBLIC, State of New York  
No. 01SW4914439  
Qualified in Nassau County  
Commission Expires Dec. 14, 2013

My Commission expires: 12/14/2013

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## LANDLORD'S CONSENT

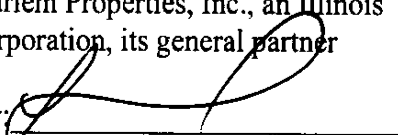
Landlord consents and agrees to the foregoing Agreement, which was entered into at Landlord's request. The foregoing Agreement shall not alter, waive or diminish any of Landlord's obligations under the Mortgage or the Lease. The above Agreement discharges any obligations of Mortgagee under the Mortgage and related loan documents to enter into a nondisturbance agreement with Tenant. Landlord is not a party to the above Agreement.

### LANDLORD

**IRVING-HARLEM VENTURE, LIMITED**, an Illinois limited partnership

By: JJF-Harlem, Limited, an Illinois limited partnership, its general partner

By: Harlem Properties, Inc., an Illinois corporation, its general partner

By:   
Name: Laurance H. Freed  
Title: President

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## EXHIBIT A

### The Property

LOTS 1 THROUGH 12 INCLUSIVE IN NORRIDGE COMMONS SUBDIVISION, BEING A SUBDIVISION OF LOTS 9, 12, 13, 14, 15 AND PARTS OF LOTS 16 AND 17 IN FULLER'S SUBDIVISION, AND PART OF THE SOUTH WEST FRACTIONAL QUARTER NORTH OF THE INDIAN BOUNDARY LINE IN SECTION 18, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS ACCORDING TO THE PLAT OF SAID SUBDIVISION RECORDED DECEMBER 30, 1977 AS DOCUMENT NO. 24266265 AND CORRECTED BY CERTIFICATE OF CORRECTION RECORDED DECEMBER 5, 1980 AS DOCUMENT NO. 2563809 IN COOK COUNTY, ILLINOIS.

13 18 318 013, 014, 016-020, 027-034  
NorrIDGE Commons Shopping Center  
NorrIDGE

Cook County Clerk's Office