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Prepared By:

RETURN TO:
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Karen A. Yarbrough
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SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

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SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** ("**Agreement**") is made as of the 16th day of February, 2016, by and between **WINTRUST BANK**, a subsidiary of Wintrust Financial Corp., an Illinois banking corporation, whose mailing address is 231 South LaSalle Street, 2nd Floor, Chicago, Illinois 60604, its successors and assigns ("**Lender**"), and **PORTILLO'S HOT DOGS, LLC**, a Delaware limited liability company, whose address is 2001 Spring Road – Suite 400, Oak Brook, Illinois 60523 ("**Tenant**").

RECITALS:

A. Tenant is the lessee under that certain Master Lease Agreement between Tenant and Richport Property, LLC, an Illinois limited liability company ("**Landlord**"), dated November 24, 2014 (together with any amendments thereto, collectively, the "**Lease**"), whereby Landlord leases to Tenant and Tenant leases from Landlord the properties described in the Lease ("**Leased Premises**") and described in Exhibit A attached hereto and made a part hereof ("**Property**").

B. Lender has agreed to make a loan to Landlord ("**Loan**") which is to be secured by a certain Mortgage, Security Agreement and Fixture Filing, a certain Assignment of Rents and Leases, and other documents of even date herewith from Landlord to Lender which will encumber the Property (collectively, "**Loan Documents**").

C. As a condition to making the Loan, Lender requires that Tenant enter into this Agreement, Tenant acknowledging that Lender will rely on this Agreement in making the Loan to Landlord.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by all parties, Lender and Tenant agree as follows:

1. **Subordination.** Tenant covenants, stipulates and agrees that the Lease and all of Tenant's right, title and interest in and to the Leased Premises thereunder is hereby, and shall at all times continue to be, subordinate and made secondary and inferior in each and every respect to the Loan Documents and the lien thereof, to all of the terms, conditions and provisions thereof and to any and all advances made or to be made thereunder, so that at all times the Loan Documents shall be and remain a lien on the Leased Premises prior to and superior to the Lease for all purposes, subject to the provisions set forth herein. This subordination is to have the same force and effect as if the Loan Documents and such renewals, modifications, consolidations, replacements and extensions had been executed, acknowledged, delivered and recorded prior to the Lease, any amendments or modifications thereof and any notice thereof.

2. **Non-Disturbance.** So long as Tenant complies with all of the terms, provisions, agreements, covenants, and obligations set forth in the Lease, Tenant's possession of the Leased Premises under said Lease shall not be disturbed or interfered with by Lender.

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3. **Attornment**. If Lender or any other party succeeds to the interest of Landlord under the Lease in any manner, including but not limited to foreclosure, exercise of any power of sale, succession by deed in lieu or other conveyance (each, a "***Succession***"), Tenant will attorn to and be bound to such party (whether Lender or another party) upon such Succession and will recognize Lender or such other party as the landlord under the Lease only upon written notice to Tenant. Such attornment is effective and self-operative without the execution of any further instrument, but subject to prior written notice to Tenant. Tenant, upon request, will sign and deliver any instruments reasonably requested to evidence such attornment. Tenant waives the provisions of any statute or rule of law, now or hereafter in effect, which may give or purport to give Tenant any right or election to terminate or otherwise adversely affect the Lease and the obligations of Tenant thereunder as a result of any such foreclosure or trustee's sale.

4. **Limitation On Lender's Liability**. Upon any Succession, Lender or any other party which succeeds to the interest of Landlord shall not be (a) liable for any act or omission of the Landlord under said Lease, (b) subject to any offsets or defenses which Tenant may have against the Landlord arising or occurring prior to the Succession, (c) bound by any rent or additional rent which Tenant may have paid to Landlord for more than the current and following month's rent, (d) bound by any amendment or modification of the Lease made without Lender's prior written consent, (e) liable for the retention, application or return of any security deposit paid by Tenant to Landlord unless such deposit is delivered to Lender, (f) liable for or obligated to pay for repairs, replacements, damages or allowances not made, performed or paid by the Landlord, (g) liable for the payment of any leasing commissions, the triggering event for which arose or occurred prior to the Succession, or (h) be obligated to cure any defaults of Landlord under the Lease which occurred prior to the date on which Lender or such successor succeeded to Landlord's interest under the Lease. Any reference to Landlord includes all prior landlords under the Lease. Neither Lender nor any party taking under a Succession shall be liable for the performance of the obligations of the Landlord under the Lease, except for those obligations which arise during the period of Lender's or such entity's or person's ownership of the Property. Tenant further agrees that any such liability shall be limited to the interest of Lender or successor in the Property, and Tenant shall not be able to enforce any such liability against any other assets of Lender or such successor.

5. **Tenant's Warranty**. Tenant hereby represents, warrants and covenants to Lender that (a) attached is a true, correct and complete copy of the Lease, (b) there are no known defaults on the part of Landlord, (c) the Lease is a complete statement of the agreement of the parties with respect to the leasing of the Leased Premises, (d) the Lease is validly executed by Tenant and in full force and effect, (e) all conditions to the effectiveness or continuing effectiveness thereof required to be satisfied as of the date hereof have been satisfied, (f) Tenant shall not pay any rent or additional rent under the Lease more than one month in advance, (g) Tenant shall not amend, modify, cancel or terminate the Lease without Lender's prior written consent, and any attempted amendment, modification, cancellation or termination of the Lease without such consent shall be of no force or effect as to the Lender, (h) Tenant shall not assign the Lease or sublet all or any portion of the Leased Premises (except as permitted by the terms of the Lease) without Lender's prior written consent, (i) this Agreement satisfies any requirement in the Lease relating to the granting of a non-disturbance agreement, and (j) Tenant shall deliver to Lender, from time to time, and within ten (10) days from the date of request, a written statement in form and substance satisfactory to Lender certifying to certain matters relating to the Lease.

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6. **Lender Cure Rights.** Before exercising any of its rights and remedies under the Lease for a Landlord default, Tenant will send written notice to Lender of the occurrence of any default by Landlord and will specify with reasonable clarity the events constituting such default, and thereupon Lender shall have the right (but not the obligation) to cure such default. If the referenced default would entitle Tenant to cancel the Lease or abate the rent payable thereunder, no such cancellation or abatement of rent will be effective unless Lender receives such notice specifying such Landlord default in reasonable detail, and affording Lender a reasonable opportunity to cure such Landlord default, at its election, for and on behalf of Landlord, except that (i) Lender shall have at least thirty (30) days to cure the default [or ten (10) business days, in the event of a monetary default]; (ii) if any nonmonetary default cannot be cured with reasonable diligence and continuity within thirty (30) days, Lender shall have any additional time as may be reasonably necessary to cure such Landlord default provided that Lender commences said cure within thirty (30) days and thereafter diligently pursues the cure of said failure; and (iii) if any nonmonetary default cannot reasonably be cured without Lender having obtained possession of the Leased Premises, Lender shall have such additional time as may be reasonably necessary under the circumstances to obtain possession of the Leased Premises and thereafter to cure the default with reasonable diligence and continuity ("*Non-Monetary Default*").

7. **Rent Payment.** Immediately upon written notice to Tenant (a) that Lender is exercising its rights under the Loan Documents following a default by Landlord under the Loan, or (b) of Lender's succeeding to the Landlord's interest under the Lease, Tenant agrees to pay all rents due under the Lease directly to Lender (in accordance with the Lease).

8. **Notices.** All notices to be given under this Agreement shall be in writing and shall be deemed served upon receipt by the addressee if served personally or, if mailed, upon the first to occur of receipt or the refusal of delivery as shown on a return receipt, after deposit in the United States Postal Service certified mail, postage prepaid, addressed to the address of Tenant or Lender appearing on page 1 of this Agreement. Such addresses may be changed by notice given in the same manner.

9. **Complete Agreement.** This Agreement supersedes, as between the parties hereto, all of the terms and provisions of the Lease which are inconsistent herewith.

10. **No Oral Modification.** 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.

11. **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns. Nothing contained in this Agreement shall in any way affect or impair the lien created by the Loan Documents except as specifically set forth herein.

12. **Severability.** If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to be enforceable, or if such modification is not practicable, such provision shall be deemed deleted from this Agreement, and the other provisions of this Agreement shall remain in full force and effect, and shall be liberally construed in favor of Lender.

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13. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

14. **Counterparts.** This Agreement may be executed in any number of counterparts, all of which shall constitute a single Agreement. Signatures delivered by facsimile or PDF shall be deemed to constitute original signatures for purposes of execution of this Agreement.

[Signature Page Follows.]


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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed the day and year first above written.

LENDER:

WINTRUST BANK,
an Illinois banking corporation

By: 
Name: Timothy S. Brown
Title: SENIOR VICE PRESIDENT

TENANT:

PORTILLO'S HOT DOGS, LLC,
a Delaware limited liability company

By: _____
Print Name: _____
Title: _____

ACKNOWLEDGED AND AGREED:
(as to Section 7 above)

RICHPORT PROPERTY, LLC,
an Illinois limited liability company

By: R&S Growth Management, LLC,
a Delaware limited liability company,
its Manager

By: _____
Karen L. Peterson, Vice President

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed the day and year first above written.

LENDER:

WINTRUST BANK,
an Illinois banking corporation

By: _____
Name: _____
Title: _____

TENANT:

PORTILLO'S HOT DOGS, LLC,
a Delaware limited liability company

By: *Susan B. Shelton*
Print Name: *Susan B. Shelton*
Title: *General Counsel & Secretary*

ACKNOWLEDGED AND AGREED:
(as to Section 7 above)

RICHPORT PROPERTY, LLC,
an Illinois limited liability company

By: R&S Growth Management, LLC
a Delaware limited liability company,
its Manager

By: _____
Richard J. Portillo, Managing Member

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed the day and year first above written.

LENDER:

WINTRUST BANK,
an Illinois banking corporation

By: _____
Name: _____
Title: _____

TENANT:


PORTILLO'S HOT DOGS, LLC,
a Delaware limited liability company

By: _____
Print Name: _____
Title: _____

ACKNOWLEDGED AND AGREED:
(as to Section 7 above)

RICHPORT PROPERTY, LLC,
an Illinois limited liability company

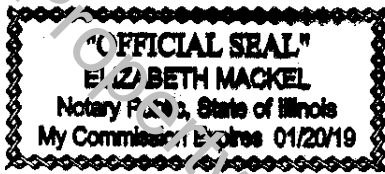
By: R&S Growth Management, LLC,
a Delaware limited liability company,
its Manager

By: 
Karen L. Peterson, Vice President

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STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

The foregoing Agreement was acknowledged before me this 12 day of February, 2016 by Timothy S. Ichniow, as SENIOR VICE PRESIDENT of **WINTRUST BANK**, a subsidiary of Wintrust Financial Corp., an Illinois banking corporation, on behalf of the bank.



Emackel
Notary Public

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STATE OF ILLINOIS)
) SS:
 COUNTY OF DUPAGE)

The foregoing Agreement was acknowledged before me this 10th day of February, 2016 by Susan B. Shelton, as General Counsel & Secretary of **PORTILLO'S HOT DOGS, LLC**, a Delaware limited liability company, on behalf of the limited liability company.

Glenda S. Knippen

 Notary Public



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STATE OF ILLINOIS)
)
COUNTY OF DuPage) SS:

The foregoing Mortgage was acknowledged before me this 12 day of February, 2016 by Karen L. Peterson, as Vice President of R&S Growth Management, LLC, a Delaware limited liability company, the Manager of **RICHPORT PROPERTY, LLC**, an Illinois limited liability company, on behalf of the limited liability company.

Patricia J. Sullivan
Notary Public



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SUBORDINATION, NON-INTERFERENCE AND ASSIGNMENT AGREEMENT

Exhibit A

Legal Description

1500 BUSSE HIGHWAY, ELK GROVE VILLAGE, ILLINOIS 20007
08-34-203-016-0000
08-34-203-017-0000

PARCEL 1: LOT 290 IN CENTEX INDUSTRIAL PARK UNIT NUMBER 170, BEING A SUBDIVISION IN THE NORTH 1/2 OF SECTION 34, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 18, 1972 AS DOCUMENT NUMBER 22020085, IN COOK COUNTY, ILLINOIS.

PARCEL 2: THE SOUTH 10 FEET OF LOT 346 AND ALL OF LOT 347 IN CENTEX INDUSTRIAL PARK UNIT 212, BEING A SUBDIVISION IN THE NORTH 1/2 OF SECTION 34, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 2, 1977 AS DOCUMENT NUMBER 24089602, IN COOK COUNTY, ILLINOIS.

PARCEL 3: LOT "A" IN CENTEX INDUSTRIAL PARK UNIT 170, BEING A SUBDIVISION IN THE NORTH HALF OF SECTION 34, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 18, 1972 AS DOCUMENT NUMBER 22020085, IN COOK COUNTY, ILLINOIS.