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Doc# 1729334049 Fee \$52.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 10/20/2017 01:24 PM PG: 1 OF 8

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16S A4527233 LRE

233 1 of 1

Lien Subordination Agreement

Prepared By

And

Mail To:

New Buffalo Savings Bank

45 N. Whittaker St.

New Buffalo, MI 49117

Attn: Richard Green

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LIEN SUBORDINATION AGREEMENT

This Lien Subordination Agreement ("**Agreement**"), dated as of 4/6, 2017, is made by JOSE L. FERNANDEZ, AS TRUSTEE OF THE JOSE L. FERNANDEZ TRUST DATED MARCH 7, 2006 & EMMY FERNANDEZ, AS TRUSTEE OF THE EMMY FERNANDEZ TRUST DATED MARCH 7, 2006 (collectively, "**Subordinated Lender**"), and NEW BUFFALO SAVINGS BANK, its successors and/or assigns ("**Senior Lender**"). Senior Lender and Subordinated Lender are collectively referred to herein as the "**Parties**" and each a "**Party**".

RECITALS:

A. 1180 N. Arlington Heights LLC, an Illinois limited liability company ("**EPC**") and Besa Mi Taco 1180 Inc., an Illinois corporation ("**OC**" and collectively with EPC, "**Borrowers**"), are liable to Lender on that certain credit facility made by Lender to Borrowers on or about 4-6, 2017 in the original principal amount of \$1,311,700.00 ("**Loan**"). The Loan is to be secured by, among other things, and pursuant to certain collateral documents ("**Senior Lender Collateral Documents**"): (i) a first priority interest in OC's equipment, fixtures, inventory, accounts, instruments, chattel paper, general intangibles, and documents ("**Business Assets**"); (ii) a first priority mortgage on the property commonly known as 1180 N. Arlington Heights Rd., Itasca, Illinois 60143 ("**Commercial Property**"); and (iii) a third priority mortgage on the property commonly known as 531 Maple, Addison, Illinois 60101 ("**Residential Property**" and collectively with the Business Assets, and the Commercial Property, the "**Assets**").

B. Certain of the Assets are or may also be encumbered by liens in favor of Subordinated Lender pursuant to certain collateral documents ("**Subordinated Lender Collateral Documents**").

In consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Subordinated Lender and Senior Lender hereby agree as follows:

AGREEMENTS:

1. Definitions. As used herein, the following terms have the meanings set forth below:

"**Lien**" means any security interest, mortgage, deed of trust, pledge, lien, charge, encumbrance, title retention agreement or analogous instrument or device, including the interest of each lessor under any capitalized lease and the interest of any bondsman under any payment or performance bond, in, of or on any assets or properties of a person, whether now owned or hereafter acquired and whether arising by agreement or operation of law.

"**Subordinated Indebtedness**" means all obligations of Borrowers to Senior Lender, however evidenced.

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2. Subordination. Regardless of any priority otherwise available to Subordinated Lender by the Subordinated Lender Collateral Documents, by law, or by agreement, Senior Lender shall hold a first priority Lien in the Business Assets, a first priority Lien in the Commercial Property and a third priority Lien in the Residential Property. Any Lien claimed therein by Subordinated Lender against the Business Assets, the Commercial Property, or the Residential Property shall be and remain fully subordinate for all purposes to the Lien of Senior Lender on the Assets, for all purposes whatsoever, except as otherwise expressly set forth in this Agreement.

3. Amendment to Financing Statement. Subordinated Lender hereby authorizes Senior Lender to prepare and file a UCC-3 Financing Statement Amendment to any financing statement of Subordinated Lender so as to effectively evidence the subordination of Subordinated Lender's Lien in the Assets to the Lien of Senior Lender in said Assets.

4. Continuing Effect. This Agreement shall constitute a continuing agreement of subordination. This Agreement may be recorded by either party. Notwithstanding anything to the contrary contained herein or in any instrument affecting the Loan, Subordinated Indebtedness or any other instrument whatsoever, the Senior Lender may, without notice to or consent by the Subordinated Lender, from time to time modify any term of the Loan in reliance upon this Agreement.

5. No Commitment. None of the provisions of this Agreement shall be deemed or construed to constitute or imply any commitment or obligation on the part of the Senior Lender to make any loan or any future loans or other extensions of credit or financial accommodations to Borrowers whatsoever.

6. Conflict in Agreements. If the provisions of any instrument arising from or otherwise evidencing the Subordinated Indebtedness conflict with the terms of this Agreement, the terms of this Agreement shall govern the relationship between the Senior Lender and the Subordinated Lender and all issues of Lien priority.

7. No Waiver. No waiver shall be deemed to be made by the Senior Lender of any of its rights hereunder unless the same shall be in writing signed on behalf of the Senior Lender, and each such waiver, if any, shall be a waiver only with respect to the specific matter or matters to which the waiver relates and shall in no way impair the rights of the Senior Lender or the obligations of the Subordinated Lender to the Senior Lender in any other respect at any time.

8. Binding Effect; Acceptance. This Agreement shall be binding upon Subordinated Lender and Subordinated Lender's successors and assigns and shall inure to the benefit of the Senior Lender and its participants, successors and assigns. Notice of acceptance by the Senior Lender of this Agreement or of reliance by the Senior Lender upon this Agreement is hereby waived by the Subordinated Lender.

9. Miscellaneous. The section headings herein are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

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10. Governing Law; Consent to Jurisdiction and Venue; Waiver of Jury Trial. This Agreement shall be governed by and construed in accordance with the substantive laws (other than conflict laws) of the State of Indiana. Each party consents to the personal jurisdiction of the state and federal courts located in the State of Illinois in connection with any controversy related to this Agreement, waives any argument that venue in any such forum is not convenient, and agrees that any litigation initiated by any of them in connection with this Agreement may be venued in either the state or federal courts located in Cook County, Illinois. **THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED ON OR PERTAINING TO THIS AGREEMENT.**

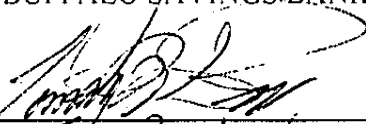
The remainder of this page is intentionally left blank – signature page to follow.

Property of Cook County Clerk's Office

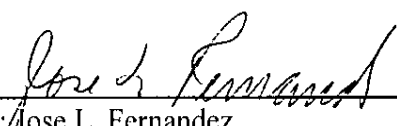
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IN WITNESS WHEREOF, the Parties have executed this Lien Subordination Agreement as of the date and year first above-written.

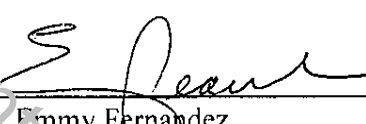
NEW BUFFALO SAVINGS BANK

By: 
Name: TIMOTHY W. LANDERT
Its: SVP

JOSE L. FERNANDEZ TRUST DATED
MARCH 7, 2006

By: 
Name: Jose L. Fernandez
Its: Trustee

EMMY FERNANDEZ TRUST DATED
MARCH 7, 2006

By: 
Name: Emmy Fernandez
Its: Trustee

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STATE OF Michigan)

) SS

COUNTY OF Berrien)

I, Angela K. Creech, a Notary Public in and for said County, in the state aforesaid, do hereby certify that Timothy W. Landry, personally known to me to be the Senior Vice President of New Buffalo Savings Bank, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act for said entity, for the uses and purposes therein set forth.

Given under my hand and official seal, this 6th day of April, 2017.

Angela K. Creech
Notary Public

****OFFICIAL SEAL****
ANGELA K. CREECH
Notary Public - State of Michigan
County of Berrien
My Commission Expires: 05-02-23
Acting in the County of Berrien

My commission expires: 05-02-23

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STATE OF ILLINOIS)

) SS

COUNTY OF Cook)

I, Cheryl L. Brady, a Notary Public in and for said County, in the state aforesaid, do hereby certify that Jose L. Fernandez, personally known to me to be the Trustee of JOSE L. FERNANDEZ TRUST DATED MARCH 7, 2006, and 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 for said trust, for the uses and purposes therein set forth.

Given under my hand and official seal, this 6th day of April, 2017.

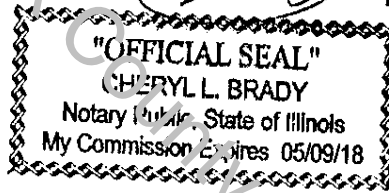
[Signature]

Notary Public
My commission expires: 5/9/2018

STATE OF ILLINOIS)

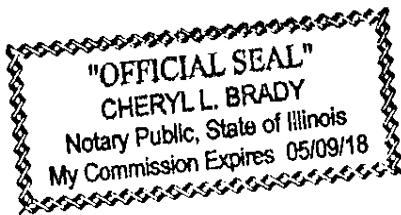
) SS

COUNTY OF Cook)



I, Cheryl L. Brady, a Notary Public in and for said County, in the state aforesaid, do hereby certify that Emmy Fernandez, personally known to me to be the Trustee of EMMY FERNANDEZ TRUST DATED MARCH 7, 2006, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed and delivered the said instrument as her own free and voluntary act, and as the free and voluntary act for said trust, for the uses and purposes therein set forth.

Given under my hand and official seal, this 6th day of April, 2017.



[Signature]

Notary Public
My commission expires: 5/9/2018

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LEGAL DESCRIPTION

Order No.: 16SA4527233LFE

For APN/Parcel ID(s): 03-05-200-032-0000

PARCEL 1: LOT 1 IN THE PIERCE ROAD SOUTH SUBDIVISION, BEING A SUBDIVISION IN THE EAST 1/2 OF SECTION 5, TOWNSHIP 40 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED ,M10 31, 2005 AS DOCUMENT R2005242879 IN DUPAGE COUNTY, ILLINOIS.

PARCEL 2: EASEMENT IN FAVOR OF PARCEL 1 FOR THE NON-EXCLUSIVE USE OF 20 PARKING SPACES AT 1100 ARLINGTON HEIGHTS ROAD, AS DESCRIBED IN THE EASEMENT AGREEMENT DATED OCTOBER 27, 2005 AND RECORDED OCTOBER 31, 2005 AS DOCUMENT R2005242878.

PARCEL 3: EASEMENT IN FAVOR OF PARCEL 1 FOR DRAINAGE, AS DESCRIBED IN THE DRAINAGE EASEMENT AGREEMENT DATED JUNE 1, 2006 AND RECORDED JUNE 13, 2006 AS DOCUMENT R2006-111297.

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