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Doc# 1731045026 Fee \$58.00

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

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 11/06/2017 12:57 PM PG: 1 OF 11

RECORDING REQUESTED AND  
WHEN RECORDED RETURN TO:  
NEW ALBERTSON'S, INC.  
250 Parkcenter Boulevard  
Boise, ID 83726  
Attention: Legal Department – Real Estate

(Space above this line for Recorder's Use)

Store #: 3157

Property Address: 4650 W 103rd St., Oak Lawn, IL

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

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT ("**Agreement**") is made as of the 31<sup>st</sup> day of October 2017, between **CF ALBERT PROPCO LLC**, a Delaware limited liability company ("**Landlord**"), **NEW ALBERTSON'S, INC.**, an Ohio corporation ("**Tenant**"), and **ROYAL BANK OF CANADA** ("**Lender**").

**RECITALS:**

A. Tenant is the holder of a leasehold interest in that certain real property together with all buildings and improvements thereon and all easements, rights and appurtenances thereto located in the City of Oak Lawn, County of Cook, State of Illinois, as legally described on **Schedule I** attached hereto and incorporated herein by this reference ("**Leased Premises**") pursuant to that certain Lease, dated as of the date hereof, between Landlord and Tenant and a Memorandum of Lease, dated as of the date hereof and recorded prior to the recording hereof in the Public Records of such County (the "**Official Records**"). The Lease and Memorandum of Lease as they may have been amended from time to time shall hereafter be referred to as the "**Lease**;" and

B. Lender has made or has agreed to make a loan to Landlord, which loan shall be secured by a certain deed of trust or mortgage encumbering all or a part of the Leased Premises, dated as of as of the date hereof and recorded prior to the recording hereof in the Official Records (the "**Mortgage**"); and

C. The parties desire to subordinate the Lease to the Mortgage and to establish certain rights of quiet and peaceful possession to the Leased Premises for Tenant's benefit together with certain obligations of attornment, all in the manner hereafter provided.

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The foregoing recitals are incorporated into and made an integral part of this Agreement.

## AGREEMENT:

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed between the parties as follows:

1. Subject to the terms and conditions set forth in this Agreement, the Tenant agrees that the Lease (including, without limitation, the First Refusal Right (as such term is defined in the Lease) of Tenant set forth in Section 28 of the Lease) and the estate conveyed thereby are and shall at all times be subordinate to the Mortgage and to all renewals, modifications, and extensions thereof.

2. Lender agrees that, if no default exists under the Lease which at such time would then permit Landlord to terminate the Lease or to exercise any dispossessory remedy provided for therein: (a) Tenant will not be made a party in any action or proceeding to foreclose the Mortgage or to remove or evict Landlord from the Leased Premises (unless Tenant is deemed to be a necessary party under applicable law in order for Lender to avail itself of and complete the foreclosure or other remedy and in such event, only to avail itself of and to complete the foreclosure or other such remedy); (b) Tenant will not be evicted or removed from the Leased Premises nor will its possession or right to possession of the Leased Premises under the Lease for the term thereof (including any and all extensions or renewals thereof effected in accordance with any option therefor in the Lease) be terminated or disturbed or in any way interfered with by any action taken by Lender, except as would be permitted for Landlord to do so; and (c) Lender, upon succeeding to Landlord's interest in the Leased Premises, will recognize the Lease and Tenant as its direct tenant under the Lease for remainder of the term thereof (including any and all extensions or renewals thereof effected in accordance with any option therefor in the Lease).

3. In the event that the Lender or any other person acquires title to the Leased Premises pursuant to the exercise of any remedy provided for in the Mortgage or other proceedings brought to enforce the rights of the holder of the Mortgage, by deed in lieu of foreclosure or by any other method, and Lender acquires title to the Leased Premises, the Lease shall not be terminated or affected by said foreclosure or sale resulting from any such proceeding except in accordance with the terms of the Lease and this Agreement.

4. Tenant agrees that, if the interest of Landlord in the Leased Premises shall be transferred to and owned by Lender by reason of foreclosure or other proceeding brought under any present or future lien against Landlord's interest in the Leased Premises, or by any other manner, Tenant shall be bound to the Lender under all of the terms, covenants, conditions and agreements set forth in the Lease for the balance of the term thereof remaining (including any and all extensions or renewals thereof effected in accordance with any option therefor in the Lease) with the same force and effect as if Lender were originally named therein as the landlord thereunder, and Tenant does hereby agree to attorn to Lender as its landlord thereunder so as to establish direct privity of estate and contract between Lender and Tenant, said attornment to be effective and self-operative without the execution of any further instrument on the part of either of

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the parties hereto immediately upon Lender succeeding to the interest of Landlord under the Lease. The parties acknowledge and agree that the Mortgage provide that, under certain circumstances, Lender shall be entitled to collect, receive and demand payment of all or any part of the rent and other sums due and payable to Landlord under the Lease to Lender. The parties agree that: (a) Tenant shall be under no obligation to pay rent or any other sums due and payable to Landlord under the Lease to Lender until such time as Tenant receives written notice from Lender that Lender has succeeded to the interests of Landlord under the Lease (and upon receipt of such notice, Tenant shall make future payments due under the Lease to Lender until notified otherwise in writing in accordance with the terms of the Lease); (b) Tenant shall be entitled to rely on any such written notice from Lender and shall not incur any liability to Landlord as a result of such reliance notwithstanding the existence of any dispute between Landlord and Lender with respect to the existence of any default or the satisfaction of any condition under the Mortgage or any other document executed in connection with the transaction which is the subject of the Mortgage which would entitle Lender to collect, receive or demand payment of said amounts from Tenant; (c) all amounts paid by Tenant to Lender shall be credited toward Tenant's corresponding obligations under the Lease; and (d) all of Lender's rights described in this sentence shall be subject to all of Tenant's rights and remedies set forth in the Lease including, without limitation, any right of offset against the rent.

5. At such time, if any, as Lender succeeds to the Landlord's interest in the Leased Premises, subject to the terms of this Agreement, Lender and Tenant shall be directly bound to each other under all of the terms, covenants, conditions and agreements contained in the Lease, with the same force and effect as if Lender were the Landlord under the Lease; provided, however, that notwithstanding anything to the contrary contained herein, Lender shall not be:

- (a) Liable for any act or omission of any prior landlord (including Landlord);
- (b) Bound by any rent or additional rent which Tenant might have paid for more than one (1) month in advance to any prior landlord (including Landlord);
- (c) Bound by any amendment or modification of the Lease made without Lender's consent;
- (d) Subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord), unless Tenant shall have delivered notice to Lender prior to the date on which Lender succeeds to the Landlord's interest in the Leased Premises of the existence of such offsets or defenses and shall have provided Lender an opportunity to cure the event or matter giving rise to such offsets or defenses in accordance with Section 12 hereof; and
- (e) Liable with respect to warranties or indemnities of any nature whatsoever made by any prior landlord (including Landlord), unless such warranty or indemnity was made in writing with the prior written consent of Lender.

Lender covenants and agrees that in the event of a conflict, whether in the express provisions or by reason of variation in inclusion of provisions, between the Mortgage and the Lease, the provisions of this Agreement shall govern for all purposes.

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6. Lender agrees that all condemnation awards and insurance proceeds payable to Landlord or Lender with respect to the Leased Premises shall be paid and applied to restoration of the Leased Premises in accordance with the provisions for condemnation and casualty under the Lease. Tenant agrees that Lender is a Depository (as such term is defined in the Lease) reasonably acceptable to Tenant and that, in the event, Landlord has the right to require Tenant to deposit insurance proceeds with a Depository in accordance with the term and conditions of Lease, Tenant shall deposit such insurance proceeds with Lender in accordance with the terms and conditions of the Lease. Lender shall disburse such proceeds deposited with Lender to Tenant to the extent Tenant is entitled to such insurance proceeds under the Lease. In no event shall the lien of the Mortgage affect or constitute a lien or charge on any fixtures, equipment or personal property owned by Tenant, and Tenant may at any time remove any of its fixtures, equipment or personal property from the Leased Premises in accordance with the provisions of the Lease.

7. Intentionally Omitted.

8. For the purpose of this Agreement: (a) the term "**Lease**" shall be deemed to include the Lease as described above in Recital A along with all amendments, modifications and supplements thereto; provided, however, that no such amendment, modification or supplement shall be binding on Lender without Lender's written consent, which consent shall not be unreasonably withheld, conditioned or delayed; (b) the term "**foreclosure**" shall be deemed to include the acquisition of Landlord's interest in the Leased Premises by foreclosure or pursuant to the exercise of any power of sale contained in the Mortgage, or by deed (or assignment) given in lieu of, or in anticipation of, foreclosure or the exercise of any such power of sale, or by any other means whatsoever; and (c) the term "**Lender**" shall be deemed to include anyone who succeeds to Landlord's interest in the Leased Premises pursuant to the Mortgage including, without limitation, any purchaser at foreclosure or pursuant to the exercise of any power of sale contained in the Mortgage, or any grantee of a deed (or assignment) given in lieu of, or in anticipation of, foreclosure or the exercise of any such power of sale.

9. If any term, covenant, condition or agreement contained in this Agreement or the application thereof to any person, firm or entity shall at any time or to any extent be deemed or found to be invalid or unenforceable by operation of law, judicial proceedings or otherwise, the remainder of this Agreement or the application of such term, covenant, condition or agreement to persons or entities or to circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each remaining term, covenant, condition or agreement of this Agreement or the application thereof shall be valid and enforced to the fullest extent permitted by law.

10. All notices given pursuant to this Agreement shall be in writing and shall be given by personal delivery, by United States registered or certified mail, or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the appropriate party at the address set forth below.

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Landlord: c/o Fortress Investment Group  
10250 Constellation Boulevard, Suite 1600  
Los Angeles, California 90067  
Attn: Joshua Pack  
Facsimile: (310) 228-3031

c/o Fortress Investment Group LLC  
One Market Plaza, Spear Tower, 42<sup>nd</sup> Floor  
San Francisco, CA 94105  
Attn: General Counsel, Credit Funds

Sidley Austin LLP  
555 West 5th Street  
Los Angeles, CA 90013  
Attention: Courtney Rangen, Esq.  
Facsimile No.: (213) 896-6600

Tenant: New Albertson's, Inc.  
250 Parkcenter Blvd.  
Boise, Idaho 83726  
Attention: Bradley R. Beckstrom,  
Legal Department - Real Estate  
ABS # 3157

With Copy to:

New Albertson's, Inc.  
250 Parkcenter Boulevard  
Boise, ID 83726  
Attention: Travis M. Molis

Lender: Royal Bank of Canada  
c/o RBC Capital Markets  
200 Crescent Court, Suite 1525  
Dallas, TX 75201  
Attn: Drew Lassiter and Richard Farris

With Copy to:

Dechert LLP  
1 Bush Street, Suite 1600  
San Francisco, CA 94014  
Attn: Kahlil Yearwood

The person and address to which notices are to be given may be changed at any time by any party upon written notice to the other party. All notices given pursuant to this Agreement shall be deemed given upon receipt. For the purpose of this Agreement, the term "**receipt**" shall mean the earlier of any of the following: (a) the date of delivery of the notice or other document to the

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address specified above as shown on the return receipt; (b) the date of actual receipt of the notice or other document by the person or entity specified pursuant to this section; or (c) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of: (i) the date of the attempted delivery or refusal to accept delivery; (ii) the date of the postmark on the return receipt; or (iii) the date of receipt of notice of refusal or notice of nondelivery by the sending party. Tenant further agrees to send to Lender at the address above copies of those notices given to Landlord pursuant to the terms of the Lease which relate to Tenant's or Landlord's default, insurance, casualty, or condemnation, at the same time notice is given to Landlord.

11. Lender shall not, either by virtue of the Mortgage or this Agreement, be or become a mortgagee in possession or be or become subject to any liability or obligation under the Lease or otherwise until Lender shall have acquired the Landlord's interest in the Property and then such liability or obligation of Lender under the Lease (as modified by the terms of this Agreement) shall extend only to those liability or obligations accruing subsequent to the date that Lender has acquired Landlord's interest in the Property.

12. Tenant shall notify Lender in writing at the address set forth above of the occurrence of any default or event of default by Landlord under the Lease which would give Tenant the right to cancel or terminate the Lease; and Tenant will grant to Lender thirty (30) days in which to cure Landlord's default; provided, however, that in the case of any default which cannot with diligence be cured within said thirty (30) day period, if Lender shall proceed promptly to commence curing such default and thereafter prosecute the curing of such default with diligence and continuity, the time within which such default may be cured shall be extended for such period as may be necessary for Lender to complete the curing of such default with diligence and continuity, not to exceed 75 days; provided, further, that Lender shall give Tenant written notice of Lender's intent to cure Landlord's default within ten (10) business days of receipt of Tenant's notice of Landlord's default. Tenant agrees that it will not terminate or cancel the Lease or account of such default until such notice to Lender has been given, and Lender has had the opportunity to cure any such default. Should Lender fail to so notify Tenant of Lender's intent to cure Landlord's default within said ten (10) business days, then Tenant shall have all available rights and remedies (including the right to cure Landlord's default) under the Lease, at law and/or in equity. It is expressly understood and agreed that the above shall not be deemed to create any obligation of Lender to cure any such default or defaults.

13. If any litigation is commenced between the parties hereto concerning this Agreement or the rights or obligations of any party in relation thereto, the prevailing party in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for its attorney's fees in such litigation (including any appeal thereof), which sum shall be determined by the court in such litigation or in a separate action brought for that purpose.

14. This Agreement shall bind and inure to the benefit of the parties hereto, their heirs, personal representatives, successors and assigns, including, without limitation, the mortgagee or beneficiary under any mortgage or deed of trust on Tenant's interest in the Lease or the Leased Premises, its successors and assigns.

15. This Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed to be an original and all of which together shall constitute but one

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and the same instrument, and shall be effective upon execution of one or more of such counterparts by each of the parties hereto.

16. This Agreement contains the entire agreement between the parties and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. This Agreement may not be modified in any manner whatsoever except by an instrument in writing signed by each of the parties hereto.

17. In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

18. Lender shall, at its or Landlord's expense, promptly record this Agreement in the Official Records, and the original, recorded Agreement, to the extent received by Lender, shall be promptly provided by Lender to Tenant.

19. The submission of this Agreement for examination, or its negotiation or the negotiation of the transaction described herein, does not constitute an offer to subordinate the Lease, and execution of this Agreement by Landlord and/or by Lender does not constitute a binding agreement until such time as this Agreement has been executed by all other parties, including by an authorized officer of Tenant, and a fully-executed and acknowledged original of this Agreement has been delivered to all parties. If this Agreement is not executed by both Landlord and Lender and a fully executed and acknowledged original delivered to Albertson's Legal Department at the address set forth herein on or before the date that is thirty (30) days following the date hereof, then Tenant shall consider the request for this Agreement withdrawn and Tenant's execution hereof shall be of no force or effect.

[Remainder of Page Intentionally Left Blank; Signature Pages Follow]

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

TENANT:

NEW ALBERTSON'S, INC.,  
an Ohio corporation

By: \_\_\_\_\_

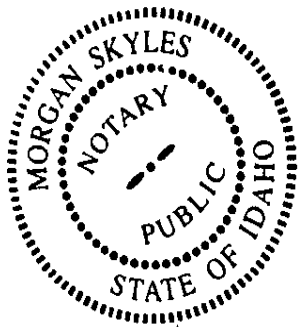
Name: Bradley Beckstrom  
Its: Authorized Signatory

STATE OF IDAHO )

County of Ada ) ss.

On this 26 day of October, 2017, before me M Skyles, personally appeared Bradley Beckstrom, known or identified to me ~~(or proved to me on the oath of \_\_\_\_\_)~~ to be the Authorized Signatory of New Albertson's, Inc., the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such company executed the same.

IN WITNESS WHEREOF, I have hereur to set my hand and affixed my official seal the day and year in this certificate first above written.



M Skyles  
NOTARY PUBLIC FOR IDAHO  
Residing at BOISE ID  
My Commission Expires 9-26-20



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**LANDLORD:**

**CF ALBERT PROPCO LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_

Name: Joshua Pack  
Title: Vice President

**ACKNOWLEDGEMENT**

STATE OF CALIFORNIA )  
COUNTY OF LOS ANGELES )ss

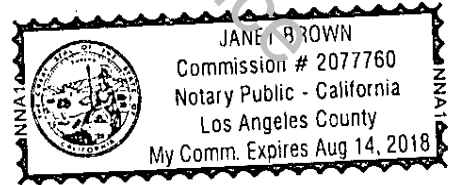
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

On October 26, 2017 before me, Janeel Brown, a Notary Public in and for said County and State, personally appeared, Joshua Pack who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


Signature: \_\_\_\_\_



(Notary Seal)

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**LENDER:**  
**ROYAL BANK OF CANADA**

By:   
Name: Drew Lassiter  
Its: Authorized Signatory

## ACKNOWLEDGEMENT

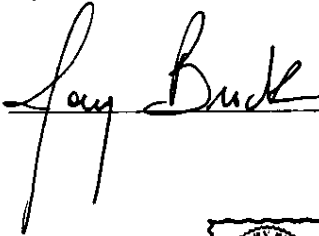
STATE OF TEXAS )  
 ) ss  
COUNTY OF DALLAS )

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

On October 27, 2017 before me, Joey Brock, a Notary Public in and for said County and State, personally appeared, Drew Lassiter, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Texas that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: 



(Notary Seal)

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PARCEL 1:

(EXCEPT THE EAST 341 FEET) (MEASURED ALONG THE NORTH AND SOUTH LINES) THE FOLLOWING DESCRIBED PARCEL OF LAND: THE SOUTH 528 FEET (EXCEPTING THEREFROM THE WEST 660 FEET THEREOF) OF LOTS 6, 7, AND 8 (TAKEN AS A TRACT) IN THE SUBDIVISION HEREINAFTER DESCRIBED (EXCEPTING THEREFROM THE EASTERLY 16 ACRES OF SAID LOTS TAKEN AS A TRACT, THE WESTERLY LINE OF SAID 16 ACRES BEING PARALLEL WITH THE EASTERLY LINE OF SAID LOTS 6, 7, AND 8, ALSO EXCEPTING THEREFROM THAT PART OF SAID LOT 8 LYING SOUTH OF A LINE DRAWN PARALLEL WITH AND DISTANT 50 FEET NORTH, MEASURED AT RIGHT ANGLES FROM THE SOUTH LINE OF SECTION 10, BEING ALSO THE SOUTH LINE OF SAID LOT 8 IN SAID SUBDIVISION AS AFORESAID LYING EAST OF THE EAST LINE OF THE WEST 660 FEET OF SAID LOT 8 IN SAID SUBDIVISION AS AFORESAID AND LYING WEST OF WEST LINE OF THE EASTERLY 16 ACRES OF LOTS 6, 7, AND 8 TAKEN AS A TRACT IN SAID SUBDIVISION) IN THE SUBDIVISION OF THE WEST 1/2 OF THE SOUTHWEST 1/4 AND WEST 1/2 OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 10, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

NON-EXCLUSIVE EASEMENTS APPURTENANT TO AND FOR THE BENEFIT OF PARCEL 1 FOR UNOBSTRUCTED PEDESTRIAN AND VEHICULAR PASSAGE, FOR ACCESS AND INGRESS TO AND EGRESS FROM AND BETWEEN THE LAND AND THE PROPERTY EAST AND ADJOINING AS DESCRIBED THEREIN AND FOR INGRESS TO AND EGRESS FROM 103RD STREET OVER AND ACROSS THE NORTH 40 FEET AND THE EAST 25 FEET OF SAID PROPERTY EAST AND ADJOINING THE LAND, AS ESTABLISHED AND CREATED BY THAT CERTAIN DECLARATION OF RESTRICTIONS FILED AS DOCUMENT LR2187486, AS MODIFIED BY AMENDMENT TO DECLARATION OF RESTRICTIONS FILED AS DOCUMENT LR2318730 AND REFILED AS DOCUMENT LR2337441, AS MODIFIED BY SECOND AMENDMENT TO DECLARATION OF RESTRICTIONS FILED AS DOCUMENT LR2406235, AND AS MODIFIED BY THIRD AMENDMENT TO DECLARATION OF RESTRICTIONS FILED DECEMBER 12, 1985 AS DOCUMENT LR3483319.

Street Address: 4650 W 103<sup>rd</sup> St, Oak Lawn, IL

PIN#: 24-10-3-00-097-0000