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PREPARED BY AND
AFTER RECORDING RETURN TO:

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KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 07/09/2018 10:11 AM PG: 1 OF 10

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made and entered into as of this 26th day of September, 2016, by and between, **Midland States Bank** ("Lender"), having its principal office at 1201 Network Centre Drive, Effingham, IL 62401, **SWC 156TH, LLC**, an Illinois limited liability company ("Landlord"), having its principal office at 9440 Enterprise Drive, Mokena, Illinois 60448; Attn.: Property Manager and **PDQ Orland Park, LLC**, a Florida limited liability company ("Tenant"), having its principal office at 4343 Anchor Plaza Parkway – Suite 1, Tampa, Florida, 33634, Attention: _____

RECITALS

WHEREAS, by a Ground Lease Agreement dated August 5, 2016 (as the same may have been amended, modified, supplemented, extended or renewed from time to time, the "Lease"), Landlord has leased to Tenant and Tenant has leased from Landlord all of that certain property in Orland Park, Illinois, as more particularly described in the Lease and on Exhibit A attached hereto (the "Premises"); and

WHEREAS, Lender has made a mortgage loan in the amount of Two Million Five Hundred Fifty Thousand and No/100 Dollars (\$2,555,000.00) to Landlord to be secured by a mortgage (as the same may be amended, restated, extended, or otherwise modified from time to time, the "Mortgage") to be recorded in the Official Records of Cook County, Illinois, which will constitute a lien against the Premises and Center; and

WHEREAS, Lender and Tenant desire to confirm their understandings with respect to the Lease and the Mortgage; and

NOW THEREFORE, in consideration of the sum of \$10.00 in hand paid and other good and valuable consideration, receipt of which is hereby acknowledged, and for and in consideration of their respective covenants herein made, the parties agree as follows:

1. Subject to the express provisions set forth in this Agreement, the Lease and the rights of Tenant in and under the Lease and in and to the Property, are hereby subjected and subordinated and shall remain in all respects and for all purposes subject and subordinate to the Mortgage and to any and all advances made on the security thereof and to any and all increases, amendments, supplements, modifications, renewals, consolidations, extensions or replacements thereto, thereof or therefore, and to the rights and interests of any of Lender's successors or assignees. This provision is acknowledged by Tenant to be self-operative, and no further instrument shall be required to effect such subordination of the Lease.

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2. In the event of foreclosure of the Mortgage or transfer of the Premises or Center by deed in lieu of foreclosure or upon a sale of the Premises or Center pursuant to a trustee's power of sale, Lender agrees, which agreement shall bind the purchaser under such a foreclosure or sale or the grantee under the deed in lieu of foreclosure (any such person, a "Successor") that so long as no default by Tenant exists under the Lease beyond any period provided for cure, and no event has otherwise occurred which would entitle the "Landlord" under the lease to terminate the Lease or dispossess Tenant thereunder, the rights of Tenant under the Lease shall not be disturbed or diminished and Tenant shall remain in possession of the Premises (and shall have rights with respect to the Center) in accordance with the terms and conditions of the Lease, except as otherwise set forth herein. Lender further agrees that Lender shall not join Tenant as a party defendant in any foreclosure or other action or proceeding taken by Lender under the Mortgage.

3. If the interests of Landlord in and to the Premises are transferred to Lender by reason of any deed in lieu of foreclosure, judicial foreclosure, sale pursuant to any power of sale or other proceedings brought by it or by any other manner, including, but not limited to, Lender's exercise of its rights under any collateral assignment(s) of leases and rents, and Lender succeeds to the interest of Landlord under the Lease, Tenant agrees to attorn to and accept any Successor as Landlord under the Lease and that Tenant will continue to be bound, and to perform all the obligations imposed upon Tenant, by the Lease and any extension thereof duly exercised by Tenant with the same force and effect as if Lender were the lessor under the Lease; provided, however, that Lender shall not be required to complete the construction of any improvements or otherwise perform the obligations of any prior landlord under the Lease in the event of a foreclosure of the Mortgage prior to full completion of such improvements; provided, however, that Tenant shall be under no obligation to pay any rent or other sums to Lender or any Successor until Tenant receives written notice from Lender or the Successor that it has succeeded to Landlord's interest in and to the Lease. Such notice shall be deemed received by Tenant if emailed to Tenant at the email address set forth in Section 8 below, provided, however, a copy of any such notice shall be mailed (or sent via overnight delivery service) to Tenant within two (2) business days after the date of such email. Landlord and Lender agree (which agreement shall bind any Successor) that upon receipt of written notice from Lender or a Successor that Lender or such Successor has succeeded to the interest of Landlord under the Lease, Tenant may rely on such notice without inquiry and may pay all rental and other charges reserved under the Lease directly to Lender or the Successor, as the case may be. Landlord and Lender further agree (which agreement shall bind any Successor) that any rent payments made by Tenant to Lender or a Successor shall be credited by both the Lender or Successor and Landlord against Tenant's rental and other obligations under the Lease, regardless of whether the Landlord or Successor had the right to make such demand and regardless of any contrary demands which may be made by Landlord. Upon such attornment, the Lease shall continue in full force and effect as a direct lease between the Lender or the Successor and Tenant. The respective rights and obligations of Tenant and Lender or its Successor upon such attornment shall be in accordance with the Lease to the extent of the then remaining balance of the term now set forth therein, it being the intention of the parties hereto for this purpose to incorporate the Lease in this Agreement by reference, with the same force and effect as if set forth at length herein.

4. Notwithstanding any contrary or inconsistent provision of the Mortgage, the proceeds of any fire and extended coverage insurance maintained pursuant to the terms of the Lease shall be handled and/or applied as set forth in the Lease. **[THIS IS A GROUND LEASE WITH TENANT CONSTRUCTING THE BUILDING WITH NO ALLOWANCE]**

5. In the event of a condemnation of all or any portion of the Premises, the obligations of the parties respecting the repair and reconstruction of the Premises, the allocation and disposition of the condemnation award, and Tenant's rights respecting such award, shall be as set forth in the Lease, and controlling over any contrary or inconsistent provision of the Mortgage; no provision of the Mortgage shall limit or affect Tenant's right to seek compensation in the event of a total or partial condemnation.

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Notwithstanding the foregoing, in no event shall the foregoing affect the rights of Lender or a Successor to any award provided for the value of Landlord's interest in the Premises.

6. Landlord represents and warrants to Tenant that the Mortgage is the only mortgage encumbrance on the Premises and that the interest of Tenant under the Lease is not subordinate to any other mortgage, lien or interest.

7. This Agreement shall be governed by and construed in accordance with the laws of the state in which the Premises are located.

8. Notices. All notices, demands, consents and approvals which may or are required to be given by either party to the other hereunder shall be in writing and shall be deemed to have been fully given when delivered personally, or sent by a nationally recognized overnight courier service or United States Mail, certified or registered, return receipt requested, postage prepaid, addressed as follows:

If to Tenant: Bob Fargo
 V.P. of Design & Construction PDQ
 Captiva MVP Restaurant Partners, LLC
 4343 Anchor Plaza Parkway, Suite One
 Tampa, Florida 33634
 Email: bfargo@eatpdq.com

With a copy to: Kathryn W. Oberto, Esq.
 Holland & Knight LLP
 200 S. Orange Ave, Suite 1600
 Orlando, Florida 32801
 Email: kathryn.oberto@hklaw.com

If to Lender: Matthew Dennison
 Midland States Bank
 38 West Countryside Parkway
 Yorkville, IL 60560
 Fax: 630-553-7118

With a copy to: Vincent Tessitore, Esq.
 Lindell & Tessitore P.C.
 1755 Park Street, Suite 200
 Naperville, IL 60563
 Fax: 630-701-1169

If to Landlord: SWC 156th LLC
 9440 Enterprise Drive
 Mokena, IL 60448
 Attn: Property Manager
 Fax: 708/478-7667

Notwithstanding the foregoing, any party can modify its notice address by delivering notice of such address change to the other parties in accordance with this Section 8.

9. This Agreement shall also bind and benefit the heirs, legal representatives, successors and assigns of the respective parties hereto, and all covenants, conditions and agreements herein contained shall

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be construed as running with the land. The word “**Lender**” as used herein shall mean not only the original Lender named herein but also all future holders of the Mortgage. The word “**Tenant**” as used herein shall mean not only the original Tenant named herein but also any entity which shall become the owner of the leasehold estate under the Lease and Tenant’s rights, benefits and privileges under the Lease in compliance with the Lease. The word “**Landlord**” as used herein shall mean not only the original Landlord named in the first paragraph hereof but also all future owners of the Property. In the event of an inconsistency or conflict between the terms of this Agreement and the terms of the Lease, the terms of this Agreement shall prevail.

10. **Lender Not Bound by Certain Acts of Landlord.** If Lender shall succeed to the interest of Landlord under the Lease, Lender shall not be: (a) liable for any breach of the Lease or other act or omission of any prior landlord (including Landlord), except for breaches or defaults in Landlord’s obligations under the Lease which are of a continuing nature; (b) subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord), except for any ongoing abatement or offset rights expressly granted in the Lease, and of which Lender has been provided written notice in accordance with Section 8 above; (c) bound by any rent or additional rent which Tenant might have paid for more than one month in advance, and all such rent shall remain due and owing, notwithstanding such advance payment; (d) bound by any amendment or modification of the Lease made without the written consent of Lender, or any termination of the Lease made without the written consent of Lender, unless such modification or termination is pursuant to the express terms of the Lease; (e) bound by any provisions of the Lease regarding the commencement or completion of any construction; (f) bound by any provision of the Lease which provided for warranties of construction from Landlord to Tenant; (g) except with respect to the real property subject to the Mortgage, bound by any provision of the Lease restricting the use of other properties owned by Lender, as landlord, for purposes which compete with Tenant; (h) liable for the return of any security deposit or advance rental deposit except to the extent actually received by Lender from Landlord; (i) liable or responsible for payment of any brokerage or other commission or compensation due with respect to the Lease or any amendment, renewal, extension, expansion, contraction, termination, or surrender thereof; (j) liable to Tenant under the Lease or otherwise from and after such time as Lender ceases to be the owner of the Property; (k) liable for any failure to provide any additional space pursuant to an option or right under the Lease, if such failure is a result of any prior landlord’s prior leasing or granting of a conflicting option or right on such space to another tenant; (l) bound by, or liable for any breach of, any representation or warranty or indemnity agreement of any kind contained in the Lease or otherwise made by any prior landlord (including Landlord); provided, however, the foregoing shall not or (m) personally liable or personally obligated to perform any such term, covenant, or provision, Lender’s liability being limited in all cases to its interest in the Premises.

11. Neither Lender nor any other party who, from time to time, shall be included in the definition of “Lender” hereunder shall have any liability or responsibility under or pursuant to the terms of this Agreement after it ceases to own or have an interest in or to the Loan. Nothing in this Agreement shall be construed to require Lender to see to the application of the proceeds of the Loan, and Tenant’s agreements set forth herein shall not be impaired on account of any modification of the documents evidencing and securing the Loan. Tenant acknowledges that Lender is obligated only to Landlord to make the Loan only on the terms and subject to the conditions set forth in the agreements between Lender and Landlord pertaining to the Loan. Tenant further acknowledges and agrees that neither Lender nor any purchaser of the Property at foreclosure sale or any grantee of the Property named in a deed in lieu of foreclosure, nor any heir, legal representative, successor, or assignee, or any such purchaser or grantee, has or shall have any personal liability for the obligations of Landlord under the Lease.

12. **Assignment of Lease.** Pursuant to the Mortgage, Landlord has assigned its interest in the rents and payments due under the Lease to Lender as security for repayment of the Loan. If in the future there is a default by the Landlord in the performance and observance of the terms of the Mortgage, the Lender may, at its option under the Mortgage, require that all rents and other payments due under the Lease

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be paid directly to it. Landlord hereby authorizes and directs Tenant and Tenant agrees to pay any payments due under the terms of the Lease to or as directed by Lender. The making of such payments directly to or as directed by Lender shall satisfy Tenant's obligation to make such payments to Landlord whether or not Lender had the right to give notice to Tenant to make such payments directly to Lender.

13. Notice to Lender by Tenant. In the event of any act or omission by Landlord under the Lease which would give Tenant the right, either immediately or after the lapse of a period of time, to terminate the Lease, or claim a partial or total eviction, Tenant shall, at the time it provides written notice to Landlord of such breach, use commercially reasonable efforts to mail a copy of such written notice to Lender by certified or registered mail, return receipt requested, addressed to Lender, at Lender's address as set forth herein.

14. Termination. This Agreement will automatically terminate upon Landlord's full payment and satisfaction of the Loan.

15. Counterparts; Electronic Delivery. This Agreement may be signed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. **[NEED ORIGINAL TO RECORD]**

16. Modifications and Assignment. 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 assigns or successors in interest. This Agreement shall inure to the benefit of and be binding on the parties hereto, their successors, and assigns. This Agreement may not be assigned by Landlord or Tenant without Lender's prior written consent. Lender may freely assign this Agreement at its sole discretion; provided, however, Tenant's obligation to deliver notice to any assignee shall be satisfied by Tenant's delivery to the notice address set forth herein until such time as Tenant receives written notice of any address change.

17. Waiver of Jury Trial. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO: (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS

18. Waiver of Special Damages. TO THE EXTENT PERMITTED BY APPLICABLE LAW, BOTH TENANT AND LANDLORD SHALL NOT ASSERT, AND HEREBY WAIVE, ANY CLAIM AGAINST THE LENDER, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS AGREEMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY, THE TRANSACTIONS, THE LOAN OR THE USE OF THE PROCEEDS THEREOF.

19. No Partnership or Co-venture. Neither the execution and delivery by Lender of this Agreement, nor the exercise by the Lender of any of its rights, privileges or remedies hereunder or under the Loan and Mortgage or under applicable law, shall be deemed to render the Lender a co-partner, or co-venturer, with the Landlord, Tenant or any other person or entity, it being expressly understood,

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acknowledged and agreed by the parties that all of such rights, privileges and remedies are being conferred upon, and exercised by, the Lender solely in furtherance of its role as a secured lender.

(Signatures Appear on Following Pages)

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RECORDER OF DEEDS

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

LENDER:

MIDLAND STATES BANK,
a Illinois State Chartered Bank

By: Matt Dennis
Name: Matt Dennis
Title: Market President

STATE OF Illinois §
COUNTY OF Kendall §

On the 14 day of SEPTEMBER 2016, before me, a notary public in and for said state, personally appeared MATT DENNIS, personally known to me (or 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 as PRESIDENT of MIDLAND STATES BANK, a _____, and that by his signature on the instrument, he acknowledged that he executed the instrument on behalf of said entity.

WITNESS my hand and official seal.

Tracy Peterson
Notary Public in and for the State of ILLINOIS

(This area for official notarial seal)

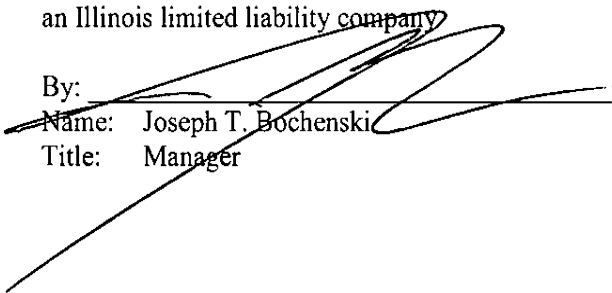


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IN WITNESS WHEREOF, the parties have executed this Agreement as of the day first above written.

LANDLORD:


SWC 156TH, LLC,
an Illinois limited liability company

By: 
Name: Joseph T. Bochenski
Title: Manager

STATE OF ILLINOIS §
 §
COUNTY OF WILL §

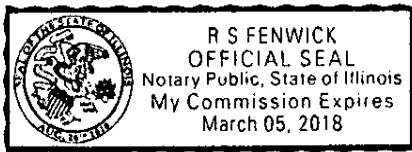
On the 26th day of September, 2016, before me, a notary public in and for said state, personally appeared Joseph T. Bochenski, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity as Manager of SWC 156th, LLC, an Illinois limited liability company, and that by his signature on the instrument, he acknowledged that he executed the instrument on behalf of said entity.

WITNESS my hand and official seal.



Notary Public

(This area for official notarial seal)



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

PDQ ORLAND PARK, LLC,
a Florida limited liability company

By: _____
Name: Nicholas Reader
Title: Manager

STATE OF FLORIDA §
 §
COUNTY OF §

On the 2 day of March, 2018, before me, a notary public in and for said state, personally appeared Nicholas Reader, personally known to me (or 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/she executed the same in his/her authorized capacity as Manager for PDQ Orland Park, LLC, a Florida limited liability company and that by his/her signature on the instrument, he/she acknowledged that he/she executed the instrument on behalf of said corporation.

WITNESS my hand and official seal.

Kathryn D Frankland
Notary Public

(This area for official notarial seal)



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EXHIBIT A

LEGAL DESCRIPTION

Lot 3 in the Final Plat of Subdivision Lagrange Retail Development being part of the Southeast Quarter of Section 16, Township 36 North, Range 12 East of the Third Principal Meridian, according to the plat thereof, recorded February 15, 2018 as Document #1804629086, in Cook County, Illinois.

Common Address: 15610 S. LaGrange Road, Orland Park, IL 60462

PIN: 27-16-401-004-0000

27-16-401-005-0000

27-16-401-008-0000

27-16-401-011-0000

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