

# UNOFFICIAL COPY

Doc#: 2325133001 Fee: \$107.00

Karen A. Yarbrough

Cook County Clerk

Date: 09/08/2023 08:05 AM Pg: 1 of 10

RECORDING REQUESTED BY,  
AND WHEN RECORDED, MAIL TO:

Holland & Knight LLP  
1901 Avenue of the Stars, Suite 1200  
Los Angeles, CA 90067  
Attention: Benjamin Bottehsazan, Esq.

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(SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY)

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR LEASEHOLD ESTATE IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "**Agreement**") is made as of August 31, 2023 by and among RCSH Operations, LLC, a Louisiana limited liability company, DBA PUTH'S CHRIS STEAK HOUSE ("**Tenant**"), ARENA SIREC LENDER I, LLC, a Delaware limited liability company (together with its successors and/or assigns, "**Lender**"), and Northbrook ND Investments, LLC, an Delaware limited liability company ("**Landlord**").

### RECITALS

A. Tenant is the lessee under that certain lease dated January 16, 1997, as amended by that certain First Amendment to Indenture of Lease dated October 13, 2011, as further amended by that certain Second Amendment to Lease dated August 2, 2020, as further amended by that certain Third Amendment to Lease dated February 28, 2021, as further amended by that certain Fourth Amendment to Lease Agreement dated November 15, 2021 (as the same may from time to time be assigned, subleased, renewed, extended, amended, modified or supplemented, collectively the "**Lease**"), by and between Landlord and Tenant for those premises more particularly described therein (the "**Premises**").

B. Lender has previously made or is about to make a loan to Landlord, evidenced by a promissory note executed by Landlord and payable to Lender and secured by a first priority Mortgage, Security Agreement, Assignment of Rents and Leases, and Fixture Filing (the "**Security Instrument**") on the real property and improvements described on Exhibit B attached hereto (the "**Property**"), recorded or to be recorded in the appropriate records of Cook County, Illinois.

C. Lender has requested that Tenant confirm that the Lease is subject and subordinate to the Security Instrument.

D. Tenant is willing to confirm the subordination of the Lease, provided it obtains assurance from Lender that its possession of the Premises and its right to use any common areas will not be disturbed by reason of or in the event of the foreclosure of the Security Instrument.

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E. Lender is willing to give such assurance on the terms and conditions contained herein.

NOW, THEREFORE, for and in consideration of the mutual agreements herein contained and other good and valuable consideration, the parties mutually covenant and agree as follows:

1. Notwithstanding anything to the contrary contained in the Lease, subject to Paragraph 2 below, Tenant, Lender and Landlord hereby agree that the Lease (including specifically, without limitation, (a) any option or options to purchase or rights of first refusal affecting the Property, or any portion thereof, contained therein, (b) any extension, renewal or modification of the Lease, (c) the leasehold estate in the Premises created by the Lease, and (d) all of Tenant's rights under the Lease) is and shall at all times be completely and unconditionally subject and subordinate in all respects (i) to the Security Instrument and associated loan documents (the "Loan Documents"), the lien thereof and to all renewals, modifications, extensions, substitutions, rearrangements and replacements thereof, and all advances of any character made or to be made thereunder, and (ii) to any and all renewals, modifications, replacements, extensions, substitutions and rearrangements of any and all obligations and indebtedness secured by the Security Instrument or the other Loan Documents.

2. So long as no event of default on the part of Tenant under the Lease shall exist that would entitle Landlord to terminate the Lease, or if such an event of default shall exist, so long as Tenant's time to cure the default shall not have expired, the term of the Lease shall not be terminated or modified in any respect whatsoever and Tenant's right of possession to the Premises and its rights in and to any common areas and its other rights arising out of the Lease will all be fully recognized and protected by Lender and shall not be disturbed, canceled, terminated or otherwise affected by reason of the Security Instrument or any action or proceeding instituted by Lender to foreclose the Security Instrument, or any extension, renewal, consolidation or replacement of same, irrespective of whether Tenant shall have been joined in any action or proceeding.

3. In the event that Lender takes possession of the Property, either as the result of foreclosure of the Security Instrument or accepting a deed to the Property in lieu of foreclosure, or otherwise, or if the Property shall be purchased at a foreclosure by a third party, Tenant shall attorn to Lender or such third party and recognize Lender or such third party as its landlord under the Lease. Tenant's attornment hereunder shall be effective and self-operative without the execution of any other instruments on the part of any party hereto, immediately upon Lender's acquisition of title to the Property; provided, however, Tenant shall, within ten (10) days after request by Lender, execute any instrument or take any action specified by Lender further to confirm attornment hereunder in accordance with the provisions of this Agreement, and Lender or such third party will recognize and accept Tenant as its tenant thereunder, whereupon, the Lease shall continue in full force and effect as a direct lease between Lender or such third party and Tenant for the full term thereof, together with all extensions and renewals thereof, and Lender or such third party shall thereafter assume and perform all of Landlord's obligations, as the landlord under the Lease with the same force and effect as if Lender or such third party were originally named therein as Landlord; provided, however, that Lender or such third party shall not be:

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- a. liable for any act or omission of any prior landlord (including Landlord), prior to taking possession of the Property; or
- b. subject to any offsets or defenses that Tenant might have against any prior landlord (including Landlord) prior to taking possession of the Property; or
- c. bound by any rent or additional rent that Tenant might have paid for more than one (1) month in advance to any prior landlord (including Landlord); or
- d. bound by any amendment or modification of the Lease not consented to in writing by Lender; or
- e. responsible for the performance of (or contribution toward) any work to be done by the landlord under the Lease to render the Premises ready or available for occupancy by the Tenant, or required to remove any person occupying the Premises or any part thereof; or
- f. responsible for any security deposit, cleaning deposit or other prepaid charge which Tenant may have paid in advance to any prior lessor (including Landlord) which has not been delivered to Lender (Lender acknowledging that Lender will be responsible for any security deposit that is delivered or obtained by Lender).

4. Notwithstanding anything to the contrary in this Agreement or otherwise, in the event Lender or a third party takes possession of the Property as provided in paragraph 3 above, the liability of Lender or such third party under the Lease shall be limited to Lender's, or such third party's, as the case may be, interest in the Property.

5. Tenant agrees not to subordinate the Lease to any other lien or encumbrance that (a) affects the Premises, or any part thereof, or (b) is junior to the Security Instrument, without the express written consent of Lender, and any such subordination or any such attempted subordination or agreement to subordinate without such consent of Lender, shall be void and of no force and effect.

6. Tenant agrees to provide copies of all notices given Landlord under the Lease to Lender at the following address:

Lender: Arena SIREC Lender I, LLC  
405 Lexington Avenue, 59<sup>th</sup> Floor  
New York, NY 10174

or to such other address as Lender shall designate in writing; and all such notices shall be in writing and shall be considered as properly given if (a) mailed to the addressee by first class United States mail, postage prepaid, registered or certified with return receipt requested, (b) by delivering same in person to the addressee, or (c) by delivery to a third party commercial delivery service for same day or next day delivery to the office of the addressee with proof of delivery; any notice so given shall be effective, as applicable, upon (i) the third (3rd) day following the day such notice is deposited with the United States mail, (ii) delivery to the addressee, or (iii) upon delivery to such third party delivery service; and any notice given in any other manner shall be effective only if and when received by the addressee.

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7. In the event Landlord shall fail to perform or observe any of the terms, conditions or agreements in the Lease, Tenant shall give written notice thereof to Lender and Lender shall have the right (but not the obligation) to cure such default. Tenant shall not take any action with respect to such default under the Lease (including, without limitation, any action in order to terminate, rescind or void the Lease or to withhold any rent or other monetary obligations thereunder) for a period of thirty (30) days following receipt of such written notice by Lender; provided, however, that in the case of any default that cannot with diligence be cured within such thirty (30)-day period, if Lender shall proceed promptly to cure such default and thereafter prosecute the curing of such default with diligence and continuity, then the time within which such default may be cured shall be extended for such period as may be necessary to complete the curing of such default with diligence and continuity.

8. Tenant warrants and represents that it has no right or option of any nature whatsoever except as provided expressly in the Lease, to purchase the Premises or the Property, or any portion thereof, or any interest therein; provided, however, that to the extent that Tenant has had or hereafter acquires any such right or option (whether in the Lease or otherwise), Tenant hereby acknowledges that such right or option is made subject and subordinate to the Loan Documents pursuant to this Agreement and is hereby waived and released against Lender.

9. Upon Lender's written request at or after any foreclosure under the Loan Documents, or any of them, Tenant shall, in the event that the Lease has been terminated as a result of the foreclosure, execute a new lease of the Premises upon the same terms and conditions as the Lease between Borrower and Tenant, which new lease shall cover any unexpired term of the Lease existing prior to such foreclosure (but there shall be no requirement for an additional deposit).

10. Tenant shall not pay any installment of rent, or any other amount or charge due under the Lease, more than 30 days prior to the due date thereof, and Lender shall be entitled to recover from Tenant any such payments or charges made by Tenant in violation hereof. Tenant shall observe and perform, throughout the term of the Lease, all of the terms, covenants, conditions and obligations to be performed by Tenant thereunder (subject to notice and cure rights provided therein).

11. Tenant, for the benefit of Lender, hereby confirms, acknowledges, warrants, represents and certifies as follows: (i) the Lease is in full force and effect and a valid and binding obligation of Borrower and Tenant enforceable in accordance with its terms; (ii) neither Tenant, nor to Tenant's knowledge, Borrower, is in default under any of the terms, covenants or conditions of the Lease, and there are no setoffs, counterclaims or credits against rentals or other amounts payable under the Lease except as expressly provided therein, and, to Tenant's knowledge, no event or circumstance has occurred or pertains which, but for the giving of required notice or the lapse of an applicable grace period, would result in any of the foregoing; (iii) Tenant has no notice of any prior assignment, hypothecation or pledge of the Lease or any of the amounts payable thereunder; and (iv) the Lease is a complete statement of the agreement of the parties thereto with respect to the leasing of the Premises, and no modifications, amendments, supplements, assignments or subleases (whether written or oral) have been made to the Lease.

12. In the event of any Event of Default under the Loan Documents, Lender has the right to give notice to Tenant to pay all rent and all other sums due or payable under the Lease

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directly to Lender. Borrower hereby expressly authorizes and directs Tenant (and Tenant agrees) to make such payments to Lender upon receipt of such notice (regardless of any conflicting claims made by Borrower as to whether a default exists or otherwise) and Borrower hereby releases and discharges Tenant of and from any liability to Borrower on account of any such payments made by Tenant hereunder.

13. Borrower acknowledges that the Note and the Loan Documents remain in full force and effect, enforceable in accordance with their terms, and that this Agreement does not constitute a waiver by Lender of any of its rights thereunder, or in any way release Borrower from its obligations to comply with any of the terms, provisions, conditions, covenants, agreements or obligations under the Note or the Loan Documents.

14. Borrower, Tenant and Lender agree that unless Lender shall otherwise expressly consent in writing, fee title to the Property and the leasehold estate created by the Lease shall not merge but shall remain separate and distinct, notwithstanding the union of said estates either in the Borrower or the Tenant or any third party by purchase, assignment or otherwise.

15. This Agreement may not be modified orally or in any other manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest. This Agreement shall not be deemed to alter or modify any of the terms, covenants, conditions or obligations of the Lease, except to the extent specifically set forth herein. No renewal, extension, modification, consolidation or replacement of the Loan Documents, or any of them, or any other provision of the loan evidenced by the Note, or any waiver of any term thereof, shall in any manner affect the obligations of Tenant under the Lease or this Agreement, and Tenant hereby unconditionally relinquishes, waives and releases any and all claims or defenses based thereon.

16. If any term of this Agreement, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term to persons or circumstances other than those to which it is invalid and unenforceable, shall not be affected thereby, and in such event this Agreement shall be construed to the extent necessary as if such invalid or unenforceable provision had never been contained herein.

17. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Illinois (without regard to conflicts of law).

18. If any action or proceeding is brought by any party against any other party under this Agreement, the prevailing party shall be entitled to recover for the fees of its attorneys in such action or proceeding such amount as the court may adjudge reasonable.

19. Nothing contained in this Agreement shall in any way impair or affect the lien created by the Security Instrument, except as specifically set forth herein.

20. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns; provided, however, that in the event of the assignment or transfer of the interest of Lender to a party that assumes Lender's obligations and liabilities hereunder, all obligations and liabilities of Lender under this Agreement shall terminate, and

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thereupon all such obligations and liabilities shall be the responsibility of the party to whom Lender's interest is assigned or transferred.

21. This Agreement may be executed in any number of counterparts all of which taken together shall constitute one and the same instrument.

[Remainder of page intentionally left blank; signature pages follow.]

Property of Cook County Clerk's Office

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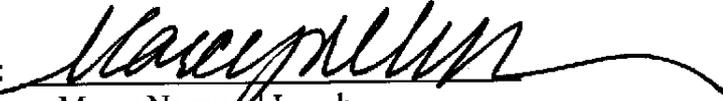
TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, THE LOAN, OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF LANDLORD OR LENDER OR ANY EXERCISE BY ANY PARTY OF THEIR RESPECTIVE RIGHTS UNDER THE LOAN DOCUMENTS OR IN ANY WAY RELATING TO THE LOAN OR THE PROPERTY OR THIS NOTE. THIS WAIVER IS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN TO LANDLORD.

TENANT:

RCSH OPERATIONS, LLC



REBECCA KITCHIN ZOLLARS  
Notary Public  
State of Florida  
Comm# HH212F29  
Expires 4/13/2026

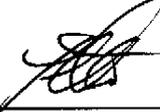
By:   
Name: Marcy Norwood Lynch  
Title: Secretary

*Rebecca Kitchen Zollars*  
*6/26/2023*

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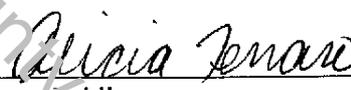
**LENDER:**

ARENA SIREC LENDER I, LLC,  
a Delaware limited liability company

By:   
Name: Lawrence Cutler  
Title: Authorized Signatory

STATE OF NEW YORK )  
 ) SS:  
COUNTY OF WESTCHESTER )

On the 1 day of August in the year 2023, before me, the undersigned, personally appeared Lawrence Cutler, personally known to me or proven 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person on behalf of which the individual acted, executed the instrument.

  
Notary Public

My Commission Expires:  
[SEAL]

**ALICIA FERRARO**  
**NOTARY PUBLIC, STATE OF NEW YORK**  
**Registration No. 01FE6416073**  
**Qualified in Nassau County**  
**Commission Expires April 5, 2025**



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## EXHIBIT A

### LEGAL DESCRIPTION OF PROPERTY

#### PARCEL 1:

LOT 1 IN EVELYN MICHELS' CONSOLIDATION OF LOT 2, RECORDED JUNE 5, 1995 AS DOCUMENT 95363638 IN OWNER'S CONSOLIDATION OF PART OF THE LOTS AND BLOCKS IN HUGHES-BROWN-MOORE CORPORATION'S SECOND ADDITION AND HUGHES-BROWN-MOORE CORPORATION'S THIRD ADDITION IN THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 12, TOWNSHIP 42 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, TOGETHER WITH PART OF THE VACATED STREETS, LYING BETWEEN AND ADJOINING SAID LOTS AND BLOCKS AND PART OF SAID NORTHWEST 1/4 OF THE NORTHWEST 1/4, LYING NORTH OF SAID HUGHES-BROWN-MOORE CORPORATION'S SECOND ADDITION, ALL LYING SOUTHERLY AND WESTERLY OF THE EDENS EXPRESSWAY, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

EASEMENT IN, ON, OVER AND UNDER A CERTAIN PORTION OF THE LAND LOCATED IN THE NORTHWEST CORNER OF THE PROPERTY SOUTH OF AND ADJOINING PARCEL 1, (THE "ADJOINING LAND") IN FAVOR OF PARCEL 1 TO CONSTRUCT, RECONSTRUCT, OPERATE, MAINTAIN, USE AND REMOVE A WATER RETENTION POND, TOGETHER WITH THE RIGHT OF ACCESS TO THE ADJOINING LAND AND THE RIGHT TO ENTER UPON THE ADJOINING LAND FOR PURPOSES OF SUCH CONSTRUCTION, RECONSTRUCTION, OPERATION, MAINTENANCE, USE AND REMOVAL AND THE ADDITIONAL RIGHT TO REMOVE LANDSCAPING, PAVING AND OTHER IMPROVEMENTS IN CONNECTION THEREWITH AS CREATED BY GRANT MADE BY LASALLE NATIONAL BANK, A NATIONAL BANKING ASSOCIATION, AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 30, 1965 AND KNOWN AS TRUST NUMBER 34374, AND CITY PRODUCTS CORPORATION, AN OHIO CORPORATION, TO LASALLE NATIONAL BANK, A NATIONAL BANKING ASSOCIATION, AS TRUSTEE UNDER TRUST AGREEMENT DATED JANUARY 14, 1969 AND KNOWN AS TRUST NUMBER 31985, RECORDED JANUARY 22, 1973 AS DOCUMENT 22195112.