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Loan No.: V00252

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. COOK COUNTY RECORDER

(10)

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

BY AND BETWEEN

HOUSTON FOODS CO.

AND

MORGAN GUARANTY TRUST COMPANY OF NEW YORK

Property of Cook County Clerk's Office

Prepared by and when recorded return to:

James H. Thompson, Esq.  
Womble Carlyle Sandridge & Rice, PLLC  
1275 Peachtree Street, N.E., Suite 700  
Atlanta, Georgia 30309

**BOX 333-CTI**

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## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Subordination, Non-Disturbance and Attornment Agreement ("**Agreement**") is made as of this \_\_\_\_ day of November, 1997, by and between **HOUSTON FOODS CO.**, a Delaware corporation ("**Tenant**") and **MORGAN GUARANTY TRUST COMPANY OF NEW YORK**, a New York banking corporation ("**Lender**").

### RECITALS

A. Lender is the owner and holder of that certain Mortgage and Security Agreement (the "**Mortgage**") dated of even date herewith, covering the property legally described in Exhibit A attached hereto and incorporated herein (the "**Property**"). The Mortgage and any and all other documents or instruments related thereto, and all renewals, amendments, supplements, restatements, extensions, and modifications thereof and thereto, are hereinafter collectively referred to as the "**Loan Documents**."

B. Tenant is the lessee of certain premises (the "**Demised Premises**") constituting a portion of the Property with a common address of 2721 Edgington, Franklin Park, Illinois under and pursuant to provisions of a certain Lease dated May 18, 1995, between 2721 Edgington, L.L.C., an Illinois limited liability company (assigned from 9401 Grand L.L.C., an Illinois limited liability company) ("**Landlord**") and Tenant (said Lease as the same may be hereafter modified, amended or extended from time to time is hereinafter collectively referred to as the "**Lease**").

C. Lender has required the execution of this Agreement as a condition of making a mortgage loan to Landlord.

### AGREEMENT

For good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. **Subordination.** Subject to Paragraph 2 below, the parties hereby agree that the Lease is and shall at all times be subject and subordinate in all respects to the lien of the Mortgage and the other Loan Documents, to all indebtedness and obligations secured thereby, and to all renewals, modifications, extensions, substitutions, rearrangements and replacements thereof.

2. **Non-Disturbance.** Lender agrees that, subject to the terms and conditions of this Agreement, if any action or proceeding is commenced by Lender or at Lender's behest for the foreclosure of the Mortgage or the sale of the Property or other realization under the Loan Documents, whether by foreclosure, deed in lieu of foreclosure or in any other proceedings made or brought to enforce the rights of Lender, or by any successor to Lender, Tenant shall not be named as a party therein (unless required by law to properly foreclose upon the Mortgage), and the sale of the Property in any such action or proceeding and the exercise by Lender of any such action or proceeding and at the time of its other rights under the Mortgage shall be made subject to all rights

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of Tenant under the Lease, provided that at the time of any such action or proceeding and at the time of any such sale or exercise of any such other rights, Tenant shall not be declared in default, and no event shall have occurred which with the giving of notice or passage of time would result in a default absent the remedy thereof by the Tenant within any grace periods permitted by the Lease, under any of the terms, covenants or conditions of the Lease on Tenant's part to be observed or performed. So long as Tenant is not in default under the Lease, which has been declared and not cured, Tenant's possession and occupancy of the Demised Premises shall not be disturbed by Lender or by any successor to Lender during the term of the Lease or any extension thereof.

3. **Attornment.** If the interests of the Landlord in the Property and under the Lease or any portion thereof are acquired by Lender, whether by purchase and sale, foreclosure, deed in lieu of foreclosure or in any other proceeding made or brought to enforce the rights of Lender, or by any successor to Lender, including without limitation any purchaser at a foreclosure sale, Tenant shall be bound to Lender, its successors and assigns under all of the terms, covenants and conditions of the Lease for the balance of the term thereof, with the same force and effect as if they were named as Landlord under the Lease, and Tenant does hereby attorn to Lender, its successors and assigns as its landlord, said attornment to be effective and self-operative immediately upon Lender's or its successor's or assign's succeeding to the interests of the Landlord in the Property and under the Lease, without the execution of any other or further instruments on the part of any party hereto. Tenant covenants and agrees from time to time to do all acts and to execute all instruments as may reasonably be requested by Lender for the purposes of fully carrying out and effectuating the purpose and intent of this Agreement, whether by filing with any public office or agency or otherwise.

4. **Limitation on Lender's Liability.** If Lender succeeds to the interests of Landlord in the Property and under the Lease, Lender or by any successor to Lender shall thereupon be bound to Tenant under all of the terms, covenants and conditions of the Lease, and Tenant shall, from and after Lender's succession to the interests of Landlord, have the same rights and remedies against Lender or by any successor to Lender for breach of the Lease that Tenant would have had under the Lease against Landlord if Lender had not succeeded to the interests of Landlord; provided, however, that Lender shall not be: (a) liable for any act or omission of any prior landlord (including without limitation Landlord); (b) except for accrued liabilities incurred by Tenant in good faith at the Property which may be offset against future rents under the terms of the Lease, subject to any offsets or defenses which Tenant might have against any prior landlord (including without limitation Landlord); (c) bound by any surrender, cancellation, agreement or modification of the Lease made without the prior written consent of Lender; or (d) bound to return Tenant's security deposit, if any, until such deposit has come into Lender's (or such successor's) actual possession and Tenant would be entitled to such security deposit under the Lease. Lender shall be bound by Tenant's payment of no more than one (1) month's rent in advance under the Lease unless otherwise approved by Lender.

5. **No Modification.** Tenant agrees that during the term of the Lease or any extension thereof, Tenant will not enter into any material amendment or modification of the Lease and will not cancel or surrender the Lease without in any such instance Lender's prior written consent, which

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consent shall not be unreasonably withheld or delayed.

6. [Reserved]

7. The monthly base rent under the Lease is \$ 111,424<sup>92</sup>, and the Lease commenced on June 15, 1995 and shall expire on July 31, 2005.

8. No Merger. Unless Lender shall otherwise expressly agree 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 Landlord, in Tenant or in any third party, by purchase, assignment or in any other matter.

9. Representations and Warranties. Tenant hereby represents and warrants to Lender that : (a) it knows of no default on the part of either party under the Lease; (b) the Lease is a complete statement of the agreement of the parties thereto with respect to the leasing of the Property; (c) the Lease is in full force and effect; (d) Tenant has paid a security deposit in the amount of \$106,000.00 on which Landlord has no obligation to segregate or pay any interest; (e) except for the assignment by DLS Real Estate, Inc. to 9401 Grand L.L.C., and the assignment by 9401 Grand L.L.C. to Landlord, and the collateral assignment to Belmont National Bank of Chicago, Tenant has received no notice of a prior sale, transfer, assignment, hypothecation or pledge of the Lease or of the rents secured therein; and (f) there has not been filed by or against Tenant a petition in bankruptcy, voluntary or otherwise, any assignment for the benefit of creditors, or any petition seeking reorganization or arrangement under the bankruptcy laws with respect to Tenant.

10. Notice to Lender. Tenant shall use its best efforts to give Lender copies of all notices and other written communications given by the Tenant to the Landlord relating to (a) material defaults on the part of the Landlord under the Lease; (b) any material violations of any ordinances, statutes, laws, rules, codes, regulations or requirements of any governmental agency having jurisdiction over the Property, and (c) any proposed or actual assignment or subletting of all or any portion of the Demised Premises. Prior to pursuing any remedy available to Tenant under the Lease, at law or in equity which Tenant may have as a result of any failure of Landlord to perform or observe any covenant, condition, provision or obligation to be performed or observed by Landlord under the Lease (any such failure hereunder referred to as a "Landlord's Default"), Tenant shall provide Lender with a notice of Landlord's Default (the "Tenant's Notice"), which notice may be sent concurrently with any similar notice to Landlord, specifying the nature thereof and the remedy which Tenant will elect under the terms of the Lease or otherwise. Lender shall have ten (10) days from the date of Tenant's Notice (or such lesser time if an emergency exists), or such greater time period as available to Landlord under the Lease, within which to commence to cure Landlord's Default and diligently proceed to complete such cure at all times thereafter. Tenant shall not pursue any remedy available to it as a result of any Landlord's Default unless Lender fails to commence within the time period set forth above or thereafter fails to diligently pursue a cure of any Landlord's Default.

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11. **Access.** Notwithstanding the provisions of the Lease, if Tenant shall not have provided Lender with access to the Demised Premises, and if access is required to remedy such Landlord default, the period of time set forth in the Lease in which to remedy same shall not commence until such access is provided to Lender.

12. **Notices.** Notices shall be in writing and shall be given by personal delivery, telecopier, followed by U.S. mail, overnight courier, or by mail addressed as set forth below. Notice by personal delivery shall be deemed effective upon the delivery of such notice to the party for whom it is intended at the recipient's address. Notice by telecopier shall be deemed given when confirmation has been received, provided a hard copy of such transmittal and confirmation are same day mailed in the manner hereinafter provided. Notice by overnight courier shall be deemed effective twenty-four (24) hours after deposit with a commercial courier or delivery service for overnight delivery within the United States, or on the second (2nd) business day after deposit with an international second day delivery service (as applicable). Notice by mail shall be made by certified or registered mail, return receipt requested, postage prepaid, properly stamped, sealed and addressed, and shall be deemed effective on the second (2nd) business day after deposit in the United States mail. Either party may give notice of any change of address in accordance with the notice procedures described herein.

TO TENANT:

Houston Foods Co.  
2421 Edgington Street  
Franklin Park, Illinois 60131  
Attn: Chief Financial Officer

with a copy to:

Rudnick & Wolfe  
203 North LaSalle Street  
Suite 1800  
Chicago, Illinois 60601  
Attn: Jerome Marks

TO LENDER:

Morgan Guaranty Trust Company of New York  
60 Wall Street  
New York, New York 10260-0060  
Attn: Nancy Alto, Commercial Mortgage Finance Group-Loan Servicing  
Facsimile No.: (212) 648-5274

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with a copy to:

Womble Carlyle Sandridge & Rice, PLLC  
1275 Peachtree Street, N.E., Suite 700  
Atlanta, Georgia 30309  
Attn: James H. Thompson, Esq.  
Facsimile No.: (404) 888-7490

12. **Interpretation.** Whenever possible each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under such law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of said document.

13. **Governing Law; Litigation.** THE VALIDITY OF THIS AGREEMENT, ITS CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT, AND THE RIGHTS OF TENANT AND LENDER SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF ILLINOIS, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE MAXIMUM EXTENT PERMITTED BY LAW, TENANT HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT SHALL BE TRIED AND DETERMINED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS, OR, AT THE SOLE OPTION OF LENDER IN ANY OTHER COURT IN WHICH LENDER SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, TENANT HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS PARAGRAPH.

14. **Jury Waiver.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, TENANT AND LENDER EACH HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS AGREEMENT, OR IN ANY WAY CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE DEALINGS OF TENANT AND LENDER WITH RESPECT TO THIS AGREEMENT, OR THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, TENANT AND LENDER EACH HEREBY AGREES THAT ANY SUCH ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT TENANT OR LENDER MAY FILE A COPY OF THIS EXECUTED AGREEMENT WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN

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EVIDENCE OF THE CONSENT OF TENANT AND LENDER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS SECTION 14, THE PARTIES' RIGHTS TO PURSUE CERTAIN CLAIMS OR REMEDIES THROUGH ARBITRATION AS SET FORTH IN THE LEASE SHALL NOT BE DIMINISHED AS A RESULT OF THIS SECTION 14.

15. Miscellaneous. This Agreement may not be amended or modified except by an agreement in writing signed by the party to be charged. If any action or proceeding is brought by any party against any other party arising from or related to this Agreement or the Lease, the prevailing party shall be entitled to recover its reasonable costs and attorneys' fees. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their heirs, representatives, successors and assigns. Time is of the essence. This document, and the Lease, to the extent applicable, represent the entire agreement between the parties with respect to the subject matter hereof and supercedes all prior agreements, representations and covenants.

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

TENANT:

HOUSTON FOODS CO., a  
Delaware corporation

By: *Bradley Alexander*  
Its: Executive VP of Finance

Attest: \_\_\_\_\_  
Its: \_\_\_\_\_

LENDER:

MORGAN GUARANTY TRUST COMPANY  
OF NEW YORK, a New York banking corporation

By: *[Signature]* *JR*  
Its: VP

Attest: *[Signature]*  
Its: ✓

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## EXHIBIT A

### PARCEL 1:

LOT 2 IN WEST GRAND AVENUE SUBDIVISION RECORDED ON JULY 31, 1997 AS DOCUMENT NUMBER 97557554 OF PART OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 27, TOWNSHIP 40 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY ILLINOIS.

### PARCEL 2:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY THE EASEMENT AGREEMENT BY AND BETWEEN MOTOROLA, INC., A DELAWARE CORPORATION AND QUASAR ELECTRONICS CORPORATION, A DELAWARE CORPORATION ATTACHED TO AND MADE A PART OF THE INSTRUMENT DATED APRIL 27, 1995 AND RECORDED MAY 19, 1995 AS DOCUMENT 95330061, FOR PASSAGE OVER THE LAND DESCRIBED THEREIN, FOR THE FOLLOWING PURPOSE:

DRIVEWAY FOR INGRESS AND EGRESS TO THE QUASAR PARCELS FOR VEHICLES OF EVERY KIND AND PEDESTRIANS ALONG AND ACROSS THAT PORTION OF MOTOROLA'S PARCELS DESCRIBED AS PARCEL "E" IN THE EASEMENT RIDER ATTACHED AS EXHIBIT "C" THEREIN.

PARCEL 3: EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR THE USE OF EXISTING ELECTRICAL SYSTEMS LOCATED ON PROPERTY DESCRIBED IN THE RECIPROCAL EASEMENT, ACCESS, REPAIR AND MAINTENANCE AGREEMENT MADE BY 9401 GRAND L.L.C. DATED JULY 29, 1997 AND RECORDED AUGUST 1, 1997 AS DOCUMENT 97560233.

PARCEL 4: EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR ACCESS TO AND INGRESS AND EGRESS FOR THE USE, INSPECTION AND REPAIR OF ELECTRIC SYSTEMS, FIRE PROTECTION SYSTEMS, WATER SYSTEMS, TELEPHONE LINES AND HEATING SYSTEMS LOCATED ON THE PROPERTY DESCRIBED IN THE RECIPROCAL EASEMENT, ACCESS, REPAIR AND MAINTENANCE AGREEMENT MADE BY 9401 GRAND L.L.C., DATED JULY 29, 1997 AND RECORDED AUGUST 1, 1997 AS DOCUMENT 97560233.

*Address 2721 Edgington  
Franklin Park*

*PIN 12-27-300-042*

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