

Num Pgs 12
Doc Tax \$0.00
Fees \$76.00
Received by: RO
P&MFund 8.00
Gen Fund 68.00
From: First American Title



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NUM Allen Second Sub
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ADAMS COUNTY, NE
FILED
INST NO **20130025**
Date Jan 03, 2013 Time 01:18 PM
Janice D. Johnson
REGISTER OF DEEDS
ELECTRONICALLY RECORDED

**RECORDING REQUESTED BY AND
AFTER RECORDING, RETURN TO:**

Kutak Rock LLP
California Street, Suite 3100
Denver, Colorado 80202
Attn: Nathan P. Humphrey

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

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

This Subordination, Non-Disturbance and Attornment Agreement ("**Agreement**"), is executed as of December 28 2012 and made effective as of December 28, 2012 among **CITIBANK, N.A.**, ("**Mortgagee**"), **STORE INVESTMENT CORPORATION**, a Delaware corporation ("**Landlord**"), and **RMH FRANCHISE CORPORATION**, a Kansas corporation ("**Tenant**").

Background

A. Mortgagee has been appointed as the collateral agent pursuant to that certain Amended and Restated Collateral Agency Agreement dated September 19, 2011 by and among Mortgagee, Landlord and STORE Capital Corporation, a Maryland corporation ("**STORE Capital**") and is the mortgagee of record as set forth in the [mortgage, deed of trust or deed to secure debt] (the "**Security Instrument**") on Landlord's property described more particularly on Exhibit A attached hereto ("**Property**").

B. Pursuant to that certain Limited Power of Attorney dated October 27, 2011, Mortgagee granted STORE Capital the authority to execute this Agreement of behalf of Mortgagee.

C. Tenant is the present lessee under that certain lease agreement between Landlord and Tenant dated as of the 11th day of December, 2012, as thereafter modified and supplemented ("**Lease**"), demising all of the Property as described more particularly in the Lease ("**Leased Space**").

D. A requirement of the Security Instrument is that Tenant's Lease be subordinated to the Security Instrument. Landlord has requested Tenant to subordinate the Lease in exchange for Lender's agreement not to disturb Tenant's possession of the Leased Space upon the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises of this Agreement, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Subordination. Tenant agrees that the Lease, and all estates, options and rights created under the Lease, hereby are subordinated and made subject to the lien and effect of the Security Instrument, as if the Security Instrument had been executed and recorded prior to the Lease.

2. Nondisturbance. Lender agrees that no foreclosure (whether judicial or nonjudicial), deed-in-lieu of foreclosure, or other sale of the Property in connection with enforcement of the Security Instrument shall operate to terminate the Lease or Tenant's rights thereunder to possess and use the Leased Space in accordance with the terms of the Lease, provided, however, that (a) the term of the Lease has commenced, (b) Tenant is in possession of the Leased Space, and (c) the Lease is in full force and effect and no uncured default exists under the Lease. Lender further agrees so long as no Event of Default has occurred and is continuing, Lessee shall not be named as a party defendant in any such foreclosure suit, except as may be required by Law.

3. Attornment. Tenant agrees to attorn to and recognize as its landlord under the Lease each party acquiring legal title to the Property by foreclosure (whether judicial or nonjudicial) of the Security Instrument, deed-in-lieu of foreclosure, or other sale in connection with enforcement of the Security Instrument ("**Successor Owner**"). Provided that the conditions set forth in Section 2 above are met at the time Successor Owner becomes owner of the Property, Successor Owner shall perform all obligations of the landlord under the Lease arising from and after the date title to the Property is transferred to Successor Owner. In no event, however, will any Successor Owner be: (a) liable for any default, act or omission of any prior landlord under the Lease; (b) subject to any offset or defense which Tenant may have against any prior landlord under the Lease; (c) bound by any payment of rent or additional rent made by Tenant to Landlord more than 30 days in advance; (d) bound by any modification or supplement to the Lease, or waiver of Lease terms, made without Lender's written consent thereto; (e) liable for the return of any security deposit or other prepaid charge paid by Tenant under the Lease, except to the extent such amounts were actually received by Lender; or (f) liable for construction or completion of any improvements to the Property or as required under the Lease for Tenant's use and occupancy (whenever arising). Although the foregoing provisions of this Agreement are self-operative, Tenant agrees to execute and deliver to Lender or any Successor Owner such further instruments as Lender or a Successor Owner may from time to time request in order to confirm this Agreement. If any liability of Successor Owner does arise pursuant to this Agreement, such liability shall be limited to Successor Owner's interest in the Property.

4. Rent Payments; Notice to Tenant Regarding Rent Payments. Tenant agrees not to pay rent more than one (1) month in advance unless otherwise specified in the Lease. After notice is given to Tenant by Lender that Landlord is in default under the Security Instrument and that the rentals under the Lease are to be paid to Lender directly pursuant to the assignment of leases and rents granted by Landlord to Lender in connection therewith, Tenant shall thereafter pay to Lender all rent and all other amounts due or to become due to Landlord under the Lease. Landlord hereby expressly authorizes Tenant to make such payments to Lender upon reliance on Lender's written notice (without any inquiry into the factual basis for such notice or any prior notice to or consent from Landlord) and hereby releases Tenant from all liability to Landlord in connection with Tenant's compliance with Lender's written instructions.

5. Mortgagee hereby consents to the leasehold mortgage or deed of trust (the "Leasehold Mortgage") of even date herewith executed by Tenant for the benefit of Bank of America, N. A., in its capacity as Administrative Agent (together with its successors and assigns, the "Leasehold Mortgagee") and the liens and security interests evidenced by same and encumbering (among other things) Tenant's leasehold interest under the Lease. In no event shall the Security Instrument cover or encumber (and it shall not be construed as subjecting in any manner to the lien thereof) any of Tenant's moveable trade

fixtures, business, equipment, furniture, signs or other personal property at any time placed on or about the Leased Space; the Mortgagee and Tenant acknowledging that such property is pledged to the Leasehold Mortgagee as further security for the obligations of Tenant under the Leasehold Mortgage. Mortgagee hereby acknowledges that Landlord has executed an Lessor Consent in favor of Leasehold Mortgagee in the form attached hereto as Exhibit B and should Lender succeed to the interest of Landlord, Lender shall be bound by such agreement.

6. Miscellaneous.

(a) Notices. All notices and other communications under this Agreement are to be in writing and addressed as set forth below such party's signature hereto. Default or demand notices shall be deemed to have been duly given upon the earlier of: (i) actual receipt; (ii) one (1) business day after having been timely deposited for overnight delivery, fee prepaid, with a reputable overnight courier service, having a reliable tracking system; (iii) one (1) business day after having been sent by telecopier (with confirmation of transmission) provided an additional notice is given pursuant to (ii); or (iv) three (3) business days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by certified mail, postage prepaid, return receipt requested, and in the case of clause (ii) and (iv) irrespective of whether delivery is accepted. A new address for notice may be established by written notice to the other parties; provided, however, that no address change will be effective until written notice thereof actually is received by the party to whom such address change is sent.

(b) Entire Agreement; Modification. This Agreement is the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes and replaces all prior discussions, representations, communications and agreements (oral or written). This Agreement shall not be modified, supplemented, or terminated, nor any provision hereof waived, except by a written instrument signed by the party against whom enforcement thereof is sought, and then only to the extent expressly set forth in such writing.

(c) Binding Effect; Joint and Several Obligations. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective heirs, executors, legal representatives, successors, and assigns, whether by voluntary action of the parties or by operation of law.

(d) Unenforceable Provisions. Any provision of this Agreement which is determined by a court of competent jurisdiction or government body to be invalid, unenforceable or illegal shall be ineffective only to the extent of such determination and shall not affect the validity, enforceability or legality of any other provision, nor shall such determination apply in any circumstance or to any party not controlled by such determination.

(e) Duplicate Originals; Counterparts. This Agreement may be executed in any number of duplicate originals, and each duplicate original shall be deemed to be an original. This Agreement (and each duplicate original) also may be executed in any number of counterparts, each of which shall be deemed an original and all of which together constitute a fully executed Agreement even though all signatures do not appear on the same document.

(f) Construction of Certain Terms. Defined terms used in this Agreement may be used interchangeably in singular or plural form, and pronouns shall be construed to cover all genders. Article and section headings are for convenience only and shall not be used in interpretation of this Agreement. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or other subdivision; and the word "section" refers to the entire section and not to any particular subsection, paragraph or other subdivision; and "Agreement" and each of the Security

Instruments referred to herein mean the agreement as originally executed and as hereafter modified, supplemented, extended, consolidated, or restated from time to time.

(g) Governing Law. This Agreement shall be interpreted and enforced according to the laws of the State where the Property is located (excluding any choice of law rules that may direct the application of the laws of another jurisdiction).

(h) Consent to Jurisdiction. Each party hereto irrevocably consents and submits to the exclusive jurisdiction and venue of any state or federal court sitting in the county and state where the Property is located with respect to any legal action arising with respect to this Agreement and waives all objections which it may have to such jurisdiction and venue.

(i) **WAIVER OF JURY TRIAL. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH PARTY HERETO WAIVES AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS AGREEMENT.**

[Remainder of page is blank; signatures appear on next page.]

IN WITNESS WHEREOF, this Agreement is executed this 26 day of December, 2012.

LENDER:

CITIBANK, N.A.

By: STORE Capital Corporation, a
Maryland corporation, its attorney-
in-fact

By: [Signature]
Name: Michael J. Zieg
Title: Executive Vice President

Lender Notice Address:

Citibank, N.A.
Agency and Trust, Store Capital
Greenwich Street, 14th Floor
New York, NY 10013
Attention: John Hannon

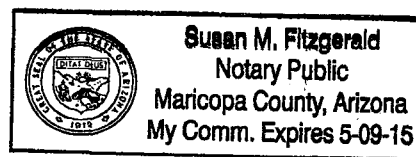
Notary Acknowledgement for Lender:

State of ARIZONA :
 :
 :SS
County of MARICOPA :

On this, the 26 day of December, 2012, before me, the undersigned Notary Public, personally appeared Michael J. Zieg known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and who acknowledged to me that he/she is an officer of STORE Capital Corporation, a Maryland corporation, as attorney-in-fact, on behalf of Citibank, N.A., in the capacity stated and that he/she executed the within instrument in such capacity for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Susan M. Fitzgerald
Notary Public



[SIGNATURE PAGE TO SUBORDINATION AGREEMENT]

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IN WITNESS WHEREOF, this Agreement is executed this 24 day of December, 2012.

TENANT:

RMH FRANCHISE CORPORATION, a
Kansas corporation

By: _____
Name: Jeffrey Neumann
Title: President

Tenant Notice Address:

1701 Windhoek Drive
Lincoln, NE 68512

Notary Acknowledgement for Tenant:

State of Florida :
County of Palm Beach :ss

On this, the 24 day of December, 2012, before me, the undersigned Notary Public, personally appeared Jeffrey Neumann known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and who acknowledged to me that he is an officer of the Tenant in the capacity stated and that he executed the within instrument in such capacity for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Christine Anne Boss
Notary Public



[SIGNATURE PAGE TO SUBORDINATION AGREEMENT]

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IN WITNESS WHEREOF, this Agreement is executed this 26 day of December, 2012.

LANDLORD:

STORE INVESTMENT CORPORATION,
a Delaware corporation

By: [Signature]
Name: Michael J. Zieg
Title: Executive Vice President

Lender Notice Address:
8501 E. Princess Drive, Suite 190
Scottsdale, AZ 85255
Attn: Michael T. Bennett, EVP - Operations

With a copy to:
Kutak Rock LLP
California Street, Suite 3100
Denver, Colorado 80202
Attn: Nathan P. Humphrey

Notary Acknowledgement for Landlord:

State of ARIZONA :
County of MARICOPA :SS

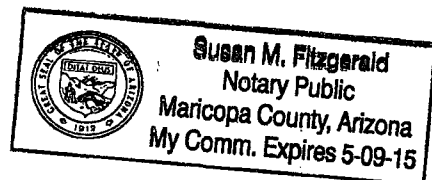
On this, the 26 day of December, 2012, before me, the undersigned Notary Public, personally appeared Michael J. Zieg known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and who acknowledged to me that he/she is an officer of the Landlord in the capacity stated and that he/she executed the within instrument in such capacity for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Susan M. Fitzgerald
Notary Public

Attachment: Exhibit A - Legal Description of the Property

Attachment: Exhibit B - Form of Lessor Consent



[SIGNATURE PAGE TO SUBORDINATION AGREEMENT]

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EXHIBIT A

2303 Osborne Drive West, Hastings, Nebraska (Applebee's Store #77010)

Lot Three (3), Block One (1), Allen Second Subdivision, in the City of Hastings, Adams County, Nebraska.

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EXHIBIT B

LESSOR CONSENT

This Lessor Consent (hereinafter "Consent"), effective as of _____, 2012, by and between _____, whose address is _____ (together with its successors and assigns, the "Administrative Agent"), _____ (hereinafter "Lessee") and _____ (hereinafter "Lessor").

RECITALS

WHEREAS, Lessor is the owner of the real property described by address on Exhibit "A" attached hereto (the "Premises");

WHEREAS, the Premises is legally described on Exhibit "B" attached hereto;

WHEREAS, the Premises has been leased by Lessor to Lessee by Lease dated _____ (the "Lease");

WHEREAS, the term "Lease" as used herein shall include the defined term New Lease (as hereinafter defined), as appropriate for the context used;

WHEREAS, _____ (the "Borrower") has or shall enter into certain financing arrangements with Administrative Agent and certain lenders under that certain Credit Agreement dated December ____, 2012 by and among Administrative Agent, the lenders thereunder and Borrower (the "Credit Agreement") with respect to the restaurants located on the Premises; and

WHEREAS, to secure the obligations of Borrower under the Credit Agreement, as the same may be amended, extended, renewed, restated or consolidated, Lessee has granted to Administrative Agent for the benefit of the lenders thereunder, a lien on and security interests in certain trade fixtures, machinery and equipment of Lessee, whether now owned or hereafter acquired, located on or used in connection with the restaurant located on the Premises, and Lessee either has executed or will be executing an assignment of lease, a leasehold mortgage, a leasehold deed to secure debt or a leasehold deed of trust assigning and conveying to the Administrative Agent, for the benefit of the lenders under the credit agreement, Lessee's rights, title and interest in and to the Lease and its leasehold interest in the Premises;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Lessor consents to Lessee's assignment and encumbrance of Lessee's leasehold interest by a mortgage, deed of trust, deed to secure debt, assignment of lease or other security agreement, and any and all extensions, renewals and amendments thereto (hereinafter the "Security Instrument") in favor of Administrative Agent for its benefit and the ratable benefit of other lenders (collectively, with their respective successors and assigns, the "Lenders") to secure loans and other financial accommodations and extensions of credit, as the same may be amended, extended, renewed, restated or consolidated to the Borrower, Lessee or its affiliates.

2. Lessor and Lessee affirm that as of the date of this Consent, the Lease is in full force and effect and no default or ground for termination thereof exists.

3. (a) Without the further consent of Lessor, Administrative Agent or one or more of the Lenders (or a designee or nominee of Administrative Agent or the Lenders approved by Lessor in its

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reasonable discretion) may acquire or obtain an assignment of the interest of Lessee under the Lease by (i) judicial or non-judicial foreclosure, (ii) assignment in lieu of foreclosure, or (iii) Administrative Agent or one or more of the Lenders obtaining a New Lease pursuant to paragraph 7 of this Consent.

(b) Any subsequent assignment of the Lease, after any assignment to or acquisition by Lender as provided for in 3(a) above, shall occur in accordance with assignment of provisions of the Lease.

(c) Upon an assignment of the Lease by Administrative Agent or one or more of the Lenders as provided for in 3(b) above, Administrative Agent or one or more of the Lenders, as the case may be, shall have no liability under the Lease for obligations arising after said assignment. Notwithstanding anything herein to the contrary, in the event Administrative Agent or one or more of the Lenders, as the case may be, shall have notified Lessor in writing of Administrative Agent or one or more of the Lenders' intent to surrender the Premises to Lessor, all obligations of Administrative Agent or one or more of the Lenders under the Lease after such surrender shall terminate. Further, subject to the terms of this Consent, including without limitation Paragraph 4 below; Lessor shall retain the right to terminate the Lease within the terms thereof and hereunder if rent and other sums due under the Lease are not paid by Lessee, Administrative Agent, Lenders, or their respective successors-in-interest, or for any other reason specified in the Lease.

(d) Lessor may not terminate the Lease because of any default or breach thereunder on the part of Lessee without giving the Administrative Agent written notice of such default or breach and such default or breach shall remain uncured after Lessor shall have afforded Administrative Agent a period in which to cure such default or breach which is (A) in the case of default in the payment of rent or other monetary obligation, ten (10) Business Days after the Administrative Agent's receipt of such notice of default, and (B) in the case of any other default (30) days after the Administrative Agent's receipt of such notice of default or breach; provided, however, if the default or breach is not so curable, Administrative Agent commences, or causes a receiver appointed pursuant to the Security Instrument to commence, and thereafter to diligently pursue to completion, proceedings to foreclose on the leasehold covered by the Security Instrument and keeps and performs all of the covenants and conditions of the Lease requiring the payment or expenditure of money by Lessee until such time as the leasehold is sold upon foreclosure pursuant to the Security Instrument, or is released or reconveyed thereunder, or is transferred upon judicial foreclosure or by an assignment in lieu of foreclosure, such cure period shall be extended. Lessor agrees that in effecting a cure of any Event of Default under the Lease, Administrative Agent shall have no obligation to cure any Event of Default which is not reasonably susceptible to being cured by Administrative Agent (including without limitation Events of Default under Sections 12.01(a), (d), (h) and (k)), none of which shall be construed as continuing Events of Default upon Administrative Agent's cure of such Events of Default which are reasonably susceptible of being cured by Administrative Agent.

4. Subject to applicable law, any and all eminent domain or condemnation awards or damages payable and applied in accordance with the terms of the Lease. For purposes of allocating the awards and damages in any such proceedings, Lessee's leasehold interest shall not be deemed automatically terminated by such eminent domain or condemnation proceedings; and Lessee shall be entitled to an award for damages for any partial or total loss of Lessee's leasehold estate if specifically allowed and paid by the entity exercising the condemnation.

5. Neither bankruptcy, insolvency, nor the appointment of a receiver or trustee shall be a condition of default under, or otherwise affect, the Lease so long as the obligations of Lessee, as set forth in the Lease, are being fully performed by Lessee.

6. In the event of a termination of the Lease prior to the expiration of the term thereof (including, without limitation, by reason of any termination of the Lease by Lessee or its trustee pursuant to Section 365 (h) of the Federal Bankruptcy Code, 11 U.S.C. Sections 101, et seq., as amended), Lessor shall send Administrative Agent written notice of such termination together with a statement of any and all

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sums which would be due under the Lease as of the date of notice (but for the termination of the Lease) and a description of any and all events of default under the Lease. Within twenty (20) days from its receipt of the notice of termination, Administrative Agent shall have the option to obtain a new lease for the Premises (the "New Lease") by providing Lessor with written notice of its desire to exercise such option and curing all defaults. Upon Lessor's receipt of such notice, Lessor shall enter into a New Lease for the Premises with Administrative Agent for the benefit of the Lenders, which shall commence as of the date of the termination of the Lease, and shall be effective for the remainder of the term of the Lease, and contain all of the terms and conditions that were set forth in the Lease including, but not limited to, those pertaining to rental payments and options to renew the term of the Lease.

7. The obligations set forth in the Security Instrument shall be secured by, among other things, all of Lessee's now owned or hereafter acquired machinery, equipment, furniture, trade fixtures and inventory (as such terms are defined in the Uniform Commercial Code) together with all accessions to, products of and proceeds thereof (collectively the "Collateral"). Any landlord's lien, right of distraint or levy, security interest or other interest which the Lessor may now or hereafter acquire in any of the Collateral for unpaid rent or otherwise, whether by virtue of a lease, landlord-tenant relationship, statute or otherwise shall be and is hereby subordinated in all respects to any security interests in the Collateral now or hereafter held by Administrative Agent for the benefit of the Lenders.

8. Lessor agrees that the "Other Lease" provisions of the Lease shall be inapplicable to Administrative Agent in terms of obligations to cure and cross defaults in the event that Administrative Agent shall seek to cure defaults or become the Tenant under such Lease.

9. In the event Lessee does not exercise any option to renew contained in the Lease on or before the required renewal date, then Lender shall have the right to exercise the option to renew the Lease in writing within fifteen (15) days of such failure to renew.

10. Lessor agrees that Administrative Agent in exercising any rights upon default by Lessee, may remove any of the Collateral from the Premises without any liability or obligation to Lessor; provided, however, that if Administrative Agent shall remove any of the Collateral, Administrative Agent shall reimburse Lessor for the reasonable and necessary cost of repair of any physical injury to the Premises directly caused by such removal, but not for any diminution in value caused by such removal. Accordingly, Administrative Agent in no event, shall be required to post any bond or other security with respect to such removal. Administrative Agent shall be required to give ten (10) days written notice to Lessor prior to entering the Premises, shall furnish evidence of reasonable liability insurance and shall not conduct any sale on the Premises. Lessor shall have no liability to Lenders or Administrative Agent for any damage to the Collateral for any reason, including the failure to maintain the Premises.

11. Lessor and Lessee shall give Administrative Agent prompt written notice of all arbitration or legal proceedings between Lessor and Lessee involving obligations under the Lease.

12. All notices, requests, demands, and other communications under this agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the third day after mailing if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, and properly addressed as follows:

LESSOR:

8501 E. Princess Drive, Suite 190
Scottsdale, Arizona 85255
Attn: Michael T. Bennett, Executive Vice President – Operations

LESSEE:

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ADMINISTRATIVE AGENT:

With a copy to:

Any party may change its address for purposes of this paragraph by giving the other parties written notice of the new address in the manner set forth above.

13. The terms hereof shall inure to the benefit of and be binding upon the parties, their successors and assigns. This Consent shall automatically terminate and be of no further force or effect upon the termination or expiration of Borrower's obligations under the Credit Agreement as evidenced by Administrative Agent's satisfaction of record of all Security Instruments encumbering each and all of the Premises.

14. Lessee hereby acknowledges and agrees that Lessee shall not enter into an extension of the maturity date of the Credit Agreement (i) if Lessee's Lease Adjusted Leverage Ratio shall exceed 5.75x, or (ii) if Lessee's Fixed Charge Coverage Ratio shall fall below 1.25, without the prior written consent of Lessor not to be unreasonably withheld or delayed.

15. In the event that any of the provisions, terms, and conditions hereof are ambiguous or inconsistent, or conflict with any of the terms and provisions of the Lease, any amendments thereto, or any other documents executed in connection therewith, the provisions, terms, and conditions of this Consent shall control.

16. Unless the Administrative Agent shall expressly consent in writing, the fee title to the Premises and the leasehold estate of Lessee shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold estate by Lessor or by Lessee or by a third party, by purchase or otherwise.

17. The terms of this Consent are severable. If any of the terms and conditions hereof shall, for any reason, be deemed void, voidable, or unenforceable, the remaining terms and conditions hereof shall remain in full force and effect as though such void, voidable, or unenforceable provisions were not included.

18. The undersigned hereby certify that they are authorized to sign this Consent and that all actions necessary to authorize the execution to this Consent by the undersigned have been taken, including if necessary, appropriate resolutions or approvals by the board of directors, shareholders, partners, or members, as required.

19. This Consent may only be modified by a written document signed by all of the parties hereto.

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