

Prepared and Recorded By  
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**CROSS ACCESS EASEMENT AGREEMENT**

**THIS ACCESS CROSS EASEMENT AGREEMENT** (this “**Agreement**”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_ 2018, by and between \_\_\_\_\_ (together with its successors and assigns, (“**LOT 10 OWNER**”), whose principal office is located at \_\_\_\_\_ and **AURORA, IL (1378 BUTTERFIELD) LLC**, an Illinois limited liability company (“**LOT 11 OWNER**”), whose principal office is located at 1400 16th Street, Suite 300, Oak Brook, Illinois 60523. LOT 10 OWNER and LOT 11 OWNER are sometimes individually and/or collectively referred to herein as the “**Party**” or “**Parties**”.

#### **RECITALS:**

A. LOT 10 OWNER is the owner of record title to the real estate legally described on **Exhibit A** (the “**LOT 10 Parcel**”). LOT 10 OWNER intends to develop the LOT 10 Parcel as a quick service restaurant.

B. LOT 11 OWNER is the owner of record title to the real estate legally described on **Exhibit B** (the “**LOT 11 Parcel**”). LOT 11 OWNER intends to develop the LOT 11 Parcel as a quick service restaurant.

C. The Parties hereto desire to grant and create, in and by this Agreement, an access easement to run with the land in, to, over, upon, and across the LOT 10 Parcel and the LOT 11 Parcel, as hereinafter more specifically set forth.

**NOW, THEREFORE**, in consideration of the above Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, LOT 10 OWNER and LOT 11 OWNER, grant and agree that the LOT 10 Parcel and the LOT 11 Parcel shall be transferred, held, sold, leased, occupied, conveyed and accepted subject to the easement, conditions, burdens, uses, and privileges set forth in this Agreement. LOT 10 OWNER and LOT 11 OWNER do hereby further declare that the following easement, conditions, burdens, uses, and privileges shall: (i) exist at all times hereafter amongst all Parties having or acquiring any right, title or interest in any portion of the LOT 10 Parcel or the LOT 11 Parcel; and (ii) be binding upon and insure to the benefit of each Owner and Occupant of any portion of the LOT 10 Parcel or the LOT 11 Parcel.

#### **I. DEFINITIONS**

1.1 “**Access Areas**” shall mean any portion, from time to time, of the LOT 10 Parcel and the LOT 11 Parcel, which are used for curb cuts, entrances, exits, aprons, driveways, private roads, curbs and drive aisles to provide access for ingress and egress of motor vehicles and pedestrians between the LOT 10 Parcel and the LOT 11 Parcel and any public streets adjacent thereto.

1.2 “**Default Interest Rate**” shall mean the annual rate of interest equal to four percent (4%) in excess of the prime rate of interest publicly announced from time to time in the Wall Street Journal Money Section.

1.3 “**Lot**” or “**Lots**” initially shall mean and refer to each of the lots or portions of real property indicated on Exhibit A and Exhibit B attached hereto and made a part hereof.

1.4 “**Occupant**” shall mean any Person legally entitled to possess or occupy any part or portion of the LOT 10 Parcel or the LOT 11 Parcel.

1.5 “**Owner**” shall mean the record owner of fee simple title to any portion of the LOT 10 Parcel or the LOT 11 Parcel (or any part or portion of a Lot), whether one or more Persons or entities. In the event fee simple title to a Lot is held in a land trust, the holder(s) of the beneficial interest in the land trust shall also be deemed an Owner and shall be additionally jointly and severally liable for the obligations and liabilities of an Owner hereunder.

1.6 “**Parcel or Parcels**” shall mean the same as “**Lot**” or “**Lots**”.

1.7 “**Person**” shall mean any natural individual, corporation, partnership, limited liability company, trustee, or any other legal entity capable of holding title to real property.

**II. PURPOSE.** The LOT 10 Parcel and the LOT 11 Parcel are hereby made subject to the following easement, conditions, burdens, uses, and privileges, all of which shall be deemed to run with the LOT 10 Parcel and the LOT 11 Parcel, and each and every portion thereof.

**III. ACCESS.**

3.1 **Access Easement.** Subject to the terms and conditions of this Agreement, each Owner hereby grants to the other Owner, for the common use and benefit of all Owners, together with their respective employees, guests, customers, occupants, agents, tenants, subtenants, permittees, invitees and licensees, a perpetual, irrevocable and non-exclusive access easement for vehicular, including trucks and trailers, and pedestrian access for ingress and egress upon, over and across all portions of the Access Areas (the “**Access Easement**”).

3.2 **Changes and Alterations.** The Owner or Occupant of the LOT 10 Parcel and/or the LOT 11 Parcel may from time to time alter, reconfigure or otherwise modify, in whole or in part, the Access Areas on its respective Lot provided such alteration or modification does not impair the Access Easement granted in Section 3.1 above and such alteration or modification is not completed without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed.

3.3 **Use; Maintenance and Repair.** The Access Areas shall be utilized solely for vehicular, including trucks and trailers, and pedestrian access to and from the LOT 10 Parcel and the LOT 11 Parcel. The Owner or Occupant of the LOT 10 Parcel shall, at its sole cost and expense, repair, maintain and replace, if necessary, the Access Areas located on the LOT 10 Parcel. The Owner or Occupant of the LOT 11 Parcel shall, at its sole cost and expense, repair, maintain and replace, if necessary, the Access Areas located on the LOT 11 Parcel. Maintenance shall include, but not be limited to, routine cleaning, surface repairs, sealing, striping, snow plowing and replacement as necessary. All such maintenance or repair work shall be performed by the Owner or Occupant of each the LOT 10 Parcel and the LOT 11 Parcel and in compliance with the applicable requirements of any municipal, county, state or federal government or agency which has jurisdiction over the LOT 10 Parcel and the LOT 11 Parcel.

3.4 **Obstructions Prohibited.** No fence or other barrier shall be erected or permitted within or across the Access Areas which would prevent or obstruct the free and unrestricted flow of pedestrian or vehicular, including truck and trailer, traffic on, over and across the Access Areas; provided, however, that the foregoing shall not prohibit (a) the temporary erection of barricades which are reasonably necessary for security and for safety purposes in connection with the construction, reconstruction, repair and maintenance of any improvements on the LOT 10 Parcel or of the LOT 11 Parcel, including the Access Areas; provided, however, that all such work shall be conducted in the most expeditious manner reasonably possible to minimize the interference with the use of the Access Areas by the Owner or Occupant of the LOT 10 Parcel or the LOT 11 Parcel, or (b) the construction of limited curbing, directional signage or other forms of reasonable traffic controls along the outer perimeter of the Access Areas.

#### **IV. INDEMNITY AND INSURANCE.**

4.1 **Indemnity.** Each Owner and Occupant of a Lot (“Indemnitor”) shall indemnify, defend and hold harmless each other Owner and any Occupant of a Lot, and their respective beneficiaries, and the partners, agents, servants, employees, mortgagees, officers and directors of each, against every, any and all demands, claims, assertions of liability or actions (a) arising or alleged to have arisen out of a breach of this Agreement, or (b) arising out of or alleged to have arisen out of the use of any areas on another Owner’s property by the Indemnitor, its agents, servants, employees or invitees, or any independent contractors acting under any written or oral contract with the Indemnitor, in any such case whether such demand, claim, assertion of liability or action be for damages, injury to person or property, made by any person, group or organization, whether employed by any party hereto or otherwise; and the Indemnitor also agrees to assume legal liability for, indemnify and hold harmless each of the other Owners, and their respective beneficiaries, and the partners, agents, servants, employees, mortgagees, officers and directors of each, from any and all loss, damages, liability, cost or expenses (including, but not limited to, attorneys’ fees, investigative and discovery expenses and court costs) and all other sums which each of the other Owners, and their respective beneficiaries, and the partners, agents, servants, employees, mortgagees, officers and directors of each, may pay or become obligated to pay on account of any, all and every

demand, claim, assertion of liability or action arising or alleged to have arisen out of any act or omission of the Indemnitor or its employees acting under any written or oral contract with the Indemnitor, or in any other way arising out of or related to the use of such areas, whether such claim, demand, assertion of liability or action be for damages, injury to person or property, or death of any person, made by any person, group or organization, whether employed by any party hereto or otherwise. No Owner or Occupant of a Lot shall cause or allow a lien or lien claim of any type, whether for work performed, materials provided or otherwise, to be filed or recorded against the Lot of another Owner as a result of any work performed or action undertaken on behalf of such other Owner or Occupant, except a lien filed or recorded by reason of application of the terms of Section 5.3 hereof. Any Owner or Occupant causing or allowing a lien or lien claim to be filed or recorded against the Lot of another Owner shall indemnify, defend (at the other Owner's election) and hold harmless such other Owner from any liability, cost and expense, including reasonable attorneys' fees and court costs incurred by such other Owner as a result of such lien or lien claim, and shall further cause such lien or lien claim to be released and waived of record or insured over by a title company acceptable to the affected Owner within ten (10) business days following the affected Owner's written request therefore.

4.2 **Insurance.** Each Owner or Occupant of a Lot (or any part or portion thereof) shall at all times during the term hereof maintain in full force and effect a commercial general liability insurance policy or policies written by one or more responsible insurance carriers, legally qualified to issue such insurance in the State of Illinois and in good standing in the State of Illinois, which shall insure against liability for injury to and/or death of any person or persons and/or damage to property, with general aggregate limits of not less than \$2,000,000.00, and a "per occurrence" limit of not less than \$1,000,000.00.

Each such policy or policies shall name the other parties hereto and their designees as additional insureds. The foregoing policy limits shall be increased from time to time if and as reasonably requested by any Owner or Occupant of a Lot, which request shall be deemed to be reasonable if such increased policy limits are customarily carried by other commercial restaurant properties in the geographic region where the Lots are located. Customary certificates of insurance evidencing the existence of the policies of insurance required by Section 4.2 shall be delivered by each Owner or Occupant of a Lot. Each such certificate shall provide that should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

## V. **DEFAULT AND REMEDIES.**

5.1 **General.** If any Owner or Occupant of a Lot fails to satisfy or perform any of its obligations hereunder (a "Defaulting Party"), any other Owner or Occupant of a Lot shall have the right to so notify the Defaulting Party and, if such failure is not cured within thirty (30) days after receipt by the Defaulting Party of the notice, the non-defaulting Owner or Occupant (a "Curing Owner") may take such action as is necessary

under the circumstances, in which case the Defaulting Party shall reimburse the Curing Owner for all costs incurred in connection therewith. In the event such demand for payment is not paid in accordance with the provisions of this Section 5.1, the Curing Party may pursue any and all available remedies at law or in equity. Each subsequent Owner or Occupant of any part of a Lot will be a successor-in-interest to one or more of the original parties to this Agreement which was the Owner or Occupant of such part of a Lot, but no party shall have or incur any liability for the acts or omissions of its predecessor-in-interest (unless and to the extent successor liability is otherwise provided by law), unless such successor affirmatively assumes any such liabilities.

5.2 **Performance Costs.** In any event described in Section 5.1 hereof, the Curing Owner shall be entitled to recover from the Defaulting Party the entire amount of reasonable costs incurred by the Curing Owner, including, without limitation, reasonable attorneys' fees in connection therewith. Such costs together with interest at the Default Rate from the date of payment by the Curing Owner and reasonable attorneys' fees ("Performance Costs") shall be paid by the Defaulting Party within ten (10) days after receipt of a statement thereof from the Curing Owner.

5.3 **Lien for Non-Payment.** The Curing Owner shall have a continuing lien upon the Defaulting Party's Lot and improvements (if any) thereon to secure the payment of the Performance Costs not paid as and when due and the Curing Owner may foreclose the lien against such Lot in the manner of a mortgage under the State of Illinois mortgage foreclosure laws then in effect. The Curing Owner may, in its discretion, file certificates of non-payment in the Office of the Recorder of Deeds of Kane County with respect to such unpaid Performance Costs. Such lien shall have a priority as of the recording of such certificate of non-payment.

5.4 **Mortgagee Provisions.** Each Owner agrees to give the holder of any first or second mortgage (the "Mortgagee") encumbering the other Owner's (such other Owner is referred to herein as the "Encumbered Owner") Lot, or any portion thereof, a copy of any notice or claim of default of any of the Encumbered Owner's duties and obligations under this Agreement, provided that prior to such notice such Owner who would be giving such notice has been notified in writing of the name and address of such Mortgagee. Each Owner further agrees that if the Encumbered Owner shall have failed to cure such default within the pertinent period permitted by this Agreement, then the holder of any such mortgage shall have an additional thirty (30) days within which to cure or correct such default (or if such default cannot be cured or corrected within that time, then such additional time as may be necessary if such Mortgagee has commenced such cure within such thirty (30) days and diligently pursues the remedies or steps necessary to cure such default, including the time necessary to obtain possession if possession is necessary to cure or correct such default, but in no event more than an additional forty-five (45) days). In the event any such Mortgagee becomes a mortgagee-in-possession or acquires title as a result of foreclosure proceedings or other appropriate means (including the acceptance of a deed in lieu of foreclosure), such Mortgagee shall have no personal obligation to pay or cause to be paid any accrued and unpaid monetary obligations of the defaulting Owner accrued or accumulated prior to the date of the earlier of (a) actual possession of the

property being obtained by such Mortgagee (in the event that such Mortgagee subsequently acquires title to the property) or (b) acquisition of title to the property by such Mortgagee, but this provision shall not affect any lien created pursuant to Section 5.3 hereof.

5.5 **Enforcement**. Subject to the notice requirements provided for in Section 5.1 and 5.4 hereof, any Owner may enforce the provisions of this Agreement by any proceeding at law or in equity against any Person or Persons violating or attempting to violate such provisions, either to restrain the violation or to recover damages or both. Any failure to enforce this Agreement shall in no event be deemed a waiver unless and to the extent so provided in a writing signed by the party to be charged and no such waiver shall affect in any way a party's ability to enforce this Agreement thereafter or with respect to a different situation unless expressly so provided in such writing.

**VI. SUBORDINATION**. LOT 10 OWNER and LOT 11 OWNER acknowledge and agree that this Agreement shall be subject and subordinate at all times to the lien of any mortgage or trust deed now or hereafter encumbering fee title to the LOT 10 OWNER or LOT 11 OWNER. The foregoing provision is declared to be self-operative and no further instrument shall be required to effect such subordination; provided, however, that LOT 10 OWNER and LOT 11 OWNER agree upon request at any time by any mortgagee to execute and deliver any instrument as may be required by such mortgagee to confirm such subordination.

**VII. MISCELLANEOUS**.

8.1 **Eminent Domain**. In the event: (a) the City of Aurora, Illinois or any federal or state governmental authority shall take by eminent domain any easement area granted herein for purposes of creating a public road or highway; or (b) such easement area shall otherwise be dedicated as a public road or highway, the Owners' obligation to install, pave, maintain and repair the taken easement area (as set forth in this Agreement) and the Owners' obligation to maintain insurance with respect to the taken easement area (as set forth in this Agreement) shall terminate on the date such easement area is so taken or dedicated.

8.2 **Benefits and Use of Easement**. The benefited party may permit the easement granted herein to be used by its employees, agents, customers, invitees and tenants, and the customers, employees, agents and invitees of such tenants, provided such use shall be in accordance with the terms and conditions set forth herein. Notwithstanding anything in this Agreement to the contrary, the Owners hereby agree that the use by the benefited party of the easement granted herein shall not interfere with the use and enjoyment of the burdened property by the grantor of such easement or by any other parties having the right to use the same.

8.3 **No Dedication**. Nothing contained in this Agreement shall be construed or be deemed to constitute a dedication, express or implied, of any part of the LOT 10 Parcel or the LOT 11 Parcel for any public use or purpose whatsoever.

8.4 **No Partnership.** The Owners shall not for any purpose become partners, agents or joint venturers of or with each other by reason of this Agreement.

8.5 **Successors and Assigns.** The provisions of this Agreement shall run with the land and be binding upon and inure to the benefit of the Owners and Occupants of each the LOT 10 Parcel and the LOT 11 Parcel and their respective successors and assigns, and to no other persons or entities. From and after the closing of the sale of a Lot, the owner so selling shall have no further liability for the obligations with respect to such Lot which accrue after the date of the recording of the conveyance; provided, however, that nothing herein contained shall be construed so as to relieve the Lot of any lien arising by reason of such liability or the Owner of such Lot from any liabilities or obligations incurred under this Agreement prior to such recording. Any successor or assign to the interest of either of the original parties hereto shall be deemed a party hereto with respect to the portion of the Lot in which such successor or assign acquires an interest.

8.6 **Amendments.** This Agreement constitutes the entire agreement between LOT 10 OWNER and LOT 11 OWNER with respect to the subject matter hereof and shall not be modified or amended in any way except in a written instrument duly signed by the Owners of the property benefited and burdened by this Agreement.

8.7 **Perpetuities and Other Invalidity.** If any of the options, privileges, covenants or rights created by this Agreement would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules analogous thereto or otherwise imposing limitations upon the time for which such covenants may be valid, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living lawful descendants of Barack Hussein Obama, former President of the United States.

8.8 **Severability.** This Agreement shall be governed by and interpreted in and construed in accordance with the laws of the State of Illinois. If any section or provision of this Agreement or the application thereof is deemed illegal or unenforceable for any reason, then each other section and provision of this Agreement shall nonetheless remain effective and enforceable in accordance with its terms.

8.9 **Notices.** All notices, requests, demands, or other communications required or permitted under this Agreement shall be in writing and may be delivered personally or by certified mail, return receipt requested, postage pre-paid, or by a national overnight courier (such as Federal Express), in each case addressed as follows:

**If to LOT 10 OWNER:**

<Name>

<Address>



<City, State, Zip>  
Attention: <Name>

With a copy to:

<Name>  
<Address>  
<City, State, Zip>  
Attention: <Name>

**If to LOT 11 OWNER:**

**AURORA, IL (1378 BUTTERFIELD) LLC**  
c/o InSite Real Estate, L.L.C.  
1400 16th Street, Suite 300  
Oak Brook, Illinois 60523  
Attention: Retail-Property Management

With a copy to:

**AURORA, IL (1378 BUTTERFIELD) LLC**  
c/o InSite Real Estate, L.L.C.  
1400 16th Street, Suite 300  
Oak Brook, Illinois 60523  
Attention: Chief Legal Officer

Copies of any notices, requests, demands and other communications from one party to the other(s) shall be sent to each mortgagee of whom a party has actual notice provided such mortgagee has given the party an address for such purpose. The Owner of any portion of the LOT 10 Parcel or the LOT 11 Parcel may change its address for the giving of notices by giving notice as aforesaid. The Owners of each the LOT 10 Parcel and the LOT 11 Parcel, as appropriate, shall each from time to time designate in writing one or more individuals who are to act as its designated and duly authorized agent(s) and representative(s) for all purposes with respect to this Agreement other than an amendment or modification hereof.

8.10 **Estoppel Certificate**. Any Owner will execute, acknowledge and deliver to any other Owner, within ten (10) days of each request therefore, a certificate certifying to the requesting party and its designees (a) that this Agreement is in full force and effect, with a true, correct and complete copy of this Agreement attached to the certificate (or if there have been modifications, that this Agreement is in full force and effect as modified, and also attaching true, correct and complete copies of the modification(s)); (b) that such party is not in default under this Agreement, except for defaults, if any, specified in said certificate; (c) that, to the knowledge of such party, no other party is in default under this Agreement, except for defaults, if any, specified in said certificate; and (d) any other information regarding this Agreement that the requesting party may reasonably request.

Any such certificate may be relied upon by a prospective purchaser or mortgagee of all or any part of the interest of the requesting party under this Agreement.

8.11 **Force Majeure.** If the performance of any act or obligation under this Agreement is prevented or delayed by an act of God, fire, earthquake, flood, explosion, action of the elements, water, invasion, insurrection, mob violence, sabotage, malicious mischief, inability to procure or general shortage of labor, equipment or facilities, materials or supplies in the open market, failure of transportation, strike, lockout, action of labor union, condemnation, threatened condemnation, requisitions, laws, orders of government or civil or military or naval authorities or any other cause whether similar or dissimilar to the foregoing not within the reasonable control of the Owner required to perform such act of obligation, then such Owner shall be excused from the performance of such act or obligation for so long as such Owner is so prevented or delayed by reason thereof so long as such Owner provides written notice of such delay within ten (10) days of the occurrence of the event causing such delay. This *force majeure* provision shall apply to each Owner's obligations hereunder except those that require the payment of money.

8.12 **Captions.** The section and paragraph headings used in this Agreement are for convenience of reference only and will not be used to interpret or construe in any way the provisions hereof.

8.13 **Counterparts.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute the Agreement.

8.14 **Exhibits.** The following Exhibits are attached to and made a part of this Agreement:

Exhibit A – LOT 10 Parcel Legal Description  
Exhibit B – LOT 11 Parcel Legal Description

**IN WITNESS WHEREOF**, LOT 10 OWNER and LOT 11 OWNER have executed and delivered this Agreement as of the date first written above.

**LOT 10 OWNER:**

<Name>

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

**LOT 11 OWNER:**

**AURORA, IL (1378 BUTTERFIELD)  
LLC**, an Illinois limited liability company

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

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF DUPAGE        )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Robin Rash is a Manager of **AURORA, IL (1378 BUTTERFIELD) LLC** , who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said Manager, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
NOTARY PUBLIC

(SEAL)

My commission expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that \_\_\_\_\_ is the \_\_\_\_\_ of \_\_\_\_\_, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such \_\_\_\_\_ appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said \_\_\_\_\_, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
NOTARY PUBLIC

(SEAL)

My commission expires: \_\_\_\_\_





**EXHIBIT A**

**LOT 10 PARCEL LEGAL DESCRIPTION**

Lot 10 of Savannah Crossings Subdivision, according to the plat thereof recorded June 22, 2007 as Document 2007K066321 in the City of Aurora, Kane County, Illinois.

**EXHIBIT B**

**LOT 11 PARCEL LEGAL DESCRIPTION**

Lot 11 of Savannah Crossings Subdivision, according to the plat thereof recorded June 22, 2007 as Document 2007K066321 in the City of Aurora, Kane County, Illinois.