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Eugene "Gene" Moore Fee: \$48.00
Cook County Recorder of Deeds
Date: 05/16/2003 11:12 AM Pg: 1 of 13

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Fremont Investment & Loan
175 N. Riverview Drive
Anaheim, California 92808
Attention: Commercial Real Estate Asset Management
Loan No.: 950114310 / J. LUSIER

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NONDISTURBANCE AND ATTORNMENT AGREEMENT

THIS NONDISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement"), dated as of February 3, 2003, is made by and among **OLIVERMcMILLAN GLENVIEW, LLC**, a California limited liability company ("Landlord"), **RED STAR GLENVIEW, INC.**, an Illinois corporation ("Tenant"), **RESTAURANT DEVELOPMENT GROUP, INC.**, an Illinois corporation ("**Guarantor**"), and **FREMONT INVESTMENT & LOAN**, a California industrial bank ("**Lender**").

RECITALS

A. Landlord is the owner of the real property described on Exhibit A attached hereto, together with the improvements now or hereafter located thereon (collectively, the "**Project**").

B. Landlord and Lender are the parties to that certain Loan and Security Agreement dated September 30, 2002, (the "Loan Agreement"), pursuant to the terms of which Lender agreed to make a loan (the "Loan") to Landlord. The Loan is evidenced by that certain Secured Promissory Note dated September 30, 2002 in the original principal amount of the Loan, executed by Landlord in favor of Lender (the "Note"). The Note is secured, inter alia, by that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated September 30, 2002, executed by Landlord, in favor of Lender (the "Security Instrument") encumbering the Project, recorded on October 10, 2002, as Instrument No. 0021114050 in the Records of Cook County, Illinois (the "Recording Location"). The Loan Agreement, the Note, the Security Instrument, and all other documents securing, or executed in connection with, the Loan, together with all renewals, substitutions, extensions, modifications or replacements thereof, are collectively referred to herein as the "Loan Documents".

C. Tenant and Landlord have entered into that certain lease dated February 3, 2003 the "**Lease**"), pursuant to which Landlord has leased to Tenant a portion of the Project more particularly described in the Lease (the "**Leased Premises**").

D. Pursuant to that certain guaranty dated February 3, 2003 (the "**Guaranty**"), Guarantor has guaranteed certain of Tenant's obligations under the Lease.

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

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1. Definitions.

When used herein, the following initially-capitalized terms shall have the following meanings:

"Attorneys' Fees," "Attorneys' Fees and Costs," "attorneys' fees" and "attorneys' fees and costs" mean the reasonable fees and expenses of counsel to the applicable party, which may include, without limitation, printing, photostating, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The terms **"attorneys' fees"** or **"attorneys' fees and costs"** shall also include, without limitation, all such reasonable fees and expenses incurred with respect to appeals, arbitrations, bankruptcy proceedings and any post-judgment proceedings to collect any judgment, and whether or not any action or proceeding is brought with respect to the matter for which such fees and expenses were incurred. The provisions allowing for the recovery of post-judgment fees, costs and expenses are separate and several and shall survive the merger of this Agreement into any judgment.

"Governing State" means Illinois

"Purchaser" means a transferee (including, without limitation, Lender and its affiliates and subsidiaries) which acquires the interest of Landlord in the Leased Premises through a foreclosure of the Security Instrument or a deed in lieu or in aid thereof, and its successors and assigns.

2. Loan Disbursements.

Tenant and Guarantor agree and acknowledge that in making disbursements of the Loan, Lender is under no obligation or duty to, nor has Lender represented that it will, see to the application of the Loan proceeds by the person or persons to whom Lender disburses the Loan proceeds, and any application or use of the Loan proceeds for purposes other than those provided for in the Loan Documents shall not defeat in whole or in part the agreements set forth herein.

3. Nondisturbance and Attornment.

A. If the interest of Landlord under the Lease is transferred by reason of any foreclosure of the Security Instrument or by deed in lieu or in aid thereof, Purchaser shall be bound to Tenant, and Tenant and Guarantor shall be bound to Purchaser, under all of the terms, covenants and conditions of the Lease and the Guaranty (except as provided in Section 6 hereof) for the balance of the term thereof, with the same force and effect (except as provided in Section 6 hereof) as if Purchaser were the original landlord under the Lease and the original holder under the Guaranty. Tenant and Guarantor do hereby attorn to Purchaser as the landlord under the Lease and the holder of the Guaranty, which attornment shall be effective and self-operative without the execution of any further instruments upon Purchaser's succeeding to the interest of the landlord under the Lease. Without limiting the generality of this Section 3, within ten (10) days after the written request of Landlord, Lender or any Purchaser, Tenant and Guarantor shall execute and deliver such documents as are reasonably requested by such party to reflect such attornment.

B. So long as (i) Tenant is not in default in the performance of any of the terms, provisions and conditions contained in the Lease beyond any notice and cure period expressly

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set forth therein, (ii) Guarantor is not in default in the performance of any of the terms, provisions and conditions contained in the Guaranty beyond any notice and cure period expressly set forth therein, and (iii) Tenant and Guarantor comply with the terms, provisions and conditions of this Agreement, then:

(1) Tenant and Guarantor shall not be named or joined in any foreclosure, trustee's sale or other proceeding to enforce the Security Instrument unless such joinder is required by law, including, without limitation, to perfect such foreclosure, trustee's sale or other proceeding; and

(2) Without limiting any of the terms of the Lease or the Guaranty, enforcement of the Security Instrument shall not terminate the Lease or the Guaranty or, subject to Section 3(C) disturb Tenant in the possession and use of the Leased Premises.

C. Tenant and Guarantor expressly acknowledge and agree that a default by Tenant or Guarantor under the Lease or the Guaranty, after the expiration of any applicable cure periods specifically provided for under the Lease or the Guaranty, (i) shall entitle Lender to exercise any or all of its rights and remedies under the Lease and/or the Guaranty and/or at law or in equity by reason thereof, and (ii) shall not terminate Tenant's and Guarantor's attornment agreements or any other agreements by Tenant or Guarantor set forth herein.

4. Tenant and Guarantor Agreements.

Tenant and Guarantor agree that:

A. Tenant or Guarantor, as applicable, shall send a copy of any notice of a default by Landlord under the Lease to Lender at the same time such notice is sent to Landlord, provided, however, failure by Tenant or Guarantor, as applicable, to send Lender a copy of any notice as required shall not vitiate or invalidate the notice sent to Landlord; and

B. Without Lender's prior written consent, which shall not be unreasonably withheld, Tenant and Guarantor shall not (i) pay any rent (however denominated) or other charges under the Lease more than one (1) month in advance (provided that Lender may, without limitation, condition its consent to any such prepayment on the deposit of such amounts with Lender), (ii) cancel, terminate or surrender the Lease or the Guaranty, except at the normal expiration of the Lease term or as expressly provided for in the Lease or the Guaranty or pursuant to applicable law, or (iii) enter into any material amendment or material modification of the Lease or the Guaranty (i.e., change in Rent, size of space, or Term). Any such material amendment or material modification of the Lease or the Guaranty entered into without Lender's prior written consent shall not be valid; and

C. Lender, at all times (whether before or after the occurrence of an Event of Default or Potential Default under the Loan Documents (as such terms are defined in the Loan Documents)), independent of Landlord, shall have the standing and right to specifically enforce, by injunction or otherwise, all or any provisions in the Lease as though Lender originally was a party thereto.

D. Any right of first offer, right of first refusal or purchase option set forth in the Lease or in any other agreement shall not apply to, or be exercisable by Tenant with respect to, the transfer of the Project and/or the Leased Premises through the foreclosure of the Security Instrument or a deed in lieu or in aid thereof or to any subsequent transfer by Purchaser.

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5. Assignment of Rents.

Tenant and Guarantor agree to recognize the assignment from Landlord to Lender of the Lease and the Guaranty and the amounts payable thereunder pursuant to the Assignment of Rents and, in the event of any default by Landlord under the Loan Documents and the expiration of any applicable cure period expressly set forth therein, Tenant and Guarantor shall pay to Lender, as such assignee, the rents and other amounts which are or become due under the Lease or the Guaranty from and after the date on which Lender gives Tenant and Guarantor notice that such rent and other amounts are to be paid to Lender pursuant to the Assignment of Rents. In complying with the provisions of this Section 5, Tenant and Guarantor shall be entitled to rely solely upon the notices given by Lender pursuant to the Assignment of Rents and Landlord hereby indemnifies and agrees to defend and hold Tenant and Guarantor harmless for, from and against any and all expenses, loss, claims, damage or liability arising out of Tenant's and Guarantor's compliance with such notice or performance of the obligations under the Lease or Guaranty by Tenant or Guarantor made in good faith in reliance on and pursuant to such notice. Tenant and Guarantor shall be entitled to full credit under the Lease or the Guaranty, as applicable, for any rents paid to Lender in accordance with the provisions hereof. Any dispute between Lender (or any other Purchaser) and Landlord as to the existence or nature of a default by Landlord under the terms of the Loan Documents or with respect to the foreclosure of the Security Instrument, shall be dealt with and adjusted solely between Lender (or such other Purchaser) and Landlord, and Tenant and Guarantor shall not be made a party thereto (unless joinder is required by law).

6. Lender's Obligations.

Nothing in this Agreement and no action taken by Lender to enforce any provision in the Lease or the Guaranty shall be deemed or construed to constitute an agreement by Lender to perform or assume any covenant of Landlord as landlord under the Lease unless and until Lender obtains title to the Leased Premises by foreclosure of the Security Instrument or a deed in lieu or in aid thereof. Without limiting any of Tenant's or Guarantor's rights against Landlord under the Lease or the Guaranty, in the event Lender acquires title to the Leased Premises, Lender shall:

- A. only be liable for any damage or other relief attributable to any act or omission accruing during Lender's period of ownership or control of the Leased Premises, regardless of whether such acts or omissions commenced prior to such period of ownership. For example, if the Lease provides that the failure of the Landlord to repair a hole in the roof entitles Tenant to offset rent for the number of days that the roof is not repaired, and if the hole in the roof occurred sixty (60) days prior to Lender's acquisition of title or control of the Project and was not repaired for another thirty (30) days after Lender's acquisition of title or control of the Project, Tenant would only be entitled to offset against its rental obligations owed to Lender thirty (30) days rental and would retain a claim against Landlord for sixty (60) days rental;
- B. only be responsible for representations, warranties, covenants and indemnities of Landlord to the extent that such representations, warranties, covenants and indemnities apply to the Project and relate to the operation of the Project during Lender's period of ownership of the Leased Premises;
- C. be liable only for any security deposit actually delivered to Lender; and
- D. have its obligations and liabilities limited to the then interest, if any, of Lender in the Project, without consideration of any mortgage liens placed on the Project by Lender.

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Tenant and Guarantor shall look exclusively to such interest of Lender, if any, in the Project for the payment and discharge of any obligations imposed upon Lender hereunder or under the Lease or the Guaranty and Tenant and Guarantor hereby release Lender from any other liability hereunder and under the Lease and the Guaranty.

Nothing contained in this Section 6 shall be deemed to limit or affect Tenant's or Guarantor's claims against Landlord for any breaches of Landlord's obligations under the Lease, or for any breaches of Landlord's representations, warranties, covenants or indemnities under the Lease, or for return of any security deposit under the Lease, and no transfer of the Project to Lender shall release Landlord from any of its Lease obligations, notwithstanding anything to the contrary in the Lease.

7. Estoppel Certificate.

Tenant and Guarantor agree, from time to time, within twenty (20) days after Lender's written request, to execute and deliver to Lender or Lender's designee, any estoppel certificate reasonably requested by Lender, stating that the Lease and the Guaranty are in full force and effect, the date to which rent has been paid, that Landlord is not in default under the Lease (or specifying in detail the nature of Landlord's default), and such other matters relating to the Lease and the Guaranty as may be reasonably requested by Lender.

8. No Merger.

The parties agree that, without Lender's prior written consent, which may be withheld in Lender's good faith sole discretion, Landlord's estate in and to the Project and the leasehold estate created by the Lease shall not merge but shall remain separate and distinct, notwithstanding the union of such estates in Landlord, Tenant or any third party by purchase, assignment or otherwise.

9. Entire Agreement.

This Agreement shall be the whole and only agreement among the parties hereto with regard to the matters set forth herein, and shall supersede and cancel any prior agreements with respect thereto, including, without limitation, any provisions contained in the Lease relating thereto.

10. Counterparts.

This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document, which may be recorded.

11. Modifications, Successors and Assigns.

This Agreement may only be modified in writing signed by all of the parties hereto or their respective successors in interest. This Agreement, including without limitation the provisions of Section 6, shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns.

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12. Attorneys' Fees.

If any lawsuit or other proceeding is commenced which arises out of, under or in connection with, or which relates to, this Agreement, including, without limitation, any alleged tort action, the prevailing party shall be entitled to recover from each other party to such lawsuit or proceeding such sums as the court or other party presiding over such lawsuit or proceeding may adjudge to be reasonable attorneys' fees and costs in the lawsuit or proceeding, in addition to costs and expenses otherwise allowed by law. Any such attorneys' fees and costs incurred by any party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment and shall survive and not be merged into any such judgment. The obligation to pay such attorneys' fees and costs is intended to be severable from the other provisions of this Agreement.

13. Governing Law.

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the Governing State.

14. WAIVER OF JURY TRIAL.

THE PARTIES HERETO EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY CONTROVERSY OR CLAIM, WHETHER ARISING IN TORT OR CONTRACT OR BY STATUTE OR LAW, BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, THE VALIDITY, INTERPRETATION, COLLECTION OR ENFORCEMENT HEREOF), OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY IN CONNECTION HEREWITH. EACH PARTY ACKNOWLEDGES AND AGREES THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES' ENTERING INTO THIS AGREEMENT AND THE PARTIES WOULD NOT HAVE ENTERED INTO THIS AGREEMENT WITHOUT THIS WAIVER. THE PARTIES HERETO ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION 14 IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL.

15. Consent to Jurisdiction.

The parties hereto hereby consent to the jurisdiction of any state or federal court located within the Governing State in any suit, action or proceeding based hereon or arising out of, under or in connection with this Agreement (and further agree not to assert or claim that such venue is inconvenient or otherwise inappropriate or unsuitable) and waive personal service of any and all process upon them and consent that all service of process be made by certified mail directed to the parties at the addresses set forth in this Agreement.

16. Notices.

Any notice, or other document or demand required or permitted under this Agreement shall be in writing addressed to the appropriate address set forth below and shall be deemed delivered on the earliest of (a) actual receipt, (b) the next business day after the date when sent

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by recognized overnight courier for next business day delivery, or (c) the second business day after the date when sent by certified mail, postage prepaid. Any party may, from time to time, change the address at which such written notices or other documents or demands are to be sent, by giving the other parties written notice of such change in the manner hereinabove provided.

To Lender: Fremont Investment & Loan
 175 N. Riverview Drive
 Anaheim, California 92808
 Attention: Commercial Real Estate Asset Management
 Loan No. 950114310

To Landlord: OliverMcMillan Glenview, LLC
 733 Eighth Avenue
 San Diego, CA 92101
 Attention: Morgan Dene Oliver


To Tenant: Red Star Glenview, Inc.
 412 North Clark Street
 Chicago, IL 60610

To Guarantor: Restaurant Development Group, Inc.
 412 North Clark Street
 Chicago, IL 60610

IN WITNESS WHEREOF, the parties have duly executed and delivered this Agreement.

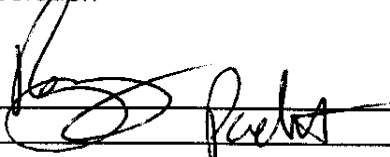
"Lender"

FREMONT INVESTMENT & LOAN,
a California industrial bank

By: 
Its: Vice President

"Tenant"

Red Star Glenview, Inc., an Illinois corporation

By: 
Its: President

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"Guarantor"

Restaurant Development Group, ^{Inc.,} an Illinois corporation

By: [Signature]
Its: [Signature]

"Landlord"

OliverMcMillan Glenview, LLC, a California limited liability company

By: [Signature]
Its: president

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[LANDLORD NOTARY]

STATE OF CALIFORNIA)

COUNTY OF SAN DIEGO)

SS.

On MARCH 12, 2003, before me, MARCELLE SAMAKOSKY, a Notary Public, personally appeared JAMES C. McMILLAN, and _____, personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Marcelle Samakosky
Notary Public



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[TENANT NOTARY]

STATE OF Illinois)

COUNTY OF Cook)

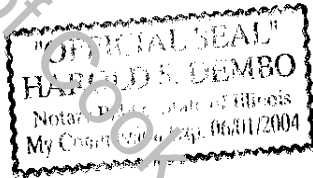
SS.

On 2/12/03, before me, Harold Dembo, a Notary Public, personally appeared Roger Greenfield, and _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Notary Public



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[GUARANTOR NOTARY]

STATE OF Illinois

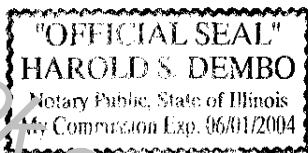
COUNTY OF Cook

SS.

On 12/12/03, before me, Harold S. Dembo, a Notary Public, personally appeared Roger Greenfield, and _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

[Signature]
Notary Public



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[LENDER NOTARY]

STATE OF California

COUNTY OF Orange

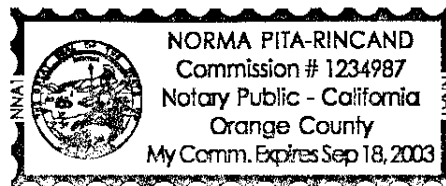
SS.

On April 29, 2003, before me, NORMA PITA RINCAND, a Notary Public,
personally appeared Anthony P. Dolim, and _____

_____, personally known to me (or proved to me on the basis of satisfactory evidence) to be
the person whose name is subscribed to the within instrument and acknowledged to me that
he/she executed the same in his/her authorized capacity, and that by his/her signature on the
instrument the person, or the entity upon behalf of which the person acted, executed the
instrument.

WITNESS my hand and official seal.

Norma Pita Rincand
Notary Public



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EXHIBIT A

Legal Description of the Project

PARCEL 1: LOTS 2, 4, 6, 8, 10, 12 THROUGH 15, AND 17 THROUGH 22, IN GLEN TOWN CENTER, A RESUBDIVISION OF LOT 3 IN GNAS MIXED USE RETAIL CENTER, IN THE WEST ½ OF SECTION 27, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT NUMBER 0020733381, IN COOK COUNTY, ILLINOIS.

PARCEL 2: EASEMENTS FOR THE BENEFIT OF PARCEL 1 FOR PARKING, ACCESS, UTILITY, AND CONSTRUCTION, AS SET FORTH IN DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED JULY 2, 2002, AS DOCUMENT 0020733381 BY THE VILLAGE OF GLENVIEW AND OLIVER McMILLAN GLENVIEW, LLC.

PARCEL 3: BLANKET PEDESTRIAN EASEMENT FOR THE BENEFIT OF PARCEL 1 AND OTHER PROPERTY OVER AND ACROSS LOT 1 IN GNAS MIXED USE SUBDIVISION, AS CONTAINED IN PLAT RECORDED SEPTEMBER 27, 2001 AS DOCUMENT NO. 0010905146.

PARCEL 4: VEHICULAR INGRESS AND EGRESS EASEMENT FOR THE BENEFIT OF PARCEL 1 OVER AND ACROSS PART OF LOT 4 IN GNAS MIXED USE SUBDIVISION, AS CONTAINED IN PLAT RECORDED SEPTEMBER 27, 2001 AS DOCUMENT NO. 0010905146.

P.L.N. 04-27-103-007-0000

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