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02-14763

Prepared by:

KRASS MONROE, P.A.  
8000 Norman Center Drive  
Suite 1000  
Minneapolis, MN 55437-1178  
(952) 885-5999  
Attention: Jodie Leigh Grabarski

Doc#: 0408241017  
Eugene "Gene" Moore Fee: \$46.00  
Cook County Recorder of Deeds  
Date: 03/22/2004 03:21 PM Pg: 1 of 12

After recording return to:

FIFTH THIRD BANK  
606 Madison Avenue  
MD292963  
Toledo, OH 43604  
Attention: Thomas A. Magnum

Mortgaged Property Address:

6350 S. Cicero Avenue  
Chicago, IL 60632

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT 12

**THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** ("Agreement") is made and entered into as of the 8th day of March, 2004, by and among (i) **BNB LAND VENTURE, INC.**, an Illinois corporation ("Tenant"); (ii) **CRC CHICAGO BK II, LLC**, a Michigan limited liability company ("Landlord"); and (iii) **FIFTH THIRD BANK**, an Ohio banking corporation ("Lender").

WITNESSETH:

WHEREAS, Lender is or may become the holder of a certain Commercial Mortgage ("Mortgage") encumbering that certain parcel of real property and the improvements thereon, commonly known as the Burger King restaurant Unit No. 12663 located at 6350 S. Cicero Avenue, Chicago, in the County of Cook, State of Illinois, and more particularly described in EXHIBIT A attached hereto and incorporated herein by this reference (the "Property");

WHEREAS, Lender and Landlord are parties to the Mortgage, pursuant to which Lender financed Landlord's purchase of the Property; and

WHEREAS, Landlord and Tenant are parties to that certain Lease Agreement dated March 8, 2004 (the "Lease") pursuant to which Tenant leased the Property from Landlord.

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NOW, THEREFORE, in consideration for the mutual covenants and agreements contained herein, the sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. **Subordination.** Tenant acknowledges and agrees that the Lease, and all of the rights of Tenant in, to and under the Lease and the Property (and any proceeds thereof), are hereby made subject, junior and subordinate in all respects to the Mortgage and all principal, interest, fees, expenses and all other amounts secured thereby and to all renewals, amendments, modifications, consolidations, replacements and extensions thereof and to the rights of Lender. This clause shall be self-operative, and no further instrument shall be required. However, Tenant covenants and agrees that if requested by Lender it will execute, acknowledge and deliver any instrument or document reasonably requested to confirm the foregoing subordination of the Lease within ten (10) days after receipt of written request therefor. Tenant shall not agree to subordinate the Lease to any lien in favor of anyone other than Lender without Lender's prior written consent.

2. **Non-Disturbance.** So long as Tenant is not in default beyond any applicable grace or cure periods under the Lease, then: (a) Tenant's possession and occupancy of the Property, the improvements thereon, and its leasehold estate shall not be disturbed or interfered with by Lender, its successors and/or assigns; (b) Tenant's rights and obligations under the Lease shall not be altered or affected by the Lender as a result of the foreclosure of the Mortgage, or a deed in lieu of foreclosure, or the Lender's exercise of any remedy or power of sale provided for in the Mortgage; and (c) in the event that Lender succeeds to Landlord's interest in the Property, Lender shall preserve the Lease as a lease between Lender and Tenant subject to the terms of Section 3, below.

3. **Attornment.** Except as provided in Section 2, above, in the event that Lender or any successors in interest to Lender succeeds to Landlord's interest in the Property (each, a "Purchaser"), then:

(a) Tenant shall be bound to Purchaser, and Purchaser shall be bound to Tenant, under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining, and any extensions or renewals thereof which may be effected in accordance with any option therefor contained in the Lease (the "Remaining Term"), with the same force and effect as if Purchaser were the original landlord under the Lease, except that Paragraph 3(b) below shall modify the Lease. In such event, Tenant shall attorn to Purchaser as its landlord for the Remaining Term, said attornment to be effective and self-operative without the execution of any further instruments; provided, however, that within ten (10) days after receipt of written request therefor from Purchaser, Tenant will execute and deliver to Purchaser any instrument or other documents reasonably requested by Purchaser to confirm Tenant's attornment to Purchaser. Tenant in such event agrees to continue to pay and perform all of the obligations of Tenant under the Lease.

(b) Notwithstanding the foregoing, however, it is agreed that in no event shall Purchaser:

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- (1) be liable for any act or omission of any prior landlord (including Landlord);
- (2) be obligated to cure any defaults of any prior landlord (including Landlord) or be bound by any obligation of any prior landlord (including Landlord) to make any payment to Tenant which occurred or were incurred prior to the date that Purchaser succeeded to the interest of such prior landlord under the Lease; provided that from and after the date Purchaser becomes the owner of the Property, Purchaser shall be obligated to cure any continuing default or satisfy any obligation of the Landlord under the Lease, but in each case only to the extent that Tenant had notified Lender in writing of such default or failure pursuant to the terms set forth below prior to the date of Purchaser's acquisition of title to the Property and only to the extent such default is capable of being cured by Purchaser or is an obligation capable of being satisfied by Purchaser;
- (3) be subject to any offsets or defenses which Tenant may be entitled to assert against any prior landlord (including Landlord) with respect to events occurring prior to the date Purchaser succeeded to Landlord's interest;
- (4) be bound by any "Minimum Monthly Rent" (as such term is defined in the Lease) or other amounts paid by Tenant to any prior landlord (including Landlord) more than one (1) month in advance of the due date under the Lease, unless such monies are actually received by Purchaser;
- (5) be bound by any amendment or modification of the Lease or by any forbearance on the part of any prior landlord (including, without limitation, the then defaulting Landlord) in either case to the extent the same is made or given without Lender's written consent; or
- (6) Purchaser shall not be bound to commence, complete, or make any contribution toward (i) construction or installation of any improvements upon the Property that the Lease requires; (ii) any rehabilitation that the Lease requires to be made on existing improvements on the Property; (iii) restoration of improvements that the Mortgage does not require Purchaser to make following casualty or condemnation; or (iv) costs of restoration that exceed any insurance proceeds or condemnation proceeds paid to Purchaser.

4. **Payment of Rent to Lender.** The Lease and all rentals thereunder have been assigned to Lender as security for repayment of the Loan. Lender, as such assignee, hereby directs Tenant to continue to pay to Landlord all rentals and other monies due and to become due under the Lease until receipt of further direction from Lender. Tenant shall continue to pay such rentals and other monies as so directed. Upon subsequent written direction from Lender, Tenant agrees to pay the Minimum Monthly Rent and any other payments due under the Lease to Lender upon receipt of such written notice from Lender that an event of default has occurred under the

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Mortgage or that Lender has succeeded to the interest of Landlord under the Lease, and Landlord agrees that Tenant is entitled to rely conclusively upon such notice from Lender without any duty or responsibility of inquiry.

## 5. Landlord Default.

(a) **No obligation to cure.** Tenant hereby acknowledges Lender as being entitled to copies of all notices of Landlord default(s), if any, under the Lease in the same manner as, and whenever, Tenant shall give any such notice of default to Landlord, and no such notice of default shall be deemed given to Landlord unless and until a copy of such notice shall have been delivered to Lender also. Lender shall not be obligated to cure any of Landlord's defaults under the Lease except as otherwise provided in this Agreement. Provided, however, in the event Lender does undertake any such duty or obligation of Landlord, Lender reserves the right to terminate such undertaking at any time without prior notice or liability to Tenant. In such event, Tenant shall accept performance by Lender of any term, covenant, condition or agreement to be performed by Landlord under the Lease with the same force and effect as though performed by Landlord. Lender's cure of Landlord's default shall not be considered an assumption by Lender of Landlord's other obligations under the Lease. If, in curing any such default, Lender requires access to the Property to effect such cure, Tenant shall furnish access to the Property to Lender as required by Lender (upon reasonable written notice) to effect such cure at all reasonable times and manner; provided that Tenant's occupancy, use and enjoyment of the Property is not unreasonably disrupted thereby, and further that Lender shall indemnify and hold Tenant harmless for any damages caused by Lender's access. Unless Lender otherwise agrees in writing, Lender shall have no liability to perform Landlord's obligations under the Lease, both before and after Lender's exercise of any right or remedy under this Agreement, except as otherwise set forth in this Agreement. Lender shall not become liable under the Lease unless and until Lender becomes, and then only with respect to periods in which Lender is, the owner of Landlord's interest in the Property. Lender shall have the right, without Tenant's consent but subject to the provisions of this Agreement, to foreclose, or exercise any power of sale under, the Mortgage or to accept a conveyance in lieu of foreclosure of the Mortgage or to exercise any other remedies under the Mortgage or any Assignment of Leases and Rents attendant therewith.

(b) **No termination of Lease.** Tenant may not terminate the Lease because of Landlord's defaults in the Lease, unless (i) Tenant first notifies Lender of the default in writing and (ii) Lender, within thirty (30) days after notice, has either failed to cure the default, or having once commenced curing the default, has failed to use reasonable efforts to cure the default. All payments or things done by Lender shall have the same force and effect to prevent the rights of Landlord being forfeited because of its default, as if the same had been done and performed by Landlord.

6. **Lease Amendment.** Tenant agrees that Tenant shall not, without the prior written consent of Lender, (a) make or agree to any amendment or modification of the Lease, (b) terminate, cancel or surrender the Lease except in accordance with the express provisions thereof, or enter into any agreement with Landlord to do so, or (c) pay any installment of Minimum Monthly Rent under the Lease more than one month in advance of the due date thereof or otherwise than in the manner provided for in the Lease. Tenant further agrees that upon the

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assignment or sublease of the Lease not in accordance with the terms of the Lease, Tenant shall remain primarily liable for all obligations under the Lease unless otherwise provided for in the Lease.

7. **Inspection Rights.** In accordance with the terms of the Lease, Tenant agrees to permit Lender and/or Landlord and Lender's and/or Landlord's representatives access to, and an opportunity to inspect, the Property during normal business hours and upon reasonable notice which shall not be less than twenty-four (24) hours, provided such inspections do not interfere with Tenant's business operations.

8. **Performance by Lender; Conflict.** Nothing in this Agreement shall be or be deemed to be an agreement by Lender to perform any obligation of Landlord under the Lease unless and until the Lender acquires the Property, and then only if required to do so by the terms of the Lease, as modified and limited by this Agreement. In the event of any conflict between the terms of this Agreement and the terms of the Lease, the terms of this Agreement shall control.

9. **Notices.** Any notice required or permitted to be given hereunder shall be in writing and may be given by personal delivery, certified mail, return receipt requested or by nationally recognized overnight courier service and if given personally or by mail or by courier service, shall be deemed sufficiently given if addressed to the parties at the addresses set forth below. Any party may by notice specify a different address for notice purposes.

Addresses for Notices:

To Lender: Fifth Third Bank  
606 Madison Avenue  
MD292963  
Toledo, OH 43604  
Attn: Thomas A. Magnum

To Landlord: CRC Chicago BK II, LLC  
24 Frank Lloyd Wright Drive  
Lobby L, 4<sup>th</sup> Floor, P.O. Box 544  
Ann Arbor, MI 48106  
Attn: Joanna Zabriskie

To Tenant: BNB Land Venture, Inc.  
1020 North Milwaukee Avenue  
Suite 360  
Deerfield, IL 60015-3555  
Attn: Sheldon T. Friedman

10. **Successors and Assigns.** This Agreement and each and every covenant and provision contained herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective representatives, successors and assigns.

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11. **Modifications; Counterparts.** This Agreement shall not be modified or amended in whole or in part except by a writing executed by all of the parties hereto or their respective representatives, successors or assigns. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be a fully executed original and all of which shall constitute one and the same instrument.

12. **Governing Law; Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the jurisdiction in which the Property is located.

13. **Limitation of Lender's Liability.** Tenant hereby acknowledges that any liability which Lender may at any time or in any manner have to Tenant with respect to the Property or the Lease shall be limited to the Lender's interest in the Property. In that regard, any judgment or claim which Tenant may hold against Lender for any reason shall be exercised by Tenant only against the Lender's interest in the Property and not against any other assets of the Lender and Tenant may not assert any claim against Lender arising after Lender has transferred its interest in the Property.

14. **Waiver of Trial by Jury.** TENANT, LANDLORD AND LENDER, HAVING BEEN REPRESENTED BY COUNSEL, EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

[Signature page to follow]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date hereinabove first written.

TENANT:

**BNB LAND VENTURE, INC.,**  
an Illinois corporation

By: Sheldon T. Friedman  
Name: Sheldon T. Friedman  
Its: President

LANDLORD:

**CRC CHICAGO BK II, LLC,**  
a Michigan limited liability company

By: \_\_\_\_\_  
Name: Joanna Zabriskie  
Its: Vice President

LENDER:

**FIFTH THIRD BANK,**  
an Ohio banking corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date hereinabove first written.

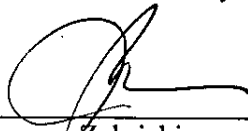
TENANT:

**BNB LAND VENTURE, INC.,**  
an Illinois corporation

By: \_\_\_\_\_  
Name: Sheldon T. Friedman  
Its: President

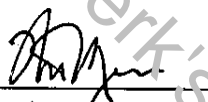
LANDLORD:

**CRC CHICAGO BK II, LLC,**  
a Michigan limited liability company

By:  \_\_\_\_\_  
Name: Joanna Zabriskie  
Its: Vice President

LENDER:

**FIFTH THIRD BANK,**  
an Ohio banking corporation

By:  \_\_\_\_\_  
Name: Thomas A. Margum  
Its: Asst VP

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STATE OF Illinois )  
 ) ss.  
COUNTY OF COOK )

On March 4, 2004 before me, Brandy Norman as a Notary Public, personally appeared Sheldon T. Friedman, as President of **BNB LAND VENTURE, INC.**, an Illinois corporation, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Given under my hand and seal of office this 4<sup>th</sup> day of March, 2004.

Sign: Brandy Norman  
Print: Brandy Norman  
My Commission Expires: 5/24/06

(SEAL)



STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On March \_\_, 2004 before me, \_\_\_\_\_ as a Notary Public, personally appeared Joanna Zabriskie, as Vice President of **CRC CHICAGO BK II, LLC**, a Michigan limited liability company, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Given under my hand and seal of office this \_\_\_\_ day of March, 2004.

Sign: \_\_\_\_\_  
Print: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

(SEAL)

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STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On March \_\_, 2004 before me, \_\_\_\_\_ as a Notary Public, personally appeared Sheldon T. Friedman, as President of **BNB LAND VENTURE, INC.**, an Illinois corporation, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Given under my hand and seal of office this \_\_\_\_ day of March, 2004.

Sign: \_\_\_\_\_  
Print: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

(SEAL)

STATE OF Michigan )  
 ) ss.  
COUNTY OF Washtenaw )

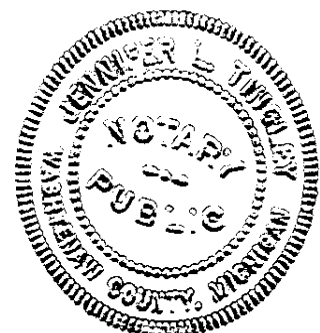
On March 1, 2004 before me, **Jennifer L. Tingley** as a Notary Public, personally appeared Joanna Zabriskie, as Vice President of **CRC CHICAGO BK II, LLC**, a Michigan limited liability company, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Given under my hand and seal of office this 1 day of March, 2004.

Sign: Jennifer L. Tingley  
Print: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

(SEAL)

**JENNIFER L. TINGLEY**  
Notary Public, Washtenaw County, MI  
My Commission Expires Feb. 4, 2008



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STATE OF Ohio )  
COUNTY OF Cook ): ss.

On March 3, 2004 before me, Gene Abercrombie as a Notary Public, personally appeared Thomas Mangum, as Asst VP of **FIFTH THIRD BANK**, an Ohio banking corporation, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Given under my hand and seal of office this 3 day of March, 2004.



GENE R. ABERCROMBIE  
Notary Public, State of Ohio  
Commission Expires 12/31/06  
Section 147.03 R.

Sign: [Signature]  
Print: Gene Abercrombie  
My Commission Expires: \_\_\_\_\_

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**Exhibit A to**  
**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

Land situated in the City of Chicago, County of Cook, State of Illinois, and more particularly described as follows:

Lots 22, 23, 24, 25 (except that part lying east of a line 50 feet West of and parallel with East line of Section 21), and except that part taken for the widening of Cicero Avenue in Block 1 in Frederick H. Bartlett's Marquette Highlands, a subdivision of the East 1/2 of the Northeast 1/4 of Section 31, Township 38 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

Street Address: 6350 S. Cicero Avenue, Chicago, IL 60638

19-21-207-035  
19-21-207-036  
19-21-207-037  
19-21-207-038