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Permanent Real Estate Index No.
17-10-200-020-0000, 17-10-200-021-0000
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Doc#: 0609545102 Fee: \$44.50
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Cook County Recorder of Deeds
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SUBORDINATION, NON DISTURBANCE AND ATTORNMENT AGREEMENT

by and between

BENIHANA NATIONAL CORP.

and

GMAC COMMERCIAL MORTGAGE BANK

Dated: as of April 4, 2006

PREPARED BY AND AFTER RECORDATION RETURN TO:

Katten Muchin Rosenman LLP
1025 Thomas Jefferson Street, N.W.
Suite 700, East Tower
Washington, D.C. 20007-5201
Attn: Christopher J. Hart, Esq.



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SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** (this "**Agreement**") is dated as of the 4th day of April, 2006, between **GMAC COMMERCIAL MORTGAGE BANK**, a Utah industrial bank ("**Lender**") and **BENIHANA NATIONAL CORP.**, a Delaware corporation ("**Tenant**").

RECITALS

A. Tenant is the tenant under a certain lease dated June 17, 1975, as amended by that certain Amendment Number One to Lease dated November 1, 1991, as further amended by that certain Amendment Number Two to Lease dated February 21, 1995, as further amended by that certain Addendum to Benihana National Corp. Lease dated August 28, 1997, and as further amended by that certain Amendment Three to Lease dated June 2, 2004 (collectively, the "**Lease**") with 166 E. Superior, LLC, a Delaware limited liability company (together with its successors and/or assigns, "**Landlord**"), of premises described in the Lease (the "**Premises**") as more particularly described in Exhibit A hereto.

B. This Agreement is being entered into in connection with a certain loan (the "**Loan**") which Lender has made to Landlord, and which is secured, in part, by a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of April 4, 2006 (the "**Mortgage**"), and an Assignment of Leases, Rents and Profits dated as of April 4, 2006 (the "**Assignment**"); (the Mortgage, the Assignment and all other documents and agreements executed and delivered in connection with the Loan are hereinafter collectively referred to as the "**Loan Documents**").

AGREEMENT

For mutual consideration, including the covenants and agreements set forth below, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Tenant agrees that the Lease and all terms and conditions contained therein and all rights, options, liens and charges created thereby is and shall be subject and subordinate in all respects to the lien of the Mortgage and the terms and conditions of the Loan Documents and to all present or future advances under the obligations secured thereby and all renewals, amendments, modifications, consolidations, restatements and extensions thereof, to the full extent of all amounts secured by the Mortgage and the Loan Documents from time to time.

2. Lender agrees that, if Lender exercises any of its rights under the Loan Documents such that it becomes the owner of the Premises, including, but not limited to, an entry by Lender pursuant to the Mortgage, a foreclosure of the Mortgage, acceptance of a deed in lieu of foreclosure, a power of sale under the Mortgage or otherwise: (a) the Lease shall continue in full force and effect as a direct lease between Lender and Tenant, subject to all the terms, covenants and conditions of the Lease, and (b) Lender shall not disturb Tenant's right of quiet possession of the Premises under the terms of the Lease so long as Tenant is not in default beyond any applicable grace period of any term, covenant or condition of the Lease.

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3. Tenant agrees that, in the event of an exercise of the power of sale or foreclosure of the Mortgage by Lender or the acceptance of a deed in lieu of foreclosure by Lender or any other successor or assign of Lender to ownership of the Premises, Tenant will attorn to and recognize Lender as its landlord under the Lease for the remainder of the term of the Lease (including all extension periods which have been or are hereafter exercised) upon the same terms and conditions as are set forth in the Lease, and Tenant hereby agrees to pay and perform all of the obligations of Tenant pursuant to the terms and conditions of the Lease.

4. Tenant agrees that, in the event Lender succeeds to the interest of Landlord under the Lease, Lender shall not be:

- (a) liable in any way for any act, omission, neglect or default of any prior landlord (including, without limitation, the then-defaulting landlord);
- (b) subject to any claim, defense, counterclaim or offsets which Tenant may have against any prior landlord (including, without limitation, the then-defaulting landlord);
- (c) bound by any payment of rent or additional rent which Tenant might have paid for more than one (1) month in advance of the due date under the Lease to any prior landlord (including, without limitation, the then-defaulting landlord);
- (d) bound by any obligation to make any payment to Tenant which was required to be made prior to the time Lender succeeded to any prior landlord's interest (including, without limitation, the then-defaulting landlord);
- (e) accountable for any monies deposited with any prior landlord (including, without limitation, the then-defaulting landlord) (including any security deposits), except to the extent such monies are actually received by Lender;
- (f) bound by any amendment or modification of the Lease made without the prior written consent of Lender.

Nothing contained herein shall prevent Lender from naming Tenant in any foreclosure or other action or proceeding initiated in order for Lender to avail itself of and complete any such foreclosure or other remedy.

5. Tenant hereby agrees to give to Lender copies of all notices of Landlord's default(s) 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 so delivered to Lender. Lender shall have the right, but not the obligation, to remedy any Landlord default under the Lease, or to cause any default of Landlord under the Lease to be remedied, and for such purpose Tenant hereby grants Lender, in addition the period given to Landlord for remedying defaults, an additional thirty (30) days to remedy, or cause to be remedied, any such default. Tenant shall accept performance by Lender of any term, covenant, condition or agreement to be performed by Landlord under the

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Lease with the same force and effect as though performed by Landlord. No Landlord default under the Lease shall exist or shall be deemed to exist (i) as long as Lender, in good faith, shall have commenced to cure such default within the above referenced time period and shall be prosecuting the same to completion with reasonable diligence, subject to force majeure, or (ii) if possession of the Premises is required in order to cure such default, or if such default is not susceptible of being cured by Lender, as long as Lender, in good faith, shall have notified Tenant that Lender intends to institute proceedings under the Loan Documents, and, thereafter, as long as such proceedings shall have been instituted and shall be prosecuted with reasonable diligence. In the event of the termination of the Lease by reason of any default thereunder by Landlord, upon Lender's written request, given within thirty (30) days after any such termination, Tenant, within fifteen (15) days after receipt of such request, shall execute and deliver to Lender or its designee or nominee a new lease of the Premises for the remainder of the term of the Lease upon all of the terms, covenants and conditions of the Lease. Neither Lender nor its designee or nominee shall become liable under the Lease unless and until Lender or its designee or nominee becomes, and then only with respect to periods during which Lender or its designee or nominee remains the owner of the Premises. In no event shall Lender have any personal liability as successor to Landlord and Tenant shall look only to the interest of Lender in the Premises for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) requiring the payment of money in the event of any default by Lender as landlord under the Lease, and no other property or assets of Lender shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to the Lease. Lender shall have the right, without Tenant's consent, to foreclose the Mortgage or to accept a deed in lieu of foreclosure of the Mortgage or to exercise any other remedies under the Loan Documents, or available at law or in equity.

6. Tenant has no knowledge of any prior assignment or pledge of the rents accruing under the Lease by Landlord. Tenant hereby acknowledges the making of the Assignment and Mortgage from Landlord to Lender in connection with the Loan. Tenant acknowledges that the interest of the Landlord under the Lease is to be assigned to Lender solely as security for the purposes specified in the Assignment and Mortgage, and Lender shall have no duty, liability or obligation whatsoever under the Lease or any extension or renewal thereof, either by virtue of the Assignment or Mortgage or by any subsequent receipt or collection of rents thereunder, unless Lender shall specifically undertake such liability in writing.

7. Tenant hereby certifies that: (a) as of March 31, 2006, Tenant paid Additional Rent (as defined in the Lease) in the amount of \$0.00; (b) Tenant has not paid any Additional Percentage Rent (as defined in the Lease) for the most recent calendar year and quarter; (c) no voluntary or involuntary actions are pending against Tenant under the bankruptcy or insolvency laws of the United States or any state thereof; and (d) Tenant has not used, stored, disposed of or transported at, to or from the Premises any substance classified as hazardous or toxic under applicable federal, state or local laws or regulations, except in compliance with such laws or regulations.

8. Each individual executing this Agreement on behalf of Tenant represents and warrants that s/he is duly authorized to execute and deliver this Agreement on behalf of Tenant, in accordance with a duly adopted resolution of the Board of Directors, or a consent of the

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members or partners, as applicable, of Tenant in accordance with the organizational documents of Tenant, and that this Agreement is binding upon Tenant, in accordance with its terms. Each individual executing this Agreement on behalf of Landlord represents and warrants the s/he is duly authorized to execute and deliver this Agreement on behalf of Landlord in accordance with the organizational documents of Landlord.

9. Any notice, election, communication, request or other document or demand required or permitted under this Agreement shall be in writing and shall be deemed delivered on the earlier to occur of (a) receipt, or (b) the date of delivery, refusal or nondelivery indicated on the return receipt, if deposited in a United States Postal Service depository, postage prepaid, sent certified or registered mail, return receipt requested, or if sent via recognized commercial courier service providing for a receipt, addressed to Tenant or Lender, as the case may be at the following addresses:

If to Tenant: Benihana National Corp.
8685 NW 53 Terrace, Suite 201
Miami, FL 33166
Attn: Joel A. Schwartz

with a copy to: Dornbush, Schaeffer, Strongin & Weinstein, LLC
747 Third Avenue
New York, NY 10017
Attn: Jerold Dornbush

If to Lender: GMAC Commercial Mortgage Bank
6955 Union Park Center
Suite 330
Midvale, Utah 84047
Attn: President

with copies to: GMAC Commercial Mortgage Corporation
200 Witmer Road
Horsham, Pennsylvania 19044
Attn: Servicing - Executive Vice President

and

Katten Muchin Rosenman LLP
1025 Thomas Jefferson Street, N.W., Suite 700 East
Washington, DC 20007
Attention: Christopher J. Hart, Esq.
Re: Affinia Chicago

or any successor servicer appointed by Lender

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10. The term "Lender" as used herein includes any successor or assign of the named Lender herein, including without limitation, any co-lender at the time of making the Loan, any purchaser at a foreclosure sale and any transferee pursuant to a deed in lieu of foreclosure, and their successors and assigns, and the term "Tenant" as used herein includes any permitted successor and assign of the named Tenant herein.

11. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to be enforceable, or if such modification is not practicable, such provision shall be deemed deleted from this Agreement, and the other provisions of this Agreement shall remain in full force and effect.

12. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing executed by all of the parties hereto.

13. This Agreement shall be construed in accordance with the laws of the State where the Premises is located.

14. This Agreement may be executed in any number of counterparts, each such counterpart shall be deemed to be an original instrument and all of which together shall constitute a single Agreement.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

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IN WITNESS WHEREOF, the parties hereto have executed and delivered this Subordination, Non-disturbance and Attornment Agreement under seal as of the day and year first above written.

WITNESS/ATTEST:

LENDER:

GMAC COMMERCIAL MORTGAGE BANK,
a Utah industrial bank

By: Adam A. Day
Name: Adam A. Day

By: _____ (SEAL)
Name: _____
Title: _____

By: Kimberly Kovach
Name: Kimberly Kovach

Lender:

STATE OF Virginia
COUNTY OF Arlington

Before me, Kimberly Kovach, on this day personally appeared Lewis DeLafield, known to me to be the person whose name is subscribed to the foregoing instrument, and known to me to be the Authorized Signatory of **GMAC COMMERCIAL MORTGAGE BANK**, a Utah industrial bank, and acknowledged to me that s/he executed said instrument for the purposes and consideration therein expressed, and as the act of said corporation, on behalf of said corporation. Given under my hand and seal of office this 31 day of March, 2006.

Kimberly Kovach
Notary Public

(SEAL)

My Commission Expires:

Jan. 31, 2009

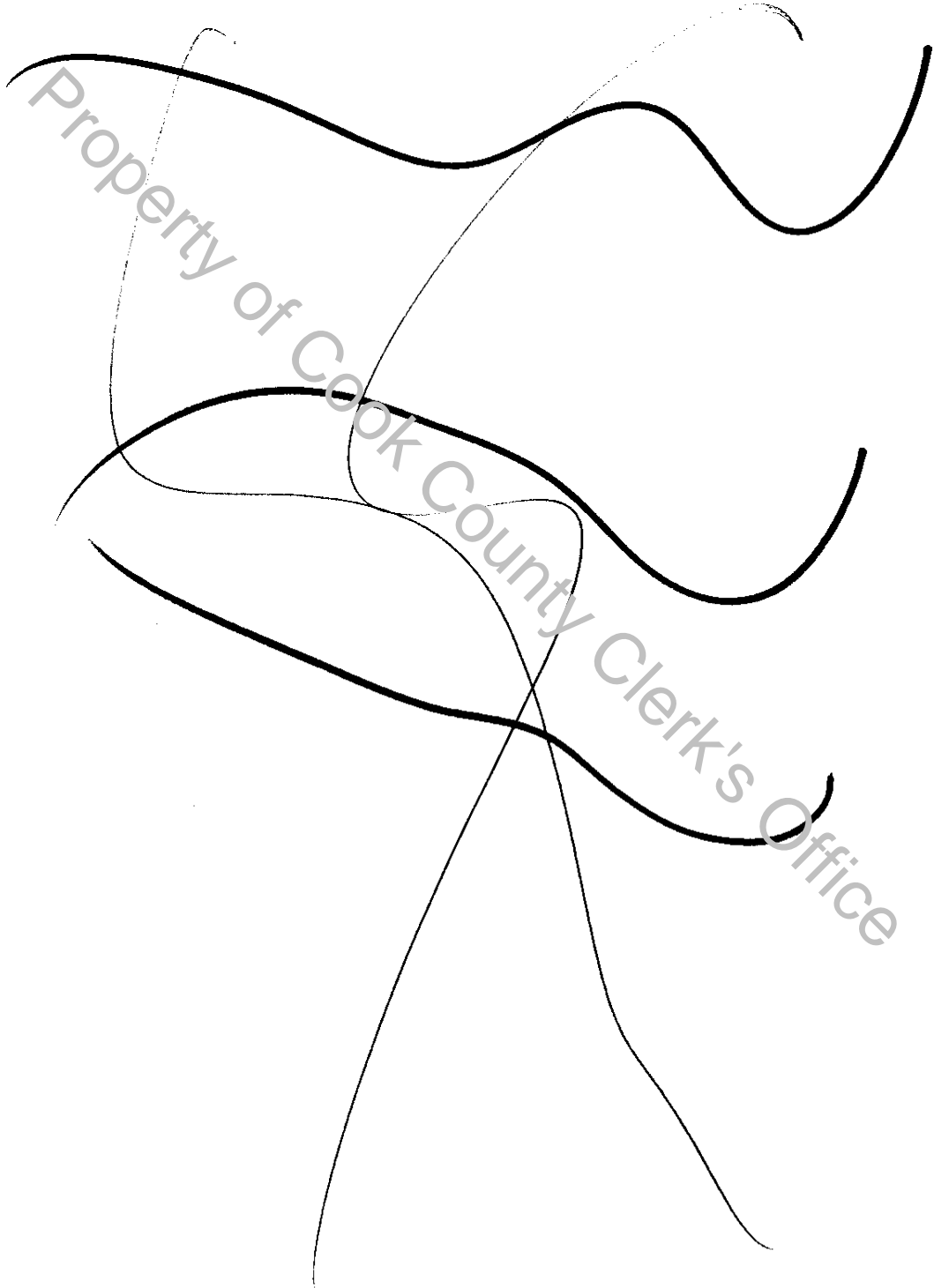
KIMBERLY S. KOVACH
Notary Public
Commonwealth of Virginia
My Comm. Exps. Jan. 31, 2009

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EXHIBIT "A"

Legal Description of the Premises

[Attached hereto]



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STREET ADDRESS: 166 E. SUPERIOR

CITY: CHICAGO

COUNTY: COOK

TAX NUMBER:

LEGAL DESCRIPTION:

PARCEL 1:

(TAX IDENTIFICATION NUMBER: 17-10-200-063-0000)

LOTS 4, 5, AND 6 IN HENRY WISCHEMEYER'S SUBDIVISION OF BLOCK 54 IN KINZIE'S ADDITION TO CHICAGO IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, BEING A RESUBDIVISION OF THE EAST 15 FEET OF LOT 11 AND ALL OF LOT 12 IN LEGG'S SUBDIVISION OF SAID BLOCK 54, TOGETHER WITH LOTS 1, 2 AND 3 IN OGDEN AND LOMBARD'S SUBDIVISION OF THE ACCRETIONS LYING EAST OF AND ADJOINING SAID LOT 12, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

(TAX IDENTIFICATION NUMBERS: 17-10-200-020-0000 AND 17-10-200-021-0000)

LOTS D, E, F, G, H, AND I IN LILL'S CHICAGO BREWING COMPANY'S SUBDIVISION IN BLOCK 54 IN KINZIE'S ADDITION TO CHICAGO IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

A NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCELS 1 AND 2 AS CREATED BY DECLARATION OF EASEMENTS AND AGREEMENTS DATED JUNE 7, 1931 AND RECORDED FEBRUARY 11, 1981 AS DOCUMENT 25950376 FOR THE PURPOSE OF INGRESS AND EGRESS OVER AND ACROSS THE 1980 EASEMENT DESCRIBED AS FOLLOWS:

THAT PART OF LOTS C AND 10 AND THAT PART OF THE NORTH AND SOUTH 10 FOOT PRIVATE ALLEY LYING EAST OF AND ADJOINING THE EAST LINE OF SAID LOTS C AND 10, DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF SAID LOT 10 WITH THE WEST LINE OF THE EAST 10.00 FEET THEREOF; THENCE NORTH 0 DEGREES 10 MINUTES 52 SECONDS EAST 117.00 FEET ALONG THE WEST LINE OF THE EAST 10.00 FEET OF SAID LOTS 10 AND C; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST 2.00 FEET ALONG A LINE PARALLEL WITH THE SOUTH LINE OF SAID LOT 10, BEING ALSO THE NORTH LINE OF EAST SUPERIOR STREET; THENCE NORTH 0 DEGREES 52 MINUTES 10 SECONDS EAST 6.45 FEET ALONG A LINE PARALLEL WITH THE EAST LINE OF SAID LOT C TO THE SOUTH LINE OF THE PUBLIC ALLEY AS DEDICATED PER DOCUMENT NO. 9561524; THENCE SOUTH 89 DEGREES 54 MINUTES 30 SECONDS EAST 8.00 FEET ALONG THE SOUTH LINE OF SAID ALLEY TO THE EAST LINE OF SAID LOT C; THENCE NORTH 0 DEGREES 52 MINUTES 10 SECONDS EAST 3.52 FEET ALONG THE EAST LINE OF SAID LOT C TO THE NORTHEAST CORNER THEREOF; THENCE SOUTH 89 DEGREES 45 MINUTES 36 SECONDS EAST 10.00 FEET ALONG THE NORTHERLY TERMINUS OF THE AFORESAID 10.00 FOOT PRIVATE ALLEY TO THE EAST LINE OF SAID ALLEY; THENCE SOUTH 0 DEGREES 10 MINUTES 52 SECONDS WEST 33.42 FEET ALONG THE EAST LINE OF SAID ALLEY; THENCE SOUTH 0 DEGREES 10 MINUTES 00 SECONDS WEST 3.50 FEET ALONG SAID PARALLEL LINE; THENCE SOUTH 90 DEGREES 00 SECONDS WEST 87.00 FEET ALONG A LINE PARALLEL WITH THE EAST LINE OF SAID ALLEY TO A LINE DRAWN 6.50 FEET NORTH OF AND PARALLEL WITH THE NORTH LINE OF EAST SUPERIOR STREET; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST 1.33 FEET ALONG SAID PARALLEL LINE; THENCE SOUTH 0 DEGREES 10 MINUTES 52 SECONDS WEST 6.50 FEET ALONG A LINE PARALLEL WITH THE EAST LINE OF SAID ALLEY TO THE SOUTHERLY TERMINUS OF SAID ALLEY; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST 15.17 FEET ALONG SAID SOUTHERLY TERMINUS AND ALONG THE SOUTH LINE OF THE AFORESAID LOT 10, BEING ALSO THE NORTH LINE OF EAST SUPERIOR STREET TO THE HEREINABOVE DESIGNATED POINT OF BEGINNING, IN LILL'S CHICAGO BREWERY COMPANY'S SUBDIVISION IN BLOCK 54 IN KINZIE'S ADDITION TO CHICAGO, IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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