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## COVER PAGE FOR RECORDING

Subordination, Nondisturbance and Attornment Agreement

Return Document To: Nebraska Title Company  
14680 W. Dodge Road  
Suite 1  
Omaha, NE 68154

Legal Description: See Exhibit A

## SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

**THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT**, (the "Agreement") is entered into as of December 14, 2011 (the "Effective Date"), between **PINNACLE BANK**, whose address is 18081 Burt Street, Omaha, NE 68022 ("Mortgagee"), AKM Holdings LLC, a Nebraska corporation whose address is 9624 Westchester Dr, Omaha, NE 68114 ("Landlord") and **BURGER KING CORPORATION**, a Florida corporation, whose address is 5505 Blue Lagoon Drive, Miami, Florida 33126 ("Tenant"), with reference to the following facts:

### RECITALS

WHEREAS, Landlord is purchasing the real property located at 2005 East 23<sup>rd</sup> Avenue, Fremont, NE 68025 in the County of Dodge, State of Nebraska (the "Property"), as more particularly described in Exhibit "A" attached hereto and made a part;

WHEREAS, Landlord will be assuming that certain Lease dated as of March 31, 2006, as amended by that certain Amendment to Lease dated July 16, 2008 (collectively known as the "Lease"), pursuant to which Elaine Sue Chan, as lessor, demised to Tenant the Property for a term of twenty (20) years, with the right to extend the term for two(2) additional periods of five (5) years each, together with all possessory rights set forth in the Lease and of Public Record;

WHEREAS, on or about the Effective Date, Landlord will enter into a Deed of Trust and Security Agreement and Assignment of Rents in favor of Mortgagee in the amount of \$1,537,500<sup>00</sup> (the "Mortgage") which will be recorded in the Public Records of Dodge County, State of Nebraska; and

WHEREAS, Mortgagee has agreed that the Lease shall remain in effect on the terms and conditions hereinafter set forth, notwithstanding any foreclosure or other proceedings for enforcement of the Mortgage.

The parties hereto desire, under the provisions set forth in this Agreement, to assure Tenant that in the event of foreclosure of the Mortgage, or in the event of a sale in lieu of such foreclosure, or in the event that Mortgagee directly or indirectly becomes the new landlord of the Premises, or in the event that Mortgagee desires to assert the priority of the terms of the Loan for any reason, that the terms of the Lease shall not be terminated, disturbed or adversely affected.

**NOW, THEREFORE**, for good and sufficient consideration, the parties hereto agree as follows:

1. Definitions. The following terms shall have the following meanings for purposes of the Agreement:

1.1 Construction-Related Obligation. A "**Construction-Related Obligation**" means any obligation of Landlord under the Lease to make, pay for, or reimburse Tenant for any alterations, demolition, or other improvements or work at the Premises. "Construction-Related Obligations" shall not include: (a) reconstruction or repair following fire, casualty or condemnation; or (b) day-to-day maintenance and repairs.

1.2 Foreclosure Event. A "**Foreclosure Event**" means: (a) foreclosure under the Mortgage, (b) any other exercise by Mortgagee of rights and remedies (whether under the Mortgage or under applicable law, including bankruptcy law) as holder of the Loan and/or the Mortgage, as a result of which the Successor Landlord (defined below) becomes owner of the Premises; or (c) delivery by Landlord to Mortgagee (or its designee or nominee) of a deed or other conveyance of Landlord's interest in the Premises in lieu of any of the foregoing.

1.3 Former Landlord. A "**Former Landlord**" means Landlord and any other party that was landlord under the Lease at any time before the occurrence of the attornment under this Agreement.

1.4 Offset Right. An "**Offset Right**" means any right or alleged right of Tenant to any offset, defense (other than arising from actual payment and performance, which payment and performance would bind a Successor Landlord pursuant to this Agreement), claim, counterclaim, reduction, deduction, or abatement against Tenant's payment of Rent or performance of Tenant's other obligations under the Lease arising from Landlord's breach or default under the Lease as set forth in the Lease, including the Tenant Construction Agreement, or other applicable law.

1.5 Rent. The "**Rent**" means any fixed rent, base rent, operating expense or additional rent under the Lease.

1.6 Successor Landlord. A "**Successor Landlord**" means any party that becomes owner of the Premises as the result of a Foreclosure Event.

1.7 Tenant Default. A "**Tenant Default**" means a material default on the part of Tenant under the Lease which has continued after written notice from Landlord, beyond the applicable cure period as set forth in the Lease.

1.8 Termination Right. A "**Termination Right**" means any right of Tenant to cancel or terminate the Lease or to claim a partial or total eviction arising (whether under the Lease or under applicable law) from Landlord's breach or default under the Lease.

2. Subordination. The Lease shall be, and shall at all times remain, subordinate to the Mortgage, the lien imposed by the Mortgage, and all advances made under the Mortgage insofar as it affects the real property of which the Premises forms a part.

3. Nondisturbance, Recognition and Attornment.

3.1 No Exercise of Mortgagee's Remedies Against Tenant. So long as the Lease has not been terminated due to a Tenant Default, Mortgagee shall not name or join Tenant as a defendant in any exercise of Mortgagee's rights and remedies arising upon a default under the Mortgage unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or prosecuting such rights and remedies. In the latter case, Mortgagee may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant's right under the Lease or this Agreement in such action, it being the intent of the parties that any action or proceeding to foreclose the Mortgage and any foreclosure sale pursuant to the Mortgage shall be subject to the Lease.

3.2 Nondisturbance and Attornment. If the Lease has not been terminated due to a Tenant Default, then, when Successor Landlord takes title to Landlord's Premises: (a) Successor Landlord shall not terminate or disturb Tenant's quiet possession of the Premises under the Lease nor deprive Tenant of any of its rights, privileges or immunities thereunder, including its ownership of the buildings and improvements (if the Lease so provides) and any easement rights and appurtenances belonging or appertaining to the Premises; (b) Successor Landlord shall not impose any additional obligations upon Tenant not specifically provided for in the Lease; (c) Successor Landlord shall assume all leasehold obligations and be bound to Tenant under all of the terms, covenants and conditions of the Lease for the balance of the remaining term and any extensions or renewals (except as provided in this Agreement); (d) Tenant shall recognize and attorn to Successor Landlord as Tenant's direct landlord under the Lease as effectuated by this Agreement; however, with the exception of Mortgagee exercising its rights under a validly executed Assignment of Rents, Tenant shall be under no obligation to pay rent to Successor Landlord as its Landlord until Tenant receives written notice from Successor Landlord Mortgagee that Successor Landlord has succeeded to the interest of Landlord under the Lease; and (e) the Lease shall continue in full force and effect as a direct Lease, in accordance with its terms (except as provided in the Agreement), between Successor Landlord and Tenant.

3.3 Further Documentation. The provisions of this Article shall be effective and self-operative without any need for Successor Landlord or Tenant to execute any further documents. Tenant and Successor Landlord shall, however, confirm the provisions of this Article in writing upon request by either of them.

4. Protection of Tenant. Notwithstanding any language or provision of the Lease or the Mortgage to the contrary, Successor Landlord shall assume full liability for and be bound by all of the following matters:

4.1 Claims Against Former Landlord. Any claim that Tenant may have against any Former Landlord relating to any event or occurrence before the date of attornment, including any claim for damages of any kind whatsoever as the result of any breach under the Lease by Former Landlord that occurred before the date of attornment; provided, however, that the foregoing shall not limit either (a) Tenant's right to exercise against Successor Landlord, any Offset Right or Termination Right available to Tenant under the Lease; (b) the right to receive

the Tenant Improvement Allowance under the Lease (as more particularly set forth in Section 6 below); and/or (c) Successor Landlord's obligation to correct any conditions that existed as of the date of attornment and violate Successor Landlord's obligation as Landlord under the Lease.

4.2 Prepayment. Any payment of Rent that Tenant may have made to Landlord or Successor Landlord more than thirty days before the date such Rent was first due and payable under the Lease with respect to any period after the date of attornment.

4.3 Payment; Security Deposit. Any obligation: (a) to pay Tenant any sum(s) that any Former Landlord owed to Tenant or (b) with respect to any security deposited with Former Landlord, unless such security was actually delivered to Mortgagee. This paragraph is not intended to apply to Landlord's obligation to make any payment that constitutes a Construction-Related Obligation.

4.4 Termination, Etc. Any consensual or negotiated termination right that Tenant may have under the Lease shall remain unchanged, in whole or in part, as agreed upon between Landlord and Tenant, unless effected unilaterally by Tenant pursuant to the express terms of the Lease.

4.5 Right of First Refusal/Purchase Rights. Any right of first refusal or right to purchase the Premises, a part of the Premises or a larger tract of property of which the Premises are a part, which right is provided to Tenant under the Lease, shall remain unchanged, in whole or in part, as agreed upon between Landlord and Tenant, unless effected unilaterally by Tenant pursuant to the express terms of the Lease.

5. Application of Proceeds. Notwithstanding anything to the contrary in the Lease or the Mortgage, Mortgagee consents to the application of all insurance and condemnation proceeds or awards in accordance with the terms of the Lease between Landlord and Tenant, whether or not the Mortgage is then foreclosed or if there is a Foreclosure Event.

6. Construction-Related Obligation. Notwithstanding anything to the contrary in the Lease or this Agreement or the Mortgage, it is expressly understood and agreed that in the event Landlord defaults in any Construction-Related Obligation, Successor Landlord and Mortgagee shall become liable for such Construction-Related Obligation in accordance with the terms of the Lease. Further, it is expressly understood and agreed that if the Successor Landlord has failed to perform such Construction-Related Obligations and does not agree in writing within thirty (30) days of Tenant's demand after the date of attornment to perform and complete such Construction-Related Obligations within a reasonable period of time, then Tenant shall have the right to elect either to terminate the Lease by written notice to Successor Landlord, or to complete and pay for such Construction-Related Obligations and offset all reasonable costs thereof incurred (the "Construction Cost"), together with interest on the unrecovered balance of the Construction Cost, against any Rent thereafter payable, until Tenant shall have so recovered the entire Construction Cost.

7. Additional Covenants.

7.1 Notices. Tenant shall not be required to serve Mortgagee with a copy of any notices it may serve upon Landlord with respect to any default by Landlord of any obligation of Landlord to Tenant. However, any such notice served by Tenant shall be effective upon Landlord, and equally effective should a Successor Landlord materialize.

8. Miscellaneous.

8.1 Notices. All notices or other communications required or permitted under this Agreement shall be in writing and given by certified mail (return receipt requested) or by nationally recognized overnight courier service that regularly maintains records of items delivered. Each party's address is as set forth in the opening paragraph of this Agreement, subject to change by notice under this paragraph. Notices shall be effective the next business day after being sent by overnight courier services, and five (5) business days after being sent by certified mail (return receipt requested).

8.2 Successors and Assigns. This Agreement shall bind and benefit the parties hereto, their successors and assigns, any Successor Landlord, and its successors and assigns.

8.3 Entire Agreement. This Agreement constitutes the entire agreement between Mortgagee and Tenant regarding the subordination of the Lease to the Mortgage and the rights and obligation of Tenant and Mortgagee as to the subject matter of this Agreement.

8.4 Interaction with Lease and with Mortgage. If this Agreement conflicts with the Lease or the Mortgage, then this Agreement shall govern as between the parties and any Successor Landlord. This Agreement supersedes, and constitutes full compliance with, any provisions in the Lease that provided for subordination or the Lease to, or for delivery of nondisturbance agreements by the holder of the Mortgage. Mortgagee confirms that Mortgagee has consented to Landlord's entering into the Lease.

8.5 Interpretation; Governing Law. The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the laws of the State of Florida.

8.6 Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. The parties agree that this instrument shall be executed in recordable form and shall take any steps necessary to effectuate recordable (non-substantive) modifications to permit recordation.

IN WITNESS WHEREOF, this Agreement has been duly executed by Mortgagee as of the Effective Date.

WITNESSES:

PINNACLE BANK

Jamie McCloud  
Jamie McCloud

By: [Signature]  
Print Name: Chris Conrad  
Title: Vice President

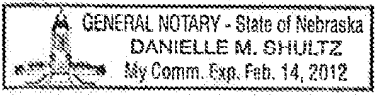
[Signature]  
Brett Michael

MORTGAGEE  
(SEAL)

STATE OF  
COUNTY OF

BEFORE ME, the undersigned authority, personally appeared Chris Conrad to me well known and known to me to be the individual described in and who executed the foregoing instrument as Vice President of PINNACLE BANK, and severally acknowledged to and before me that he/she executed such instrument as Vice President of said corporation and that said instrument is the free act and deed of said corporation.

WITNESS my hand and official seal this 14 day of December, 2011.

(SEAL) 

[Signature]  
Notary Public  
My Commission Expires:

IN WITNESS WHEREOF, this Agreement has been duly executed by Landlord as of the Effective Date.

WITNESSES:

[Signature]  
Brett Michael

[Signature]  
Danielle M Shultz

By: [Signature]  
Print Name: NARESH DEWAN  
Title: MANAGER

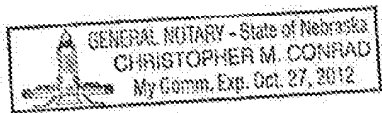
LANDLORD  
(SEAL)

STATE OF Nebraska  
COUNTY OF Douglas

BEFORE ME, the undersigned authority, personally appeared Naresh Dewan to me well known and known to me to be the individual described in and who executed the foregoing instrument as Manager of N&M Holdings LLC, and severally acknowledged to and before me that he/she executed such instrument as Manager of said corporation and that said instrument is the free act and deed of said corporation.

WITNESS my hand and official seal this 14<sup>th</sup> day of December, 2011.

(SEAL)



[Signature]  
Notary Public  
My Commission Expires:



IN WITNESS WHEREOF, this Agreement has been duly executed by Tenant as of the Effective Date.

WITNESSES:

Jessica Kasnik  
Andrew A. Spokas

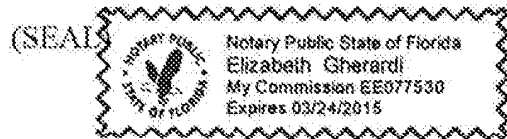
BURGER KING CORPORATION

By: Heiken S. Bell  
Print Name: Heiken S. Bell  
Title: Director, Senior Mktg.  
TENANT  
(CORPORATE SEAL)

STATE OF FLORIDA  
COUNTY OF MIAMI-DADE

BEFORE ME, the undersigned authority, personally appeared Heiken S. Bell to me well known and known to me to be the individual described in and who executed the foregoing instrument as DIRECTOR, SENIOR Mktg. of **BURGER KING CORPORATION**, a Florida corporation, and severally acknowledged to and before me that he/she executed such instrument as such Director, Senior Mktg. of said corporation and that said instrument is the free act and deed of said corporation.

WITNESS my hand and official seal this 9<sup>th</sup> day of Dec., 2011.



Elizabeth Gherardi  
Notary Public  
My Commission Expires:

## EXHIBIT "A"

### LEGAL DESCRIPTION

That portion of Lot 1, Block 1, Howard Williams Fifth Addition, an Addition to the City of Fremont, as surveyed, platted and recorded in Dodge County, Nebraska, described as follows:

Beginning at the Southeast corner of said Lot 1 monumented with a 5/8" rebar; thence North 89 degrees 31 minutes 10 seconds West (assumed bearings) for 241.72 feet along the South line of said Lot 1 to a 5/8" rebar; thence North 00 degrees 02 minutes 29 seconds East for 287.47 feet along a line that is parallel with and 237.00 feet East of the West line of said Lot 1 to a chiseled "x" on the South right of way line of East 23rd Avenue South; thence along said South right of way line for the following four (4) courses; 1) thence South 87 degrees 42 minutes 07 seconds East for 92.08 feet to a star drill hold with chiseled V; 2) thence along a curve to the right having a radius of 90.00 feet and a long chord bearing South 56 degrees 10 minutes 33 seconds East for 49.82 feet, for an arc length of 50.48 feet to a 1/2" rebar; 3) thence along a curve to the left having a radius of 91.00 feet and a long chord bearing South 64 degrees 51 minutes 01 seconds East for 76.50 feet, for an arc length of 78.95 feet to a 1/2" rebar; 4) thence along a curve to the right having a radius of 40.01 feet and a long chord bearing South 51 degrees 52 minutes 19 seconds East for 49.37 feet, for an arc length 53.20 feet to a 1/2" rebar on the West right of way line of Cedar Street; thence South 00 degrees 00 minutes 30 seconds East for 195.08 feet along said West right of way line to the point of beginning.