

# NOT AN OFFICIAL DOCUMENT

2023-539840  
12/05/2023 10:20 AM  
TOTAL FEES: 25.00  
BY: JLS  
PG #: 6  
RECORDED AS PRESENTED

STATE OF INDIANA  
LAKE COUNTY  
CLERK OF COURTS  
GINA FIMENTEL  
RECORDER

RECORDATION REQUESTED BY:  
CENTIER BANK  
600 EAST 84TH AVENUE  
MERRILLVILLE, IN 46410

**FILED**

Dec 05 2023 BDD  
PEGGY HOLINGA-KATONA  
LAKE COUNTY AUDITOR

WHEN RECORDED MAIL TO:  
CENTIER BANK  
600 EAST 84TH AVENUE  
MERRILLVILLE, IN 46410

SEND TAX NOTICES TO:  
BR2C PROPERTIES, LLC, AN INDIANA  
LIMITED LIABILITY COMPANY  
10769 BROADWAY # 356  
CROWN POINT, IN 46307-7316

NOTICE: THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE COLLATERAL BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

### SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT dated September 26, 2023 ("Agreement"), is made and executed among BR2C PROPERTIES, LLC, AN INDIANA LIMITED LIABILITY COMPANY, whose address is 10769 BROADWAY # 356, CROWN POINT, IN 46307-7316 ("Lender"); TEXAS ROADHOUSE HOLDINGS LLC, A KENTUCKY LIMITED LIABILITY COMPANY, whose address is 6040 DUTCHMANS LN, LOUISVILLE, KY 40295-3305 ("Tenant"); and CENTIER BANK, Business Banking Valparaiso, 600 E 84th Avenue, Merrillville, IN 46410 ("Lender").

**SUBORDINATED LEASE.** Tenant and Landlord have executed a lease dated April 14, 2022 of the property described herein (the "Lease"). The following information is the summary of the basic terms and conditions of the Subordinated Lease: Ground Lease Agreement between BR2C Properties, LLC, an Indiana Limited Liability Company and Texas Roadhouse Holdings LLC, a Kentucky Limited Liability Company dated April 14, 2022 as evidenced by Memorandum of Lease between BR2C Properties, LLC, an Indiana Limited Liability Company and Texas Roadhouse Holdings LLC, a Kentucky Limited Liability Company dated February 22, 2023 recorded March 9, 2023 as Document Number: 2023-007259 in the office of the recorder of Lake County, Indiana.

**REAL PROPERTY DESCRIPTION.** The Lease covers 701 E 109TH PL, CROWN POINT, IN 46307 of the following described real property (the "Real Property") located in LAKE County, State of Indiana:

LOT 4 OF THE PLAT OF BEACON HILL SOUTH, AN ADDITION TO THE CITY OF CROWN POINT, LAKE COUNTY, INDIANA, RECORDED IN PLAT BOOK 116, PAGE 24, IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA.

The Real Property or its address is commonly known as 701 E 109TH PL, CROWN POINT, IN 46307.

**SUPERIOR INDEBTEDNESS.** Lender has extended or has agreed to extend the following described financial accommodations to BR2C PROPERTIES, LLC, secured by the Real Property (the "Superior Indebtedness"):

Promissory Note dated September 26, 2023 in the original principal amount of \$1,250,000.00 from BR2C Properties, LLC to Lender, together with all renewals of, extensions of, modifications of, refinancing of, consolidation of, and substitutions for the promissory note or agreement. The maturity date of the Note is September 26, 2028.

**LENDER'S LIEN.** The Superior Indebtedness is or will be secured by the Real Property and evidenced by a mortgage, dated September 26, 2023, from Landlord to Lender (the "Lender's Lien") and recorded in LAKE County, State of Indiana as follows:

Collateral including but not limited to, Mortgage dated September 26, 2023 recorded on a Certain Date under a Certain Document Number in the Office of the Recorder of Lake County, Indiana and Assignment of Rents dated September 26, 2023 recorded on a Certain Date under a Certain Document Number in the Office of the Recorder of Lake County, Indiana.

As a condition to the granting of the requested financial accommodations, Lender has required that the Lien created by Lender's Lien be and remain superior to the Subordinated Lease.

**REQUESTED FINANCIAL ACCOMMODATIONS.** Landlord wants Lender to provide financial accommodations to BR2C PROPERTIES, LLC in the form of the Superior Indebtedness. Landlord represents and acknowledges to Lender that Landlord will benefit as a result of these financial accommodations from Lender to BR2C PROPERTIES, LLC, and Landlord acknowledges receipt of valuable consideration for entering into this Agreement.

**IN EXCHANGE FOR GOOD AND VALUABLE CONSIDERATION, THE SUFFICIENCY AND RECEIPT OF WHICH ARE HEREBY ACKNOWLEDGED, LENDER, LANDLORD, AND TENANT HEREBY AGREE AS FOLLOWS:**

NOTICE  
Accommodation

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**SUBORDINATION.** Notwithstanding anything in the Lease to the contrary, the parties acknowledge and agree that the Lease shall be subject and subordinate in lien to Lender's Lien, and to all renewals, modifications, consolidations, replacements, and extensions thereof. Nothing in this Agreement shall entitle Lender to share in or receive any insurance proceeds with respect to the insurance of Tenant procured and maintained pursuant to the Lease.

**NON-DISTURBANCE.** So long as the Lease is in full force and effect and Tenant is not in default under the Lease beyond any applicable cure period, Lender shall not name or join Tenant as a defendant in any exercise of Lender's rights and remedies arising upon a default of the Loan under the Note and/or under Lender's Lien unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or pursuing such rights and remedies. In the latter case, Lender 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 rights under the Lease or this Agreement in such action. If the Lease has not been terminated, then, when Lender succeeds to the interest of Landlord, the Lender shall not terminate or disturb Tenant's possession of Tenant's premises under the Lease, except in accordance with the terms of the Lease and this Agreement.

**ATTORNMENr.** If Lender shall succeed to the interest of the Landlord under the Lease, and the Lease shall not have expired or been terminated in accordance with the terms of the Lease or this Agreement, Tenant shall, from and after such event, attorn to Lender, all rights and obligations under the Lease to continue as though the interest of Landlord had not terminated. Such attornment shall be effective and self-operative without the execution of any further instrument on the part of the parties hereto. Tenant agrees, however, to execute and deliver at any time and from time to time, upon the request of Lender, any instrument or certificate which, in the sole judgment of Lender, may be necessary or appropriate in any such foreclosure proceeding or otherwise to evidence such attornment.

**NO LIABILITY FOR LENDER.** Lender in the event of attornment shall have the same remedies in the event of any default by Tenant (beyond any period given Tenant to cure such default) in the payment of annual base rent or additional rent or in the performance of any of the terms, covenants, and conditions of the Lease on Tenant's part to be performed that are available to Landlord under the Lease. Tenant shall have the same remedies against Lender for the breach of an agreement contained in the Lease that Tenant might have had against Landlord if Lender had not succeeded to the interest of Landlord; provided, however, that Lender shall not be:

- (A) Liable for any act or omission of or any claims against any prior landlord, including Landlord; or
- (B) Subject to any offsets or defenses which Tenant might have against any prior landlord, including Landlord; or
- (C) Bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord, including Landlord; or
- (D) Liable for any sum that any prior landlord, including Landlord, owed to Tenant, including without limitation any security deposit, unless the amount owed was actually delivered to Lender; or
- (E) Liable for any breach of representation or warranty of any prior landlord, including Landlord.

**ACKNOWLEDGMENT AND AGREEMENT BY LANDLORD.** Landlord, as landlord under the Lease, acknowledges and agrees for itself and its heirs, successors and assigns to each of the following:

- (A) This Agreement does not in any way release Landlord from its obligations to comply with the terms, provisions, conditions, covenants, agreements and clauses of the Note, Lender's Lien or any other documents executed in connection with the Loan.
- (B) In the event of a default under the Note, or any of the other documents executed in connection with the Loan, Landlord hereby consents to Tenant's attornment to Lender and, upon such event, Tenant shall pay all rent and all other sums due under the Lease to Lender as provided in the Lease.

**COUNTERPART LANGUAGE.** This document may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Agreement:

**Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Attorneys' Fees; Expenses.** If Lender institutes any suit or action to enforce any of the terms of this Agreement, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees and title insurance, to the extent permitted by applicable law. Landlord also will pay any court costs, in addition to all other sums provided by law.

**Authority.** Any person who signs this Agreement on behalf of Landlord and Tenant represents and warrants that he or she has authority to execute this Agreement.

**Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be

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used to interpret or define the provisions of this Agreement.

**Counterparts.** This Agreement may be executed in multiple counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts, taken together, shall constitute one and the same Agreement.

**Governing Law.** This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Indiana without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of Indiana.

**Choice of Venue.** If there is a lawsuit, Landlord agrees upon Lender's request to submit to the jurisdiction of the courts of Lake County, State of Indiana.

**Notices.** Any notice required to be given under this Agreement shall be given in writing, and, shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address.

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing among Lender, Landlord, and Tenant shall constitute a waiver of any of Lender's rights or of any of Landlord's and/or Tenant's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

**Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

**Successors.** This Agreement shall extend to and bind the respective heirs, personal representatives, successors and assigns of the parties to this Agreement.

**Waive Jury.** All parties to this Agreement hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

EACH PARTY TO THIS AGREEMENT ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS AGREEMENT, AND EACH PARTY AGREES TO ITS TERMS. THIS AGREEMENT IS DATED SEPTEMBER 26, 2023.

LANDLORD:

BR2C PROPERTIES, LLC, AN INDIANA LIMITED LIABILITY COMPANY

By:   
DENNIS CAUDILL, Manager of BR2C PROPERTIES, LLC, AN INDIANA LIMITED LIABILITY COMPANY

LENDER:

CENTER BANK

X   
Gregory Gottschalk, Vice President

TENANT:

TEXAS ROADHOUSE HOLDINGS LLC, A KENTUCKY LIMITED LIABILITY COMPANY

By: Texas Roadhouse, Inc., It's Manager

By:   
Name: Russell Arbuckle  
Title: Senior Director of Real Estate

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## LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF IN  
COUNTY OF PORTER



**WENDY WHITE FOSTER**  
Commission Number 707645  
My Commission Expires  
December 29, 2025

On this 28 day of NOV, 2023, before me, the undersigned Notary Public, personally appeared **DENNIS CAUDILL**, Manager of **BRZO PROPERTIES, LLC, AN INDIANA LIMITED LIABILITY COMPANY**, and known to me to be a member or designated agent of the limited liability company that executed the Subordination, Non-Disturbance and Assignment Agreement and acknowledged the Agreement to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this Agreement and in fact executed the Agreement on behalf of the limited liability company.

By Wendy White Foster Residing at PORTER IN  
Notary Public in and for the State of IN My commission expires 12/29/25

## LENDER ACKNOWLEDGMENT

STATE OF IN  
COUNTY OF PORTER



**WENDY WHITE FOSTER**  
Commission Number 707645  
My Commission Expires  
December 29, 2025

On this 28 day of NOV, 2023, before me, the undersigned Notary Public, personally appeared **Gregory Gottschalk** and known to me to be the **Vice President**, authorized agent for **CENTIER BANK** that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of **CENTIER BANK**, duly authorized by **CENTIER BANK** through its board of directors or otherwise, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this said instrument and in fact executed this said instrument on behalf of **CENTIER BANK**.

By Wendy White Foster Residing at PORTER IN  
Notary Public in and for the State of IN My commission expires 12/29/25

## LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

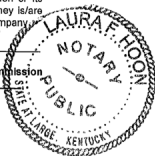
STATE OF KY  
COUNTY OF Jefferson

On this 15<sup>th</sup> day of November, 2023, before me, the undersigned Notary Public, **Russell Arbuckle** personally appeared

and known to me to be (s) member(s) or designated agent(s) of the limited liability company that executed the Subordination, Non-Disturbance and Assignment Agreement and acknowledged the Agreement to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes therein mentioned, and on oath stated that he or she/they is/are authorized to execute this Agreement and in fact executed the Agreement on behalf of the limited liability company.

By James F. Noon Residing at Prospect, KY  
Notary Public in and for the State of My commission expires \_\_\_\_\_

**Laura F. Hoon**  
Notary Public, State at Large, KY  
My commission expires Feb. 28, 2024  
Notary ID # KYNP993



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I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law (GREG GOTTSCHALK, Vice President).

Center Bank 600E 54th Ave Merrillville in 46410

This Subordination, Non-Disturbance and Attornment Agreement was prepared by: GREG GOTTSCHALK, Vice President

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Property of Lake County Recorder

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## RECORDING PAGE

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Property of Lake County Recorder