

**SUBORDINATION, NON-DISTURBANCE  
AND  
ATTORNMENMENT AGREEMENT**

In order to induce **ALIANNT BANK** (hereinafter, along with its successors and assigns "Lender") to make a loan to or to continue to make a loan (the "Loan") in the original principal amount of \$ 1,407,000.00 to **RCJ HOME BUILDING, INC.** (hereinafter jointly severally and collectively "Lessor") secured by a mortgage (the "Mortgage") on the property described on Exhibit "A" attached hereto (hereinafter "Real Estate"), and for ten dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned, **BRUNO'S MEMORIAL CLASSIC FOUNDATION, INC.** (hereinafter "Lessee"), Lender and Lessor do hereby agree as follows:

1. **Agreements of Lessee.** Lessee hereby agrees and certifies to Lender the following:

(a) Lessee leased the Real Estate from Lessor in accordance with the terms of a Lease Agreement dated June 23, 2004 (hereinafter "Lease"). The Lease contains a purchase option (the "Purchase Option") which grants to Lessee the right, at its option, to purchase all or portions of the Real Estate.

(b) A true and correct copy of the Lease, along with all amendments, and modifications, thereto is recorded as Instrument 20040802000426450 in the Office of the Judge of Probate of Shelby County, Alabama.

(c) The Lease has not been modified, changed, altered, assigned, supplemented or amended in any respect.

(d) The Lease is valid and in full force and effect on the date hereof.

(e) The Lease (and the Escrow Agreement referenced therein) represent the entire agreements between the Lessor and Lessee with respect to the Real Estate.

(f) Lessee has not assigned the Lease to any party or granted any rights therein.

(g) To the best of Lessee's knowledge, Lessor, as of this date, is not in default under the Lease and no event has occurred and no condition exists which, with the giving of notice or the lapse of time or both, would constitute a default by Lessor or Lessee under the Lease; and to the best knowledge of Lessee, Lessee has no existing defenses or offsets against the enforcement of the Lease by Lessor.

(h) Lessee is current with all rental payments due under the Lease and has not pre-paid any rental payments except as stated in the Lease and the Escrow Agreement referenced therein.

(i) Subject to Lender's compliance with the terms and provisions of Paragraph 2 below, Lessee consents to the Mortgage being granted on the Real Estate to Lender, and hereby subordinates its rights under the Lease to the Mortgage.



## 2. **Nondisturbance.**

(a) So long as Lessee is not in default (after the giving of any applicable notices and the expiration of any applicable cure periods set forth in the Lease), in (i) the payment of any sums payable under the Lease or (ii) the performance of any of the terms, covenants or provisions of the Lease (items (i) and (ii) are hereinafter collectively referred to as a “Lessee Default”), Lessee’s rights and privileges under the Lease, including, specifically, the right to exercise the Purchase Option under the Lease, and Lessee’s possession, use, enjoyment and occupancy of the Real Estate shall not be disturbed or interfered with by Lender.

(b) Upon and after a foreclosure of the Mortgage, the granting of any deed in lieu of foreclosure, or any other action by Lender under the documents evidencing or securing the Loan which results in Lender acquiring title to or any interest in the Real Estate or the Lease, and for so long as no Lessee Default has occurred which has not been cured within any applicable cure period set forth in the Lease, then (i) Lender shall succeed to Lessor’s interests in the Lease, including the Purchase Option, subject to all of the terms and provisions of the Lease, (ii) the Lease, including the Purchase Option, and the Lessee’s rights and privileges thereunder shall not be affected or disturbed, but shall continue in full force and effect, (iii) Lessee shall be entitled to the lawful, quiet and peaceful possession and use of the Real Estate and shall have the right to enjoy all of the rights and privileges set forth in the Lease, including the Purchase Option, without any hindrance, ejection, molestation or interference by any person whatsoever, and (iv) Lender shall be bound to Lessee under all of the terms, covenants, conditions of the Lease, including the Purchase Option, except that, in no event, shall Lender be:

- (1) Bound by amendments or modifications to the Lease made without the consent of Lender; or
- (2) Liable for any act or omission of any prior lessor under the Lease (including Lessor).

(c) In any action or proceeding brought by Lender to enforce its rights upon the occurrence of any default by Lessor under the Mortgage or any other documents evidencing or securing the Loan, Lender agrees not to join Lessee as a party defendant, unless required by applicable law.

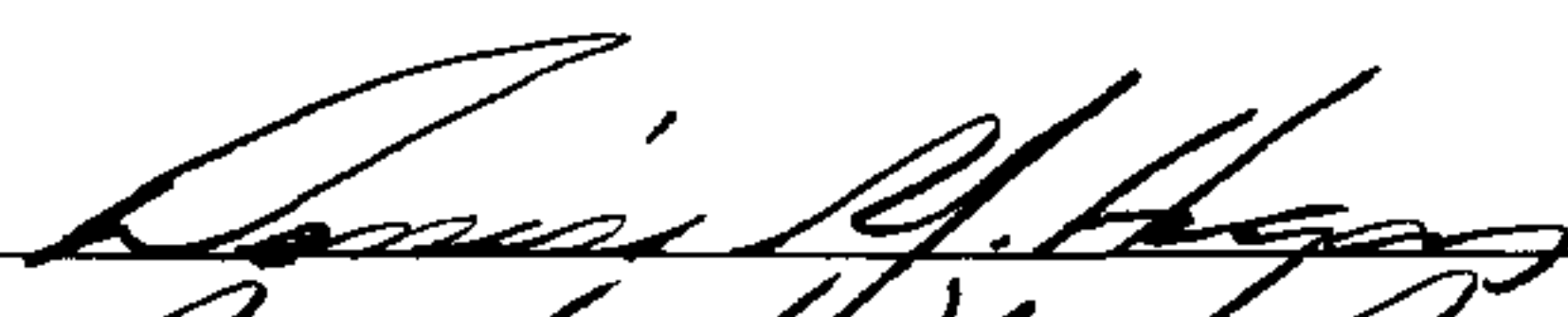
4. **Attornment.** Upon and after a foreclosure of the Mortgage, any conveyance or deed in lieu thereof, or the taking of any other action by Lender under any of the documents evidencing or securing the Loan which results in Lender acquiring title to or any interest in the Real Estate or the Lease, Lessee shall be bound to Lender under and pursuant to all of the terms, covenants and other provisions of the Lease for the balance of the term thereof with the same force and effect as if Lender were the “lessor” named in the Lease and Lessee does hereby agree to (a) attorn to Lender as its landlord under the Lease, such attornment to be effective and self- operating immediately upon the foreclosure of the Mortgage or the occurrence of any other events described in this Paragraph 4 which results in Lender acquiring any interest in the Real Estate or the Lease, without the execution of any further instrument by any of the parties to this Agreement and (b) instruct the Title Company, as defined in the Lease, to make any and all future payments due on the Lease to Lender.

5. **Exercise of Purchase Option.** In the event Lessee desires to purchase any (or all) of the lots making up the Real Estate in accordance with the terms of the Lease, Lessee shall cause the funds being paid for such lots to be paid jointly to Lessor and Lender.

6. **Miscellaneous.** The unenforceability or invalidity of any provision or provisions of this Agreement shall not render any other provision herein contained unenforceable or invalid.

**IN WITNESS WHEREOF**, we have hereunto set our hands and seals this 26 day of July, 2004.

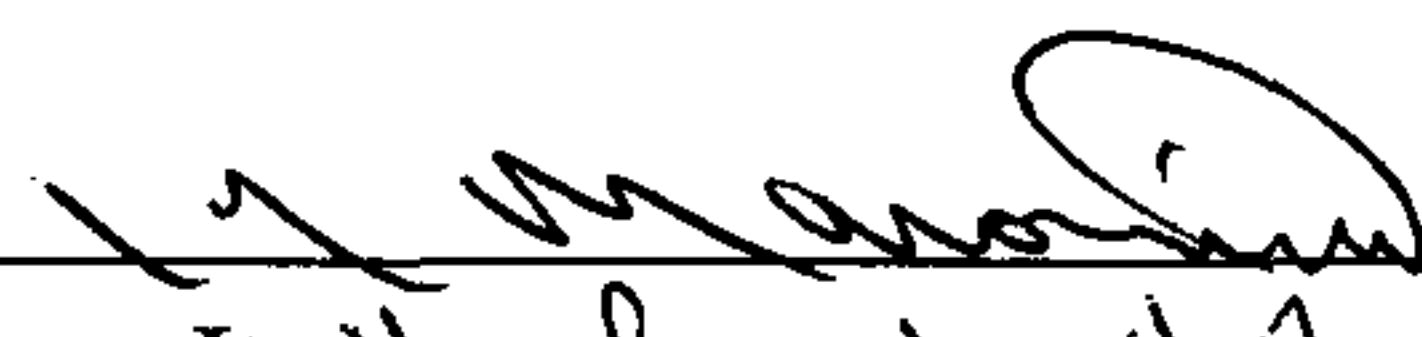
LENDER: **ALIAANT BANK**

By:   
Its: Assistant Vice President

LESSOR: **RCJ HOME BUILDING, INC.**

By:   
Its: President

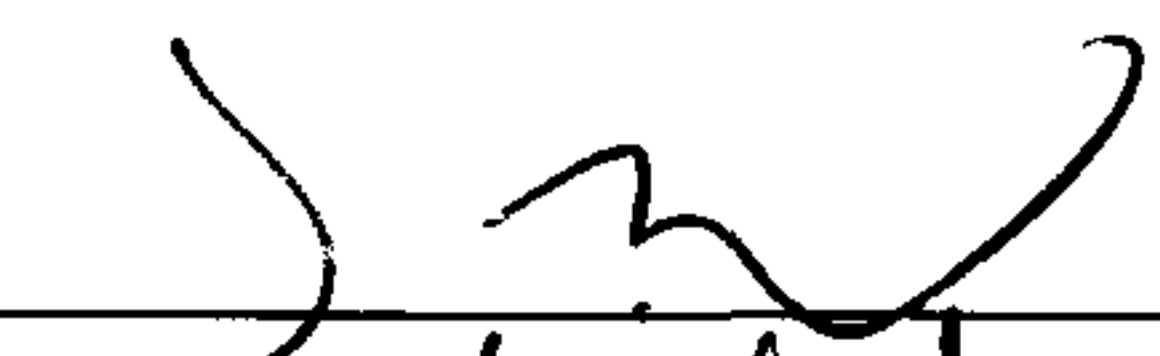
LESSEE: **BRUNO'S MEMORIAL CLASSIC FOUNDATION, INC.,** an Alabama non-profit corporation

By:   
Its: Vice President/Tournament Director

**ACKNOWLEDGED AND CONSENTED TO:**

**DANIEL OAK MOUNTAIN LIMITED PARTNERSHIP**

By: DANIEL REALTY INVESTMENT CORPORATION-  
OAK MOUNTAIN, Its General Partner

BY:   
Its: Assistant Sec.



STATE OF ALABAMA

COUNTY OF JEFFERSON

I, the undersigned, a Notary Public, in and for said County, in said State, hereby certify that Denise Hagan, whose name as Asst Vice Pres of ALIANT BANK, an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she as such officer and with full authority executed the same voluntarily, as an act of said corporation, acting in his capacity as aforesaid.

Given under my hand and official seal, this 20 day of July, 2004.

  
NOTARY PUBLIC

My Commission expires: 6/17/07

STATE OF ALABAMA

COUNTY OF JEFFERSON

I, the undersigned, a Notary Public, in and for said County, in said State, hereby certify that Roy Pearce, whose name as President of RCJ HOME BUILDING, INC., an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she as such officer and with full authority executed the same voluntarily, as an act of said corporation, acting in his capacity as aforesaid.

Given under my hand and official seal, this 20 day of July, 2004.

  
NOTARY PUBLIC

My Commission expires: 6/17/07

STATE OF ALABAMA

COUNTY OF JEFFERSON

I, the undersigned, a Notary Public, in and for said County, in said State, hereby certify that John Masoch, whose name as Vice President / Joint Director of BRUNO'S MEMORIAL CLASSIC FOUNDATION, INC., an Alabama non-profit corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she as such officer and with full authority executed the same voluntarily, as an act of said corporation, acting in his capacity as aforesaid.

Given under my hand and official seal, this 9 day of July, 2004.

Blenda C. Jacob  
NOTARY PUBLIC  
My Commission expires: \_\_\_\_\_

NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: Mar 10, 2007  
BONDED THRU NOTARY PUBLIC UNDERWRITERS

## EXHIBIT "A"

### **PARCEL 1:**

Lots 57, according to the Survey of Greystone, 6<sup>th</sup> Sector, as recorded in Map Book 17, page 54 A, B, and C, in the Office of the Judge of Probate of Shelby County, Alabama; being situated in Shelby County, Alabama.

### **PARCEL 2:**

Lots 1 through 9, inclusive, according to the Survey of Greystone, 6<sup>th</sup> Sector, Phase I, as recorded in Map Book 33 page 57, in the Office of the Judge of Probate of Shelby County, Alabama; being situated in Shelby County, Alabama.

THIS INSTRUMENT PREPARED BY AND AFTER  
RECORDATION SHOULD BE RETURNED TO:

William B. Hairston, III  
ENGEL, HAIRSTON & JOHANSON, P.C.  
109 North 20th Street, Fourth Floor  
P.O. Box 11405  
Birmingham, Alabama 35202  
(205) 328-4600

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