


After recording please  
return to preparer:

ADELE M. VESPA  
Assistant General Counsel  
HUDDLE HOUSE, INC.  
2969 E. Ponce de Leon Ave.  
Decatur, Georgia 30030  
(404) 377-5700

STATE OF GEORGIA

COUNTY OF DEKALB

  
20041123000642720 Pg 1/11 41.00  
Shelby Cnty Judge of Probate, AL  
11/23/2004 08:50:00 FILED/CERTIFIED

NON-DISTURBANCE, SUBORDINATION AND ATTORNMENT AGREEMENT

This Agreement, made and entered into this the 18 day of October, 2004, by and among CENTRAL STATE BANK, an Alabama corporation (hereinafter known as "**Mortgagee**"), P&J INVESTMENTS, INC., an Alabama corporation (hereinafter known as "**Tenant**"), JOHN & PATRICA ROPER, an individual resident of the state of Alabama (hereinafter known as "**Landlord**"), and HUDDLE HOUSE, INC., a Georgia corporation, (hereinafter known as "**Optionee**").

WITNESSETH:

WHEREAS, Landlord and Tenant desire to enter into a Lease Agreement covering the real property on the legal description attached hereto as Exhibit "A"; and

WHEREAS, Mortgagee holds a security interest in said real property; and

WHEREAS, Tenant and Optionee will not complete this transaction and subordinate their respective interest to Mortgagee in the absence of the execution of this Agreement;

NOW THEREFORE, the parties hereto, for and in consideration of the promises herein contained, the covenants expressed, for the purpose of inducing Tenant to complete its Lease Agreement with Landlord; and for and in consideration of Ten (\$10.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, do hereby covenant and agree as follows:

1. DEFINITIONS.

**"Landlord"** as used in this Agreement shall include the Landlord, its heirs, representatives, assigns, and successors in title to Premises.

**"Optionee"** as used in this Agreement shall include the Optionee, its successors and assigns.

**"Tenant"** as used in this Agreement shall include the Tenant, its heirs and representatives, and if the Lease shall be validly assigned or sublet, shall include successors and assigns of the Tenant.

Landlord and Tenant shall be deemed to include male and female, singular and plural, individuals, corporations, partnership, or other artificial entities, as the context so requires.

2. NON-DISTURBANCE. So long as no event of default on the part of the Tenant under the Lease shall exist which would entitle Landlord to terminate the Lease, or if such an event of default shall exist, so long as Tenant's time to cure same shall not have expired, (a) Mortgagee will not at any time join Tenant as a party defendant in any action or proceeding to foreclose the security interest or any extension, renewal, consolidation or replacement of same, unless such joinder is a prerequisite to the institution or prosecution of any such action or proceeding, and (b) the term of the lease shall not be terminated or modified in any respect whatsoever, Tenant's right of possession to the demised premises and its other rights arising out of the Lease will all be fully recognized and protected by Mortgagee and shall not be disturbed, cancelled, terminated or otherwise affected by reason of the security interest or any action or proceeding instituted by Mortgagee to foreclose the security interest or any extension, renewal, consolidation or replacement of same, irrespective of whether Tenant shall have joined in any such action or proceeding.

3. PURCHASE OPTION. INTENTIONALLY OMITTED.

4. ATTORNMENT. In the event that Mortgagee takes possession of the Entire Premises, either as the result of foreclosure of the security interest or accepting a deed to the Entire Premises in lieu of foreclosure, or otherwise, or the Entire Premises shall be purchased at such foreclosure by a third party, Tenant shall attorn to Mortgagee or such first

party as its landlord under the Lease and Mortgagee or such third party will recognize and accept Tenant as its tenant thereunder, whereupon, the Lease shall continue in full force and effect as direct lease between Mortgagee or such third party and Tenant for the full term thereof, together with all extensions and renewals thereof, and Mortgagee or such third party shall thereafter assume and perform all of Landlord's obligations, as Landlord under the Lease with the same force and effect as if Mortgagee or such third party were originally named therein as Landlord; provided, however, that if conflicting claims should be made to the rent payable under the Lease, Tenant shall have the right to institute an interpleader suit for the purpose of determining who is entitled to payment of such rent and to pay the rent in accordance with the judicial determination rendered in such proceeding.

5. SUBORDINATION. Subject to and upon all the terms and conditions set forth in this Agreement, Tenant hereby subordinates its right, title and interest by virtue of the Lease to the right, title and interest of Mortgagee by virtue of the security interest and all renewals and extensions thereof.

6. DEFAULT OF LANDLORD TO TENANT. Tenant agrees to concurrently furnish Mortgagee by certified mail with copies of all notices and demands served by Tenant upon Landlord. Tenant further agrees that with respect to any notice of default served upon Landlord, if Landlord shall have failed to cure such default within the time provided for therein, then Mortgagee shall have an additional sixty (60) days within which to cure such default, or if such default cannot be cured within that time, then such additional time as may be necessary if within such sixty (60) days Mortgagee has commenced and is diligently pursuing the remedies necessary to cure such default (including but not limited to commencement of foreclosure proceedings, if necessary to effect such cure), in which event the Lease shall not be terminated while such remedies are being so diligently pursued.

7. DEFAULT OF LANDLORD TO MORTGAGEE. Landlord agrees that the rent payable under the Lease shall be paid directly by Tenant to Mortgagee upon the occurrence of a default by Landlord under the security deed, deed of trust or mortgage. After notice is given by Mortgagee to Tenant that the rent under the Lease shall be paid to Mortgagee, Tenant shall pay to Mortgagee (or in accordance with the directions of Mortgagee), all rent and other sums then due and thereafter to become due to Landlord under the Lease; subject, however, to the terms of payment under

the Lease and to the rights of Tenant under the Lease. Tenant shall have no responsibility to ascertain whether or not such demand by Mortgagee is permitted under the Security Deed. Landlord hereby waives any claim or demand it may now or hereafter have against Tenant by reason of such payment to Mortgagee. Landlord agrees that any payment made to Mortgagee by Tenant pursuant to the terms of this Paragraph shall discharge the obligations of Tenant, under the Lease or otherwise, to make such payment to Landlord.

8. MORTGAGEE AS SUCCESSOR IN INTEREST. In the event that Mortgagee shall succeed to the interest of Landlord under the Lease, Mortgagee shall not be:

liable for any act or omission of Landlord; or

liable for the return of any security deposit; or

subject to any offsets or defenses which Tenant might have against Landlord; or

bound by any rent or additional rent which Tenant might have paid for more than the current month to Landlord; or

bound by any amendment or modification of the Lease made without its consent.

9. POSITION OF HUDDLE HOUSE, INC. This Agreement shall inure to the benefit of Huddle House, Inc., its successors and assigns, in the event it should ever become the Tenant on said real property.

10. CAPTIONS. The captions used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of this Agreement, nor in any way affect this Agreement.

11. NOTICE. If at any time after the execution of this Lease, it shall be required or become necessary or convenient for one of the parties hereto to serve any notice demand or communication upon the party, such notice, demand or communication shall be in writing, signed by the party serving the same, deposited in registered or certified United States Mail, return receipt requested, postage prepaid, or by a reputable commercial overnight carrier that provides a receipt and;

if intended for **Landlord**, shall be addressed to:

**JOHN & PATRICA ROPER**  
**P.O. Box 702**  
**Montevallo, Alabama 35115**  
**(205) 665-2717**

if intended for **Tenant**, shall be addressed to:

**P&J INVESTMENTS, INC.**  
**P.O. Box 206**  
**808 Main St.**  
**Montevallo, Alabama 35115**  
**(205) 288-1089**

if intended for **Mortgagee**, shall be addressed to:

**CENTRAL STATE BANK**  
**P.O. Box 180**  
**Montevallo, Alabama 35115**  
**(205) 668-0711**

if intended for **Optionee** shall be addressed to:

**HUDDLE HOUSE, INC.**  
**2969 E. Ponce de Leon Avenue**  
**Decatur, Georgia 30030**  
**(404) 377-5700**

or, to such other addresses as any party may have furnished to the other in writing as a place for service of notice.

12. ENTIRE AGREEMENT. This Lease contains the entire agreement of the parties with regard to the subordination of the Lease and the interest of Tenant thereunder to the lien or charge in favor of Mortgagee pursuant to security deed, deed of trust, mortgage or UCC-1 Financing Statement, and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force and effect. No failure of any party to exercise any power given such party hereunder, or to insist upon strict compliance by any other party of any obligation hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of such party's right to demand exact compliance with the terms hereof.

13. AMENDMENTS. No term or provision of this Agreement shall be modified or amended except in writing and signed by the party against whom enforcement of any such modification or amendment is sought. This Agreement shall not be modified by the parties without the express written consent of Huddle House, Inc.

14. SEVERABILITY. If any provision of this Agreement shall be declared invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect.

15. APPLICABLE LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each individual party hereto has caused his or her hand and seal to be affixed and each corporate, partnership or other legal entity hereto have caused its duly authorized officers, partners, or agents to execute and affix its seal to this instrument on the day and year first above written.

TENANT

**P&J INVESTMENTS, INC.**, an  
Alabama corporation

BY: John P. Roper  
JOHN P. ROPER, President

ATTEST: Patricia G. Roper  
PATRICIA G. ROPER, Secretary

(CORPORATE SEAL)

STATE OF GEORGIA

COUNTY OF ~~DEKALB~~ Gwinnett

I, ESTHER MOSZKOWICZ, Notary Public in and for said County and State, hereby certify that JOHN P. ROPER, whose name as President of P&J INVESTMENTS, INC., an Alabama corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that being informed of the contents of the conveyance, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this 18<sup>th</sup> day of October, 2004.

My commission expires:

12-9-2007

[NOTARY SEAL]

Esther Moszkowicz  
NOTARY PUBLIC

LANDLORD

John P. Roper (SEAL)  
JOHN P. ROPER, individually

Patricia G. Roper (SEAL)  
PATRICIA G. ROPER, individually

STATE OF ALABAMA

COUNTY OF Shelby

I, L. Michele K. Stamps, Notary Public in and for said County and State, hereby certify that JOHN and PATRICA ROPER, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that being informed of the contents of the conveyance, he/she executed the same voluntarily.

Given under my hand this 17<sup>th</sup> day of October, 2004.

My commission expires: 5/17/07

\_\_\_\_\_

[NOTARY SEAL]

L. Michele K. Stamps  
NOTARY PUBLIC

MORTGAGEE

CENTRAL STATE BANK, an Alabama corporation

BY: Carlene R. Hadaway  
NAME: Carlene R. Hadaway  
TITLE: Senior Vice President

{CORPORATE SEAL}

STATE OF ALABAMA

COUNTY OF SHELBY

I, Sharon Anderson, Notary Public in and for said County and State, hereby certify that Carlene R. Hadaway, whose name as Senior Vice President of CENTRAL STATE BANK, an Alabama corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that being informed of the contents of the conveyance, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this 7th day of October, 2004.

My commission expires:

MY COMMISSION EXPIRES MARCH 12, 2007

[NOTARY SEAL]

Sharon Anderson  
NOTARY PUBLIC

OPTIONEE

**HUDDLE HOUSE, INC.**

a Georgia corporation

BY:

Philip Greifeld  
PHILIP M. GREIFELD, President

ATTEST:

Claudia Koepfel Levitas  
CLAUDIA KOEPPLE LEVITAS,  
Secretary

(CORPORATE SEAL)

STATE OF GEORGIA

COUNTY OF ~~DEKALB~~

Gwinnett

I, Esther Moszkowicz, Notary Public in and for said County and State, hereby certify that PHILIP M. GREIFELD, whose name as President of HUDDLE HOUSE, INC., a Georgia corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that being informed of the contents of the conveyance, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this 18<sup>th</sup> day of October, 2004.

My commission expires:

12-9-2007

[NOTARY SEAL]

Esther Moszkowicz  
NOTARY PUBLIC

**EXHIBIT "A"**

A parcel of land lying in the Northeast Quarter of Section 3, Township 24 North, Range 12 East, Shelby County, Alabama and being more particularly described as follows:

Commence at the southeast corner of the Southwest Quarter of the Northeast Quarter of said Section 3, thence North 00 degrees 51 minutes 03 seconds East a distance of 721.06 feet to a point on the northerly right of way of Alabama Highway 25; thence North 81 degrees 47 minutes 44 seconds West along said northerly right of way a distance of 547.75 feet to a ½" rebar set and the Point of Beginning; thence continue North 81 degrees 47 minutes 44 seconds West along said northerly right of way a distance of 145.39 feet to an iron pin found; thence North 00 degrees 35 minutes 23 seconds East a distance of 235.02 feet to an iron pin found; thence South 81 degrees 25 minutes 54 seconds East a distance of 145.36 feet to a ½" rebar set; thence South 00 degrees 33 minutes 12 seconds West a distance of 234.11 feet to the Point of Beginning.

According to the survey of Rodney Shiflett, dated April 4, 2004