


This Instrument Prepared By and Upon

Recordation Return to:
Stephen P. Leara, Esq.
Wallace, Jordan, Ratliff & Brandt, L.L.C.
800 Shades Creek Parkway, Suite 400
Birmingham, Alabama 35209

5)



20030616000374590 Pg 1/7 32.00
Shelby Cnty Judge of Probate, AL
06/16/2003 10:00:00 FILED/CERTIFIED

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement") executed between **BANK OF ALABAMA**, an Alabama state banking corporation ("Mortgagee"), and **SOUTH TACALA, LLC**, an Alabama limited liability company ("Tenant").

WITNESSETH:

WHEREAS, Tacalera, LLC, an Alabama limited liability company ("Landlord"), has entered into a certain lease ("Lease") with Tenant dated May 15, 2003, relating to certain premises located in the County of Shelby, State of Alabama ("Premises"), said Premises being more particularly described in said Lease and being situated on the real property described in EXHIBIT A attached hereto and made a part hereof; and

WHEREAS, Mortgagee has committed to make loans to Landlord in the aggregate amount up to the principal amount of Eight Hundred Eighty-Two Thousand One Hundred Sixty-Two and No/100 Dollars (\$882,162.00), to be secured by certain Mortgage and Security Agreement (the "Mortgage") of even date herewith, covering the Premises, which Mortgage will be recorded simultaneously herewith in the Office of the Judge of Probate of Shelby County, Alabama;

NOW, THEREFORE, it is mutually agreed as follows:

1. To the extent that Tenant's rights and entitlements under the Lease are not diminished or otherwise affected, and except as provided in this Agreement, the Lease is and shall be subject and subordinate to the lien of the Mortgage and to all renewals, modifications, consolidations, replacements and extensions of the Mortgage.

2. In the event of foreclosure of the Mortgage or should Mortgagee obtain title by deed in lieu thereof, or otherwise, Mortgagee, for itself, its successors or assigns (which shall include any persons acquiring title by voluntary deed, assignment or other disposition or transfer in lieu of foreclosure), agrees that Tenant shall not be disturbed in its quiet use, possession and occupancy of the Premises in accordance with the terms and provisions of the Lease, so long as Tenant is not in material default under the Lease beyond any applicable notice and cure period. Mortgagee agrees not to name Tenant as a party defendant in any foreclosure action.

3. Tenant agrees to attorn to: (a) Mortgagee when in possession of the Premises; (b) a receiver appointed in an action or proceeding to foreclose the Mortgage or otherwise; or (c) to

any party acquiring title to the Premises as a result of foreclosure of the Mortgage or deed in lieu thereof. Tenant further covenants and agrees to execute and deliver, upon request of Mortgagee, or its assigns, an appropriate agreement of attornment, in form and content reasonably acceptable to Tenant and Mortgagee (but which shall not amend the terms of the Lease or otherwise diminish Tenant's rights thereunder) with any subsequent titleholder of the Premises.

4. So long as the Mortgage on the Premises remains outstanding and unsatisfied, Tenant will deliver to Mortgagee a copy of all notices of default given to Landlord by Tenant. At any time before the rights of Landlord shall have been forfeited or adversely affected because of any default under the Lease as therein provided, Mortgagee shall have the right (but not the obligation) to cure such default within the same period of time as is allowed Landlord under the Lease.

5. If Mortgagee shall succeed to the interest of Landlord under the Lease, Mortgagee shall be bound to Tenant under all the terms, covenants and conditions of the Lease, and Tenant shall, from and after Mortgagee's succession to the interest of Landlord under the Lease, have the same remedies against Mortgagee for the breach of an agreement contained in the Lease that Tenant might have had under the Lease against Landlord if Mortgagee had not succeeded to the interest of Landlord; provided further, however, that Mortgagee shall not be:

(a) liable for any warranty, act or omission of any prior landlord (including Landlord), except those of a continuing nature; or

(b) subject to any offsets, defenses or abatement which Tenant might have against any prior landlord (including Landlord), except (i) offsets specifically provided for in the Lease, or (ii) those which arose out of such Landlord's default under the Lease and accrued after Tenant has notified Mortgagee and given Mortgagee an opportunity to cure as provided in Paragraph 4 above; 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) bound by any amendment or modification of the Lease or any collateral agreement made without Mortgagee's consent which would (i) reduce fixed minimum rent, or (ii) reduce any other monetary obligation of Tenant under the Lease.

6. Mortgagee consents to the application and disposition of casualty proceeds and condemnation awards in accordance with the Lease.

7. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns (which shall include any persons acquiring title by voluntary deed, assignment or other disposition or transfer in lieu of foreclosure) of the parties.

8. Any notices under this Agreement may be delivered by hand or sent by commercial delivery services or United States Postal Service express mail, in either case for overnight delivery with proof of service, or sent by certified mail, return receipt requested, to the following addresses:

To Tenant: South Tacala, LLC
4268 Cahaba Heights Court
Birmingham, Alabama 35243
Attention: Mr. Richard D. Reese

To Lender: Bank of Alabama
2340 Woodcrest Place, Suite 200
Birmingham, Alabama 35209
Attention: Mr. John Bentley

The notice shall be deemed to have been given on the date it was actually received.

9. This Agreement may be executed and delivered in counterparts for the convenience of the parties.

[signatures on following pages]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date indicated below their respective signatures.

TENANT:

SOUTH TACALA, LLC,
a Delaware limited liability company

By: Tacala, Inc., its Manager

By: 

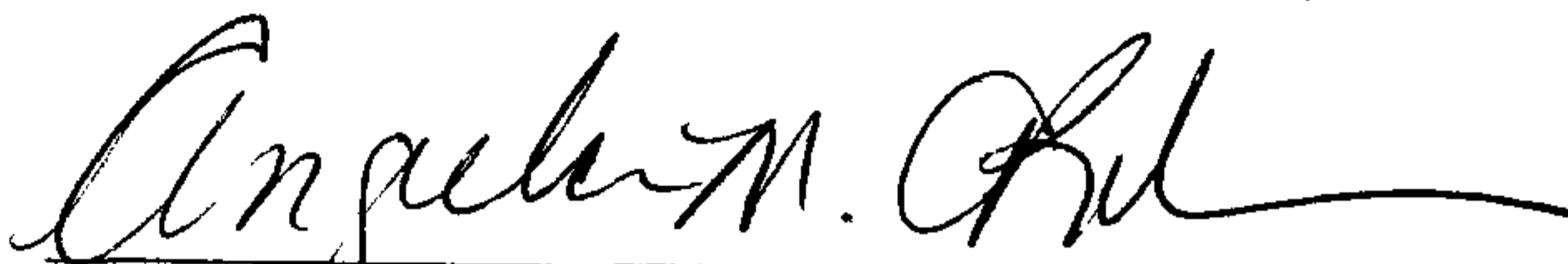
Richard D. Reese

Its: Chief Executive Officer

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that RICHARD D. REESE, whose name as Chief Executive Officer of Tacala, Inc., an Alabama corporation, in its capacity as Manager of South Tacala, LLC 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, as such officer, and with full authority, executed the same voluntarily for and as the act of said corporation, acting in its capacity as Manager of South Tacala, LLC, as aforesaid.

Given under my hand this the 12th day of June, 2003.



Notary Public

My Commission Expires: _____

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Jan 7, 2005
BONDED TIRU NOTARY PUBLIC UNDERWRITERS

MORTGAGEE:

Bank of Alabama,
an Alabama state banking corporation

By: 
John Bentley
Its Senior Commercial Lending Officer

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that John Bentley, whose name as Senior Commercial Lending Officer of Bank of Alabama, a banking 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 thereof, he, as such officer and with full authority, executed the same voluntarily for and as the act of said banking corporation.

Given under my hand and official seal, this the 12th day of June, 2003.


Notary Public

My Commission Expires: 2-6-06

EXHIBIT A

Legal description of the Property:

Parcel 1:

Lot 5A according to Baker Seafood, Inc Resurvey (Being a Resurvey of Lots 4 and 5, Wal-Mart Supercenter #3271 Subdivision, as recorded in Map Book 27, page 117) as recorded in Map Book 31 page 92, in the Office of the Judge of Probate of Shelby County, Alabama, also being situated in the Northwest Quarter of the Southeast Quarter of Section 4, Township 22 South, Range 2 West, St. Stephens Meridian, Shelby County, Alabama, and being more particularly described as follows:

Commence at an axle found at the southwest corner of the Southwest Quarter of the Northeast Quarter, of Section 4, Township 22 South, Range 2 West, St. Stephens Meridian, Shelby County, Alabama; thence run North 02°06'24" West along the west line of said quarter, for a distance of 512.99 feet; thence leaving said quarter line, run South 89°47'07" East for a distance of 1036.65 feet to the west right-of-way line of Highway 31(right-of-way width 100 feet); thence run South 10°16'53" East along said right-of-way line, for a distance of 466.48 feet to a point (50 feet left of 290+25.0) at the intersection of said right-of-way line and the west right-of-way line of I-65 (right-of-way width varies); thence run South 79°34'19" West continuing along said right-of-way line, for a distance of 49.72 feet to a point (100 feet left of 290+25.0) to the Point of Curvature of a curve to the right, having a radius of 854.81 feet, a central angle of 05°36'58", a chord length of 83.76 feet and a chord bearing of South 07°31'03" East; thence continue along the arc of said curve and said right-of-way for a distance of 83.79 feet to a capped iron found (PLS #19262) and the **POINT OF BEGINNING**; said point also being the Point of Curvature of a curve to the right, having a radius of 854.81 feet, a central angle of 10°08'50", a chord length of 151.19 feet and a chord bearing of South 00°21'51" West; thence continue along the arc of said curve and right-of-way for a distance of 151.39 feet to the Point of Curvature of a non-tangent curve to the left, having a radius of 121.50 feet, a central angle of 20°57'11", a chord length of 44.19 feet and a chord bearing of North 79°08'51" West; thence, leaving said right-of-way, continue along the arc of said curve for a distance of 44.43 feet to the Point of Tangency of said curve; thence run North 89°37'26" West for a distance of 121.82 feet to the Point of Curvature of a curve to the right, having a radius of 23.50 feet, a central angle of 90°00'00", a chord length of 33.23 feet and a chord bearing of North 44°37'26" West; thence continue along the arc of said curve for a distance of 36.91 feet to the Point of Tangency of said curve; thence run North 00°22'34" East for a distance of 119.55 feet to a capped iron found (PLS #19262); thence run South 89°39'17" East for a distance of 188.73 feet to the **POINT OF BEGINNING**; being situated in Shelby County, Alabama.

Parcel 2:

Together with a non-exclusive access easement as conveyed to Baker Seafood, Inc., on May 29, 2001, and recorded in Inst. # 2001-25731, including ingress and egress across the following described property:

Line description of 25 feet ingress and egress easement:

Commence at the SW corner of the SW ¼ of the NE ¼ of Section 4, Township 22 North, Range 2 West, Shelby County, Alabama; thence North 02 deg. 06 min. 24 sec. West 512.99 feet; thence South 89 deg. 47 min. 07 sec. East 1036.65 feet; thence South 10 deg. 16 min. 53 sec. East

396.25 feet to the Westerly margin of U. S. Highway 31; thence continue along said road South 10 deg. 16 min. 53 sec. East 80.24 feet; thence continue along said right of way South 79 deg. 34 min. 19 sec. West 49.72 feet; thence continue along said right of way on a curve said curve concave to the West having a radius of 854.82 feet along a chord bearing and distance South 02 deg. 26 min. 38 sec. East for a chord distance of 234.44 feet to the beginning of a 25 foot ingress and egress easement; Thence leaving said right of way along a curve said curve concave to the South having a radius of 121.50 feet along a chord bearing north 79 deg. 08 min. 51 sec. West for a distance of 44.19 feet; thence North 89 deg. 37 min. 26 sec. West 121.82 feet to the beginning of a curve said curve concave to the northeast having a radius 23.50 feet along a chord bearing North 44 deg. 37 min. 26 sec. West a chord distance of 33.23 feet; thence north 00 deg. 23 min. 01 sec. East 230.63 feet to the beginning of a curve said curve concave to the Southeast having a radius of 43.50 feet on a chord bearing North 40 deg. 02 min. 50 sec. East a chord distance of 55.54 feet; thence North 79 deg. 43 min. 07 sec. East 120.73 feet; thence South 10 deg. 16 min. 53 sec. East 5.0 feet; thence North 79 deg. 43 min. 07 sec. East 40.25 feet; thence South 65 deg. 30 min. 48 sec. East 18.21 feet to the point of beginning, said easement being 25 feet left of the above described line begin a 25 foot ingress and egress easement; being situated in Shelby County, Alabama.

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