

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT, (the "**Agreement**") is entered into as of ~~August~~ ^{September} 8, 2008 (the "**Effective Date**"), between **FIRST PLACE BANK**, whose address is 6150 Enterprise, Solon, OH 44139 ("**Mortgagee**"), **DUANE WASSON AS TRUSTEE OF THE WASSON FAMILY 2001 TRUST**, whose address is 125 Joselyn Road, Woodside, CA 94062 ("**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

A. Landlord will become the fee owner of the real property located at 613 Cahaba Valley Road, Pelham, Alabama County of Shelby, State of Alabama (the "**Premises**"), as more particularly described in **Exhibit "A"** attached hereto and made a part hereof.

B. Pursuant to that certain Lease dated as of January 18, 2008, and all amendments, extensions, modifications thereto, (collectively known as the "**Lease**"), Landlord demised, to Tenant, the Premises for a term of Fifteen (15) years, with the right to extend the term for two (2) successive additional terms of ten (10) years each together with all possessory rights set forth in the Lease and of Public Record.

C. Lender is about to make a loan to Landlord in the original principal amount of \$ 530,000 (the "**Loan**").

D. To secure the Loan, Landlord has encumbered the Premises by entering into that certain Mortgage dated ~~September 5~~ ^{September 8}, 2008, in favor of Mortgagee (as amended, increased, renewed, extended, spread, consolidated severed, restated, or otherwise changed from time to time, the (Mortgage or Deed of Trust) to be recorded in the Official Records of the County of Shelby, State of Alabama. (the "**Land Records**").

E. 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, 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 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.

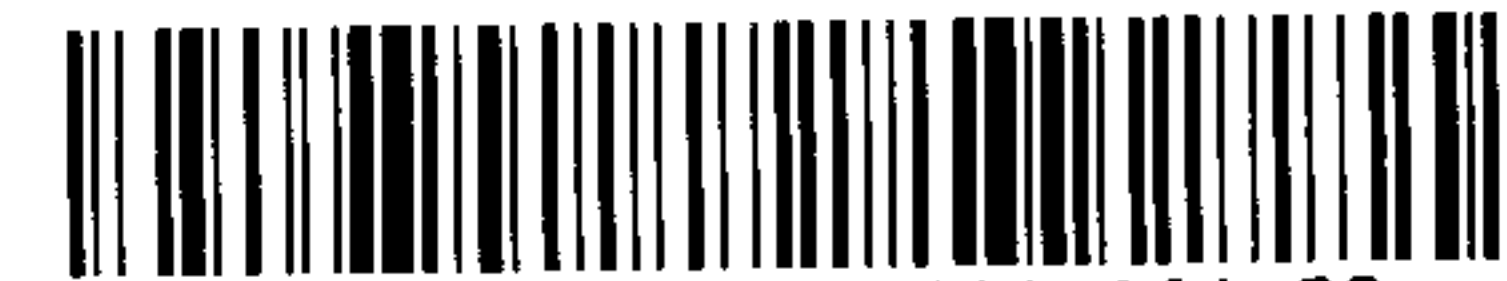
4.3 Payment; Security Deposit. Any obligation: (a) to pay Tenant any sum(s) that any Former Landlord owed to Tenant or (b) with respect to any security deposited with Former Landlord, unless such security was actually delivered to Mortgagee. This paragraph is not intended to apply to Landlord's obligation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



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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 the Lease shall govern as between the parties and any Successor Landlord. This Agreement 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 Alabama.

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.



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

WITNESSES:

Edith H Gibbs
EDITH H GIBBS
John Maitre
JOHN MAITRE

FIRST PLACE BANK

By: *SK*
Print Name: Sean Keane
Title: Vice President

MORTGAGEE
(SEAL)

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

WITNESSES:

WASSON FAMILY 2001 TRUST

By: _____
Name: Duane Wasson
Title: Trustee

LANDLORD
(SEAL)

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

WITNESSES:

Jessica Rosendo
JESSICA ROSENDO
Vanessa Flores
VANESSA FLORES

BURGER KING CORPORATION
a Florida corporation

By: *Jill Anderson Blanco*
Name: Jill Anderson Blanco
Title: Director Senior Mng.

TENANT
(CORPORATE SEAL)

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

WITNESSES:

FIRST PLACE BANK

By: _____
Print Name: _____
Title: _____

MORTGAGEE
(SEAL)

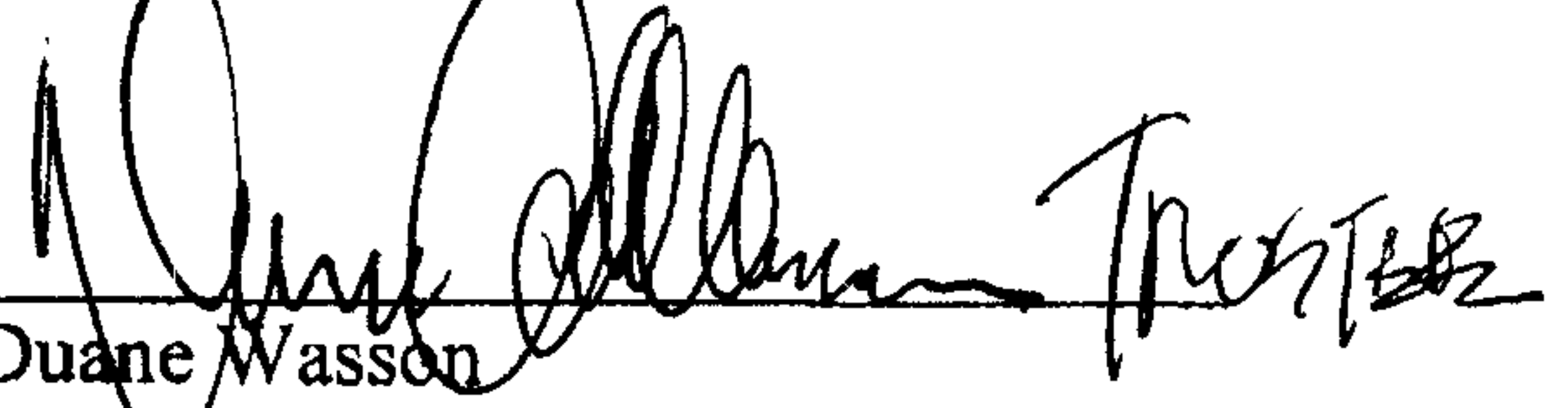
IN WITNESS WHEREOF, this Agreement has been duly executed by Landlord as of the Effective Date.

WITNESSES:


Thomas B. Woods

J. J. Allen

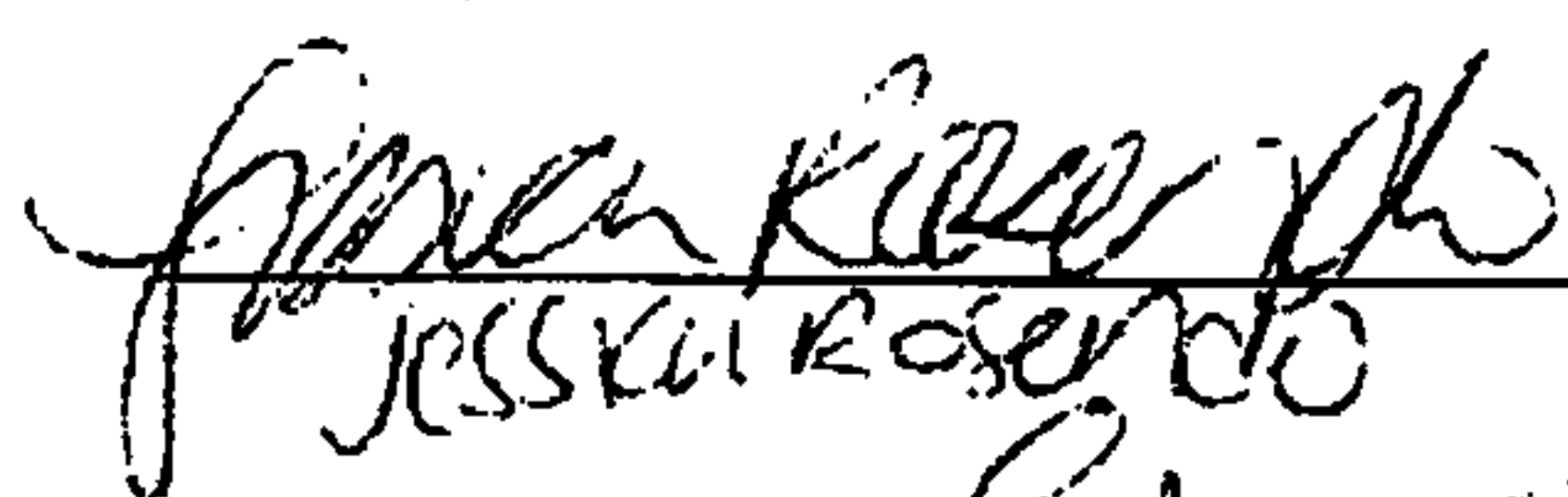
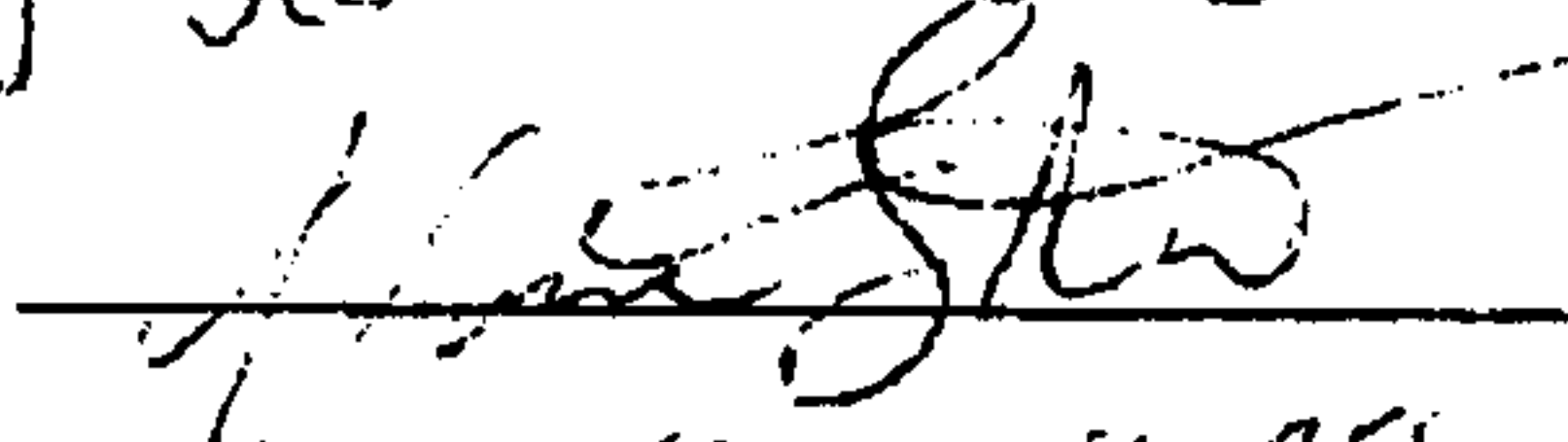
WASSON FAMILY 2001 TRUST

By: 
Name: Duane Wasson
Title: Trustee

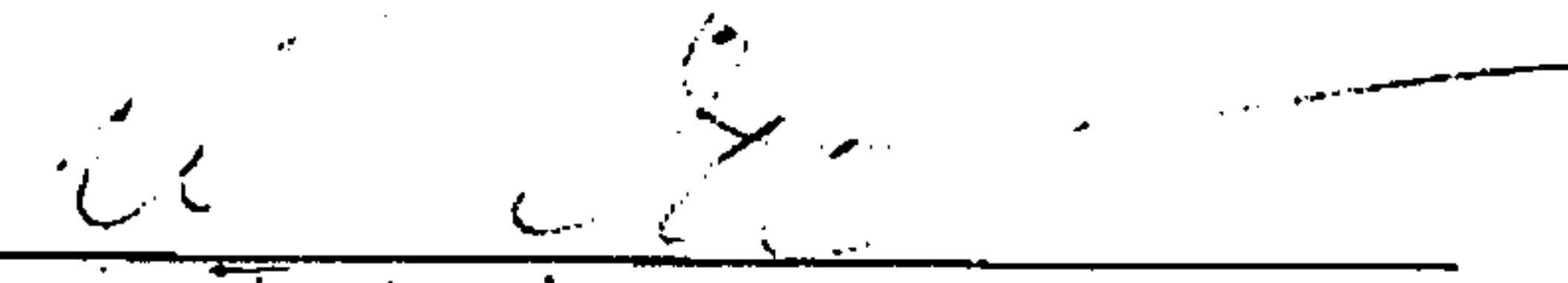
LANDLORD
(SEAL)

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

WITNESSES:


JESSICA ROSENDO

VANESSA FLORES

BURGER KING CORPORATION
a Florida corporation

By: 
Name: T. Anderson
Title: NITEL Senior Analyst

TENANT
(CORPORATE SEAL)

STATE OF OHIO
COUNTY OF CUYAHOGA

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BEFORE ME, the undersigned authority, personally appeared
Sean Keane to me well known and known to me to be the individual described
in and who executed the foregoing instrument as Vice President of **FIRST
PLACE BANK** and severally acknowledged to and before me that he executed such instrument
as such Vice President respectively of said corporation and that said instrument is the free act
and deed of said corporation.

WITNESS my hand and official seal this 8th day of August, 2008

(SEAL)



JOHN L. MLAKAR,
Notary Public, State of Ohio
My Commission Expires
May 14, 2010

[Signature]
Notary Public
My Commission Expires:

STATE OF
COUNTY OF

BEFORE ME, the undersigned authority, personally appeared Duane Wasson to me well
known and known to me to be the individual described in and who executed the foregoing
instrument as Trustee of **WASSON FAMILY 2001 TRUST**, and severally acknowledged to and
before me that they executed such instrument as such _____ respectively of
said company and that said instrument is the free act and deed of said company.

WITNESS my hand and official seal this _____ day of August, 2008.

(SEAL)

Notary Public
My Commission Expires:

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

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BEFORE ME, the undersigned authority, personally appeared Jill Anderson-Blanco to me well known and known to me to be the individuals described in and who executed the foregoing instrument as Director/Senior Atty of **BURGER KING CORPORATION**, a Florida corporation, and severally acknowledged to and before me that they executed such instrument as such Director/Senior Atty of said corporation and that said instrument is the free act and deed of said corporation.

WITNESS my hand and official seal this 13th day of August, 2008.

(SEAL)



Sara Lopez
Notary Public
My Commission Expires: 11-27-08

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STATE OF
COUNTY OF

BEFORE ME, the undersigned authority, personally appeared _____ to me well known and known to me to be the individual described in and who executed the foregoing instrument as _____ of **FIRST PLACE BANK** and severally acknowledged to and before me that he executed such instrument as such Vice President respectively of said corporation and that said instrument is the free act and deed of said corporation.

WITNESS my hand and official seal this _____ day of August, 2008

(SEAL)

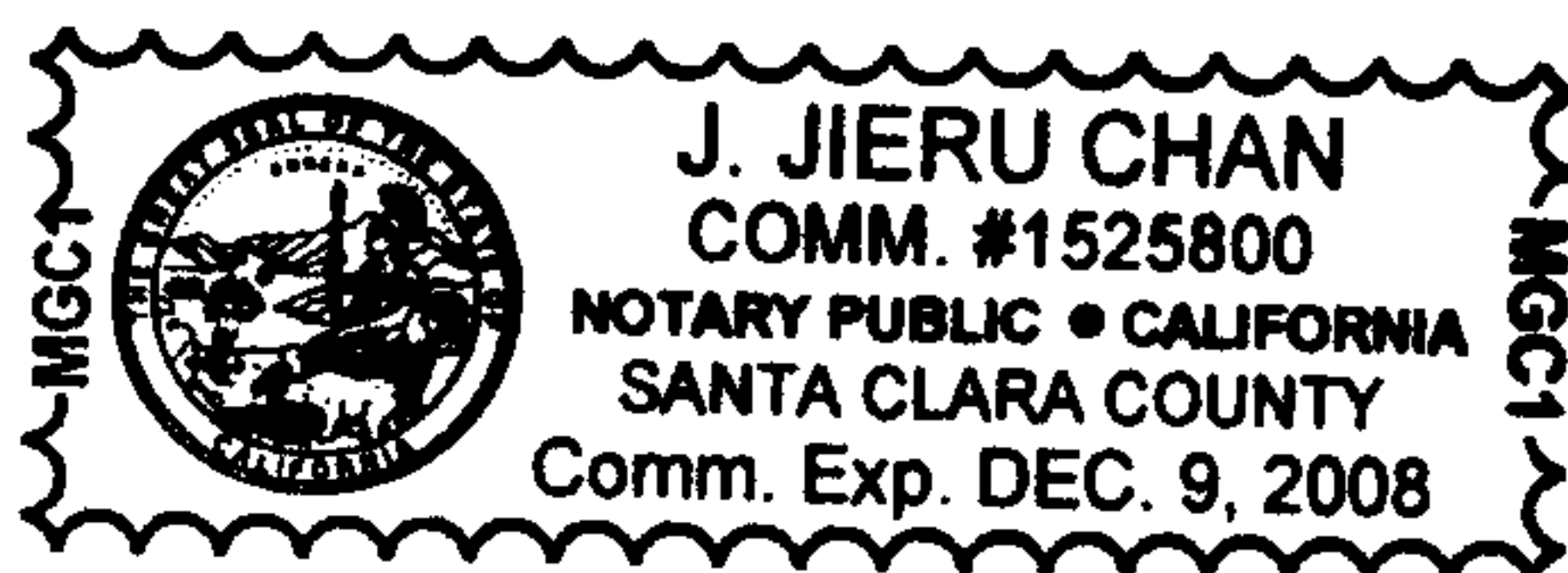
Notary Public
My Commission Expires:

STATE OF *CALIFORNIA*
COUNTY OF *SAN MATEO*

BEFORE ME, the undersigned authority, personally appeared Duane Wasson to me well known and known to me to be the individual described in and who executed the foregoing instrument as Trustee of **WASSON FAMILY 2001 TRUST**, and severally acknowledged to and before me that they executed such instrument as such _____ respectively of said company and that said instrument is the free act and deed of said company.

WITNESS my hand and official seal this *5th* day of *September*, 2008. *at*

(SEAL)



Notary Public
My Commission Expires: *12-09-08*

Exhibit "A"
Legal Description of the Premises

Lot C-1, according to the Survey of Cahaba Valley Park North, as recorded in Map Book 13, page 140, in the Probate Office of Shelby County, Alabama.



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