

STATE OF ALABAMA

SUBORDINATION, NON-DISTURBANCE AND  
ATTORNMEN AGREEMENT

COUNTY OF SHELBY

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT ("Agreement") is made and entered into as of this 20<sup>th</sup> day of November, 2009, by and among HILL/GRAY SEVEN, L.L.C., a Florida limited liability company ("Landlord"), BOJANGLES' RESTAURANTS, INC., a Delaware corporation ("Tenant"), and RBC BANK (USA), a North Carolina banking corporation ("Lender").

WITNESSETH:

WHEREAS, Lender is the owner and holder of a certain Promissory Note secured by a Mortgage dated December 17, 2009, and recorded in Book \* beginning at Page \_\_\_\_\_ in the Probate Office of Shelby County, Alabama (hereinafter collectively referred to as the "Mortgage") constituting a first lien upon real property described therein (hereinafter referred to as the "Real Property");

\* Inst # 20091229000473300

WHEREAS, Landlord and Tenant have entered into a LAND AND BUILDING LEASE AGREEMENT dated as of May 14, 2009 (hereinafter referred to as the "Lease"), all with respect to certain premises (hereinafter referred to as the "Premises") which are part of the Real Property conveyed by the Mortgage;

WHEREAS, the Lease is subordinate to the Mortgage and to the right, title and interest of Lender thereto and thereunder;

WHEREAS, Tenant wishes to obtain from Lender certain assurances that Tenant's possession of the Premises will not, subject to the terms and conditions of this Agreement, be disturbed by reason of a foreclosure of the lien of the Mortgage on the Real Property; and

WHEREAS, Lender is willing to provide such assurances to Tenant upon and subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants set forth below and other good and valuable considerations, the parties hereto agree as follows:

1. The Lease shall at all times continue to be subject and subordinate in all respects to the



Mortgage and to all renewals, modifications and extensions thereof, subject to the terms and conditions of this Agreement.

2. So long as Tenant is not in default beyond any applicable notice and cure period in the payment of rent, additional rent or other charges or in the performance of any of the other terms, covenants or conditions of the Lease, Tenant shall not be disturbed by Lender in Tenant's possession, enjoyment, use and occupancy of the Premises during the original or any renewal term of the Lease or any extension or modification thereof.

3. If Lender exercises a right arising under the Mortgage or any assignment of the Lease to receive the rents payable by Tenant under the Lease, then Lender shall not by such act alone become obligated to Tenant for the performance of any of the terms, covenants, conditions and agreements of Landlord under the Lease. Landlord and Tenant agree that Tenant shall make all payments to be made by Tenant under the Lease to Lender upon receipt of written notice of the exercise of such rights, and Tenant agrees not to prepay any sums payable by Tenant under the Lease more than one month in advance. Such receipt of rent by Lender shall not relieve Landlord of its obligations under the Lease and Tenant shall continue to look to Landlord only for performance thereof.

4. If the interest of Landlord shall be acquired by Lender or any other party by reasons of foreclosure of the Mortgage or other proceedings brought to enforce the rights of the holder thereof, by deed in lieu of foreclosure or by any other method, and Lender or such other party succeeds to the interest of Landlord under the Lease, the Lease and the rights of Tenant thereunder shall continue in full force and effect and shall not be terminated or disturbed except in accordance with the terms of the Lease, and Tenant shall be bound to Lender or such other party under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining, and any extensions or renewals thereof which may be effected in accordance with any option therefor contained in the Lease, with the same force and effect as if Lender or such other party were the Landlord under the Lease and Tenant does hereby attorn to Lender or such other party as its Landlord, said attornment to be effective and self-operative without the execution of any other instruments immediately upon Lender's or such other party's succeeding to the interest of Landlord under the Lease, and Tenant hereby agrees that Lender or such other party shall not be responsible or liable in any way for any default under the Lease occurring prior to the time Lender or such other party obtains title to the fee estate owned by Landlord and is entitled to actual, unrestricted possession of the Real Property.

Lender, or any subsequent owner, shall not (a) be liable for any previous act or omission of Landlord under the Lease except to the extent that Lender was given notice and opportunity to cure the same in accordance with the provisions of this Agreement prior to Lender or such other owner taking possession of such premises, (b) be subject to any offset, claim or defense which shall theretofore have accrued against Landlord except to the extent that Lender was given notice and opportunity to cure the same in accordance with the provisions of this Agreement prior to Lender or such other owner taking possession of such premises, (c) have any obligation with respect to any security deposited under the Lease unless such security has been physically delivered to Lender, or (d) be bound by any previous modification of the Lease or by any previous prepayment of rent for a period greater than one (1) month, unless such modification or prepayment shall have been expressly approved in writing by Lender.

5. Tenant hereby affirms that the Lease has not been modified or amended.

6. All notices, demands, or requests, and responses thereto, required or permitted to be given pursuant to this Agreement shall be given in accordance with the notice provisions of the Lease. Notices given hereunder shall be in writing and shall be deemed to have been properly given or served and shall be effective upon being deposited in the United States mail, postpaid and registered or certified with return receipt





requested; provided, however, the time period in which a response to any notice, demand or request must be given shall commence on the date of the receipt of the return receipt of the notice, demand, or request by the addressees thereof. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been given shall constitute receipt of the notice, demand or request sent. Any notice given to Lender or Tenant shall be addressed as follows:

Lender: RBC Bank (USA)  
Attn: W. Mahler Thorp  
P.O. Box 353  
Rocky Mount, NC 27802-0353

Tenant: Bojangles' Restaurants, Inc.  
Attn: General Counsel  
9432 Southern Pine Boulevard  
Charlotte, NC 28273

or at such other address in the United States as Lender or Tenant may designate in writing.

7. This Agreement shall be binding upon and inure to the parties, their respective heirs, successors and assigns. Whenever used herein the singular numbers shall include the plural, the plural the singular, and the use of one gender all genders, as the context requires.

8. Any provision of this Agreement to the contrary notwithstanding, Lender shall have no obligation, or incur any liability, with respect to the erection and completion of any improvements for Tenant's use and occupancy.

9. From and after the date hereof, Tenant shall send a copy of any notice or statement of default under the Lease or of intent to assign or sublet any portion of the Premises to Lender at the same time such notice or statement is sent to Landlord under the Lease.

10. Tenant acknowledges that Landlord will not surrender or consent to the modification or amendment of any of the material terms of the Lease nor to the termination thereof by Landlord without the prior written consent of Lender, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Lender's consent shall not be required for the contemplated amendment of the Lease required to adjust the rental amounts after the final expenses for construction are determined. Tenant will not terminate nor seek to terminate the Lease by reason of a taking under eminent domain, by reason of any act or omission of Landlord, or any other default under the Lease, or exercise any right under the Lease to make deductions from or reductions in rental payments until Tenant shall have given written notice of such taking, act, omission or other default to Lender and allowed Lender thirty (30) days from its receipt of said notice within which Lender shall have the right, but shall not be obligated, to remedy such act, omission or other default and Tenant will accept such performance by Lender.

11. Subject to the terms of the Lease, Landlord has assigned to Lender any proceeds or awards which may become due to Landlord by reason of any condemnation or other taking for public use of the whole or any part of the Premises or any rights appurtenant thereto, and the proceeds of any casualty insurance policy which are payable to Landlord as a result of any insured casualty to the Premises. The aforesaid proceeds or any part thereof may be applied by Lender to the outstanding balance of any indebtedness of Landlord to Lender.

12. No modification, amendment, waiver or release of any provision of this Agreement or of any right, obligation, claim or cause of action arising hereunder shall be valid or binding for any purpose whatsoever unless

in writing and duly executed by the party against whom the same is sought to be asserted.

13. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. All parties hereto submit to the jurisdiction of the courts of the State of North Carolina sitting in Mecklenburg County, and to the Federal Courts for the Western District of North Carolina.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]



IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

LANDLORD:

HILL/GRAY SEVEN, L.L.C.

By: [Signature] [SEAL]  
Its: Member

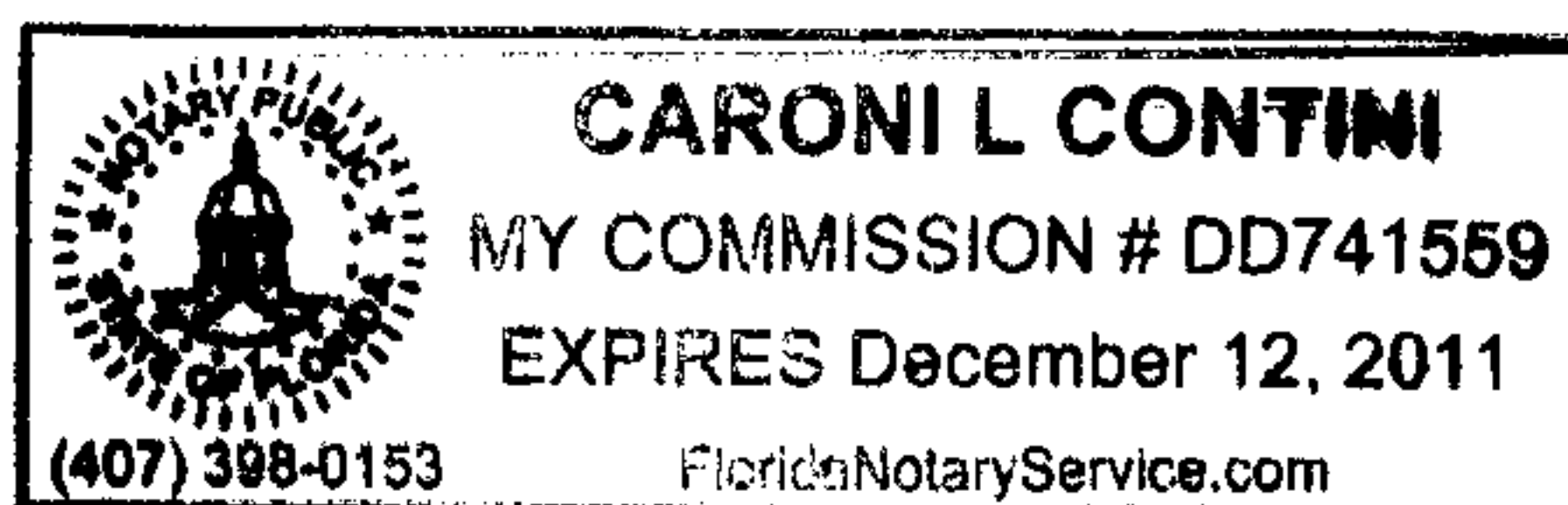
[Signature]  
Witness # 1

[Signature]  
Witness # 2

STATE OF FLORIDA  
COUNTY OF ORANGE

I, CARONI L CONTINI, a NOTARY PUBLIC in and for said County in said State, hereby certify that ANDREW HILL, whose name 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 the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand this 23 day of NOVEMBER, A. D. 2009.



[Signature]  
Style of Officer: NOTARY





[Corporate Seal]

ATTEST:

[Signature]  
Asst. Secretary

[Signature]  
Witness #

[Signature]  
Witness # 2

TENANT:

BOJANGLES' RESTAURANTS, INC.

By: [Signature] [SEAL]  
Its: Exec. Vice President

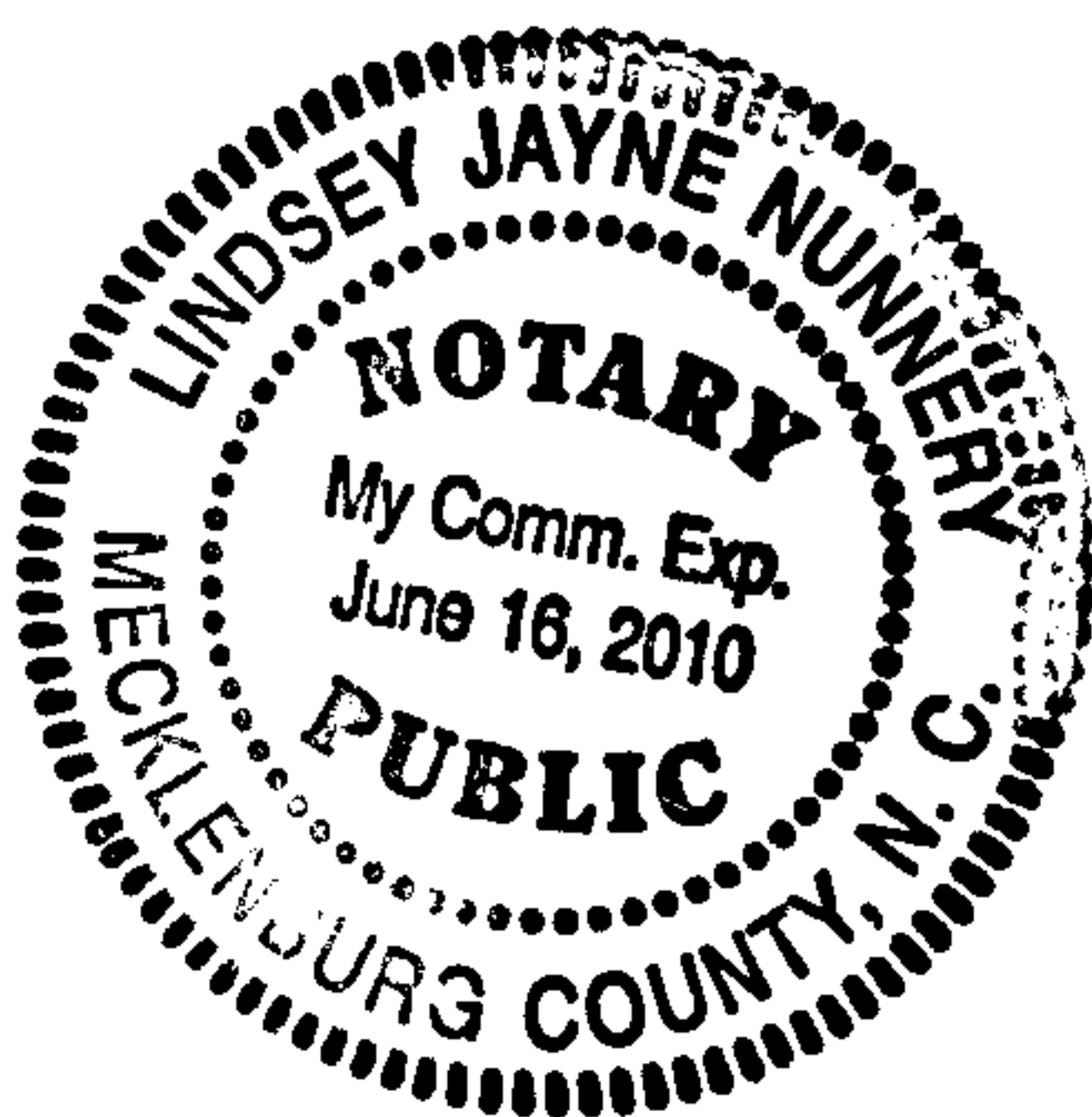
STATE OF North Carolina

COUNTY OF Mecklenburg

I, Lindsey Jayne Nunnery, a Notary in and for said County in said State, hereby certify that Eric M. Newman, whose name 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 the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand this 18<sup>th</sup> day of November, A. D. 2009.

Lindsey Jayne Nunnery  
Style of Officer: Notary



Javon Parker  
Witness # 1

Eric Higwood  
Witness # 2

LENDER:

RBC BANK (USA)

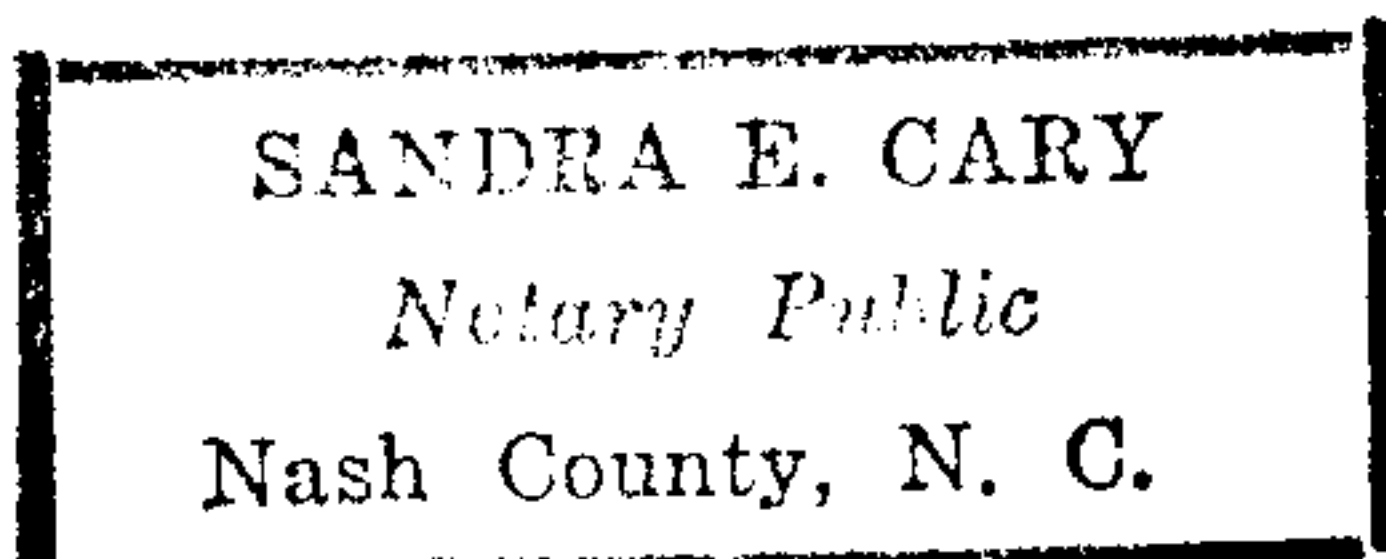
By: W. Mahler Sharp [SEAL]  
Its: Bank Officer

STATE OF NORTH CAROLINA

COUNTY OF Nash

I, Sandra E. Cary, a Notary Public of Nash County,  
State of North Carolina, hereby certify that W. Mahler Sharp whose name 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 the instrument, he executed the same voluntarily on the day the same  
bears date.

Given under my hand this 21<sup>st</sup> day of December, A. D. 2009.



Style of Officer: Sandra E. Cary  
Notary Public:

My Commission Expires: 8-27-2010



20091229000473320 7/7 \$29.00  
Shelby Cnty Judge of Probate, AL  
12/29/2009 12:07:03 PM FILED/CERT

