

WHEN RECORDED, RETURN TO:

Panda Restaurant Group, Inc.
Real Estate Legal Department
1683 Walnut Grove Avenue
Rosemead, CA 91770
Attn: _____


20170313000084880 1/10 \$42.00
Shelby Cnty Judge of Probate: AL
03/13/2017 02:11:21 PM FILED/CERT

SUBORDINATION, NONDISTURBANCE AND ATTORNMENMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT (the "Agreement") is made as of the 21 day September, 2016, by and between Iberia Bank ("Lender") and Panda Express, Inc., a California corporation ("Tenant").

RECITALS:

- A. Tenant is the holder of a leasehold estate, as more particularly described on **Exhibit "A"** (the "Premises") under and pursuant to the provisions of that certain lease dated September 21, 2016, by and between Tenant and Resource Holdings, LLC, an Alabama limited liability company ("Landlord"), or its predecessors in interest (such lease, as amended through the date hereof, the "Lease");
- B. The Premises is or is to be encumbered by a mortgage, (the "Security Instrument") from Landlord, or its successor in interest, in favor of Lender; and
- C. Tenant has agreed to subordinate the Lease to the Security Instrument and to the lien thereof and Lender has agreed to grant non-disturbance to Tenant under the Lease on the terms and conditions hereinafter set forth.

AGREEMENT:

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. **Subordination.** The Lease shall be subject and subordinate in all respects to the lien and terms of the Security Instrument, to any and all advances to be made thereunder and to all renewals, modifications, consolidations, replacements and extensions thereof.
2. **Non-disturbance.** So long as Tenant pays all rents and other charges as specified in the Lease and is not otherwise in default (beyond applicable notice and cure periods) of any of its obligations and covenants pursuant to the Lease, Lender agrees for itself and its successors in interest and for any other person acquiring title to the Premises (an "Acquiring Party"), that Tenant's possession of the Premises as described in the Lease will not be disturbed during the term of the Lease, as said term may be extended pursuant to the terms of the Lease or as said Premises may be expanded as specified in the Lease, by reason of a foreclosure. For purposes of this agreement, a "foreclosure" shall include (but not be limited



to) a sheriff's or trustee's sale under the power of sale contained in the Security Instrument, the termination of any superior lease of the Premises, and any other transfer of Landlord's interest in the Premises under peril of foreclosure, including, without limitation to the generality of the foregoing, an assignment or sale in lieu of foreclosure. Lender (and any Acquiring Party) and Tenant shall be bound each to the other under all of the terms, covenants and conditions of the Lease for the balance of the term of the Lease, with the same force and effect as if they were the original landlord and tenant, respectively, under the Lease. Should the Lender or any Acquiring Party fail or refuse to recognize and assume the Lease and recognize the rights of Tenant under the Lease and agree not to disturb Tenant, this Lease shall be deemed prior and superior to the lien and terms of the Security Instrument.

3. Attornment. Tenant agrees to attorn to, accept and recognize any Acquiring Party as the landlord under the Lease pursuant to the provisions expressly set forth therein for the then remaining balance of the term of the Lease, and any extensions thereof as made pursuant to the Lease. The foregoing provision shall be self-operative and shall not require the execution of any further instrument or agreement by Tenant as a condition to its effectiveness. Tenant agrees, however, to execute and deliver, at any time and from time to time, upon the request of the Lender or any Acquiring Party any reasonable instrument which may be necessary or appropriate to evidence such attornment.

4. No Liability Notwithstanding any provision to the contrary in this Lease, it is specifically understood and agreed that neither the Lender, any receiver nor any Acquiring Party shall be:

(a) liable for any act, omission, negligence or default of any prior landlord (other than to cure defaults of a continuing nature); provided, however, that any Acquiring Party shall be liable and responsible for the performance of all covenants and obligations of Landlord under the Lease which they expressly assume in writing or which accrue from and after the date that it takes title to the Premises;

(b) except as set forth in (a) above, liable for any failure of any prior landlord to construct any improvements;

(c) subject to any offsets, credits, claims or defenses which Tenant might have against any prior landlord (excluding any overpayment of prepaid Additional Rent);

(d) bound by any rent or additional rent which is payable on a monthly basis and which Tenant might have paid for more than one (1) month in advance to any prior landlord, unless such prepayment is required by the terms of the Lease;

(e) be liable to Tenant hereunder or under the terms of the Lease beyond its interest in the Development and the issues therefrom; or

(f) liable or responsible for or with respect to the retention, application and or/return to Tenant of any security deposit paid to Landlord or any prior landlord, unless and until Lender or such Acquiring Party has actually received for its own account as landlord the full amount of such security deposit or has expressly assumed the obligation therefor in writing.

Notwithstanding the foregoing, Tenant reserves its rights to any and all claims or causes of action against such prior landlord for prior losses or damages and against the successor

landlord for all losses or damages arising from and after the date that such successor landlord takes title to the Premises.

5. Rent. Tenant has notice that the Lease and the rents and all other sums due thereunder have been assigned to Lender as security for the loan secured by the Security Instrument. In the event Lender notifies Tenant of the occurrence of a default under the Security Instrument and demands that Tenant pay its rents and all other sums due or to become due under the Lease directly to Lender, Tenant shall honor such demand and pay its rent and all other sums due under the Lease directly to Lender or as otherwise authorized in writing by Lender. Landlord hereby irrevocably authorizes Tenant to make the foregoing payments to Lender upon such notice and demand.

6. Lender to Receive Notices. Tenant shall simultaneously notify Lender of any default by Landlord under the Lease which would entitle Tenant to cancel the Lease, and agrees that Lender shall have the same time period to cure any such default as is provided to Landlord in the Lease.

7. Notices. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to the receiving party at its address set forth above, and:

If to Tenant: Panda Express, Inc.
Attn: Real Estate Legal Department
1683 Walnut Grove Avenue
Rosemead, California 91770

If to Lender:

Attention:

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Section 7, the term "Business Day" shall mean any day other than Saturday, Sunday or any other day on which banks are required or authorized to close in Alabama.

8. Successors. The obligations and rights of the parties pursuant to this Agreement shall bind and inure to the benefit of the successors, assigns, heirs and legal representatives of the respective parties. In addition, Tenant acknowledges that all references herein to Landlord shall mean the owner of Landlord's interest in the Lease, even if said owner shall be different than the Landlord named in the recitals herein.

9. Duplicate Originals; Counterparts. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. Landlord or Lender must return a fully-executed original of this Agreement to Tenant within ninety (90) days from the date Tenant has executed the same, and if Landlord and Lender fail to return a

fully-executed original of this Agreement to Tenant within such ninety (90) day period, Tenant, at its option, may deem this Agreement lapsed and terminated. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement.

[SIGNATURES ON THE FOLLOWING PAGE]

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Shelby Cnty Judge of Probate: AL
03/13/2017 02:11:21 PM FILED/CERT



IN WITNESS WHEREOF, Lender and Tenant have duly executed this Agreement as of the date first above written.

LENDER:

_____, a _____ corporation

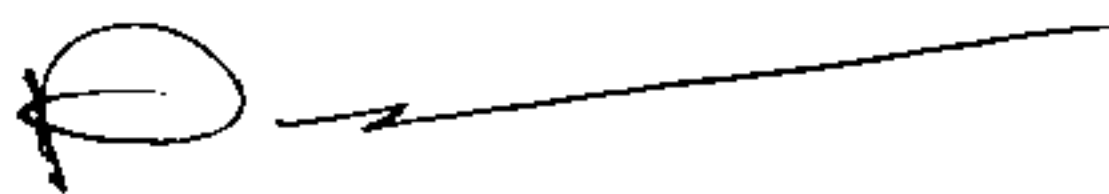
By: _____

Name: _____

Title: _____

TENANT:

PANDA EXPRESS, INC., a California corporation

By:  _____

Name: Peggy T. Cherng

Title: Co-chair and Co-CEO

The undersigned as the Landlord named in the recitals herein or as successor thereto hereby accepts and agrees to be bound by the provisions of this Agreement.

LANDLORD:

RESOURCE HOLDINGS, LLC, an Alabama limited liability company

By: _____

Name: _____

Title: _____


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ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF _____)
COUNTY OF _____) ss.

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under the PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my name and official seal.

Notary Public in and for the
State of _____
My commission expires: _____

See Attached



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(Signature)

ACKNOWLEDGMENT

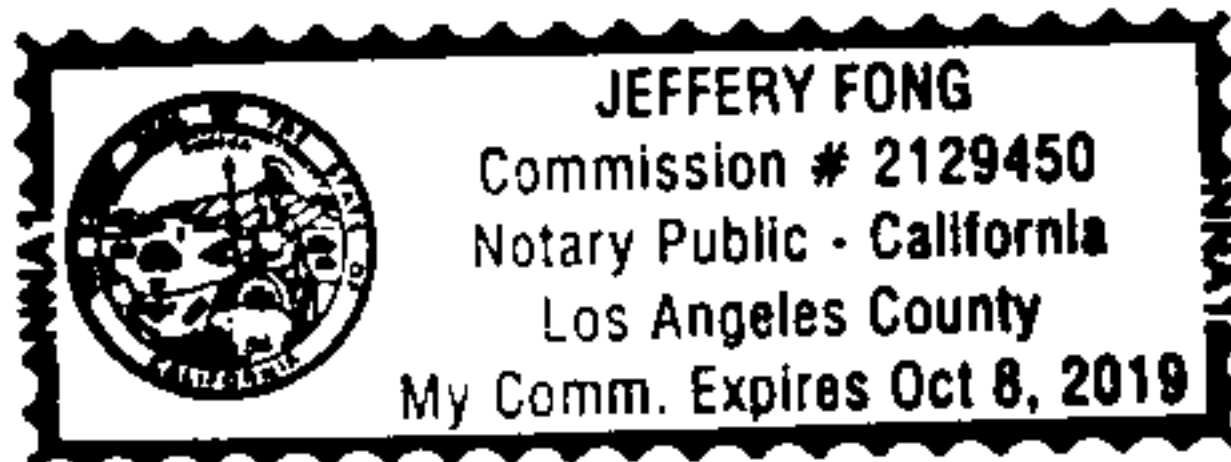
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On September 27, 2016 before me, **JEFFERY FONG**, Notary Public, personally appeared **PEGGY TSIANG CHERNG**, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(~~ies~~), and that by ~~his/her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my name and official seal.





Jeffery Fong
Notary Public in and for the
State of California
My commission expires: October 8, 2019

SUBORDINATION, NONDISTURBANCE AND ATTORNMENMENT AGREEMENT

Re: Certain Real Property located within Birmingham, AL

Signer: Peggy Tsiang Cherng, Co-Chairperson and Co-CEO of Panda Express, Inc., a California corporation


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IN WITNESS WHEREOF, Lender and Tenant have duly executed this Agreement as of the date first above written.

LENDER:

_____, a _____ corporation

By: _____

Name: _____

Title: _____

TENANT:

PANDA EXPRESS, INC., a California corporation

By: _____

Name: _____

Title: _____

The undersigned as the Landlord named in the recitals herein or as successor thereto hereby accepts and agrees to be bound by the provisions of this Agreement.

LANDLORD:

RESOURCE HOLDINGS, LLC, an Alabama limited liability company

By: _____

Name: JAMES A. BRUND

Title: MANAGER



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ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF ALABAMA)
COUNTY OF JEFFERSON) ss.

On SEPT 13, 2016, before me, JEANNETTE S. WALKER, Notary Public, personally appeared JAMES A. BRUND, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under the PENALTY OF PERJURY under the laws of the State of ALABAMA that the foregoing paragraph is true and correct.

WITNESS my name and official seal.

Jeannette S. Walker
Notary Public in and for the
State of ALABAMA
My commission expires: _____

My Commission Expires
October 13, 2019



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EXHIBIT "A"

LEGAL DESCRIPTION OF THE PREMISES

All that certain lot or parcel of land situated in the County of Shelby, State of Alabama, and being more particularly described as follows:

Lot 2A-1 according to the Final Plat of Resource Center Resurvey No. 1, as recorded in Map Book 46, Page 89 in the Probate Office of Shelby County, Alabama. Situated in Shelby County, Alabama.

