

ENVELOPE



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FORSYTH CO, NC FEE \$41.00  
PRESENTED & RECORDED

04-18-2008 10:04 AM

KAREN GORDON  
REGISTER OF DEEDS  
BY: BETTY C CAMPBELL  
DPT

BK: RE 2826

PG: 513-522

Prepared by: Shawn McMillan, Esq.  
Return To: Johnston, Allison & Hord (JAP) PO Box 36469, Charlotte, NC 28236

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement"), made and entered into as of this 27 day of March, 2008, by and among BOJO WALKERTOWN, LLC, a North Carolina limited liability company, (hereinafter called "Landlord"), BJ RESTAURANT DEVELOPMENT, LLC, a North Carolina limited liability company, having an office in Charlotte, North Carolina (hereinafter called "Tenant"), and NEW DOMINION BANK, a North Carolina banking corporation (hereinafter called "Lender").

W I T N E S S E T H:

WHEREAS, Lender is the owner and holder of a certain Promissory Note secured by a Deed of Trust dated March 27, 2008, and recorded in Book 2821 beginning at Page 3662 in the Office of the Register of Deeds of Forsyth County, North Carolina (hereinafter collectively referred to as the "Mortgage") constituting a first lien upon real property described therein (hereinafter referred to as the "Real Property"); and

WHEREAS, Landlord and Tenant have entered into a Land and Building Lease Agreement dated as of March 27, 2008 (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; and

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

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.

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 the 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.

The 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 the Lender was given notice and opportunity to cure the same in accordance with the provisions of this Agreement prior to the 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 the Lender was given notice and opportunity to cure the same in accordance with the provisions of this Agreement prior to the 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 the 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 the 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. Notice to Lender 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 such notice if given to Lender shall be addressed as follows:

New Dominion Bank  
1100 Kenilworth Avenue  
Charlotte, NC 28204

or at such other address in the United States as Lender 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, the 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 the Lender at the same time such notice or statement is sent to the 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 the Landlord without the prior written consent of the 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 the 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 the Lender and allowed the Lender thirty (30) days from its receipt of said notice within which the 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 the Lender.

11. Subject to the terms of the Lease, the Landlord has assigned to the 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 the Lender to the outstanding balance of any indebtedness of Landlord to the 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  
BOJO WALKERTOWN, LLC

Witness Maue McGee

By: William G. Seymour  
Print Name: WILLIAM G. SEYMOUR  
Title: MEMBER / MANAGER

TENANT  
BJ RESTAURANT DEVELOPMENT, LLC

Witness \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: Manager

LENDER  
NEW DOMINION BANK

(Bank Seal)

Attest: \_\_\_\_\_  
Print name: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LANDLORD:

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, ETTA MAE G. BONDS, a Notary Public of Mecklenburg County, State of North Carolina, do hereby certify that WILLIAM G. SEYMOUR, (the "Signatory"), personally appeared before me this day and acknowledged that he/she is Manager of BOJO WALKERTOWN, LLC, a North Carolina limited liability company, and that he/she being authorized to do so, executed of the foregoing instrument. I certify that the Signatory personally appeared before me this day and I have personal knowledge of the identity of the Signatory. The Signatory acknowledged to me that he/she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated. Witness my hand and official stamp or seal this 20th day of MARCH, 2008.

Etta Mae G. Bonds  
Notary Public

Print Name: ETTA MAE G. BONDS  
[Notary Public must sign exactly as on notary seal]

My Commission Expires: 1/18/09

[Must be legible]

TENANT:

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, \_\_\_\_\_, a Notary Public of Mecklenburg County, State of North Carolina, do hereby certify that \_\_\_\_\_, (the "Signatory"), personally appeared before me this day and acknowledged that he/she is Manager of BJ RESTAURANT DEVELOPMENT, LLC, a North Carolina limited liability company, and that he/she being authorized to do so, executed of the foregoing instrument. I certify that the Signatory personally appeared before me this day and I have personal knowledge of the identity of the Signatory. The Signatory acknowledged to me that he/she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated. Witness my hand and official stamp or seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

[NOTARY SEAL]

Print Name: \_\_\_\_\_  
[Notary Public must sign exactly as on notary seal]

My Commission Expires: \_\_\_\_\_

[Must be legible]

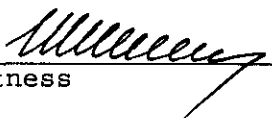
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

LANDLORD  
BOJO WALKERTOWN, LLC

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TENANT  
BJ RESTAURANT DEVELOPMENT, LLC

  
\_\_\_\_\_  
Witness

By:   
Print Name: Eric V. Newman  
Title: Manager

LENDER  
NEW DOMINION BANK

(Bank Seal)

Attest: \_\_\_\_\_  
Print name: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LANDLORD:

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, \_\_\_\_\_, a Notary Public of Mecklenburg County, State of North Carolina, do hereby certify that \_\_\_\_\_, (the "Signatory"), personally appeared before me this day and acknowledged that he/she is Manager of BOJO WALKERTOWN, LLC, a North Carolina limited liability company, and that he/she being authorized to do so, executed of the foregoing instrument. I certify that the Signatory personally appeared before me this day and I have personal knowledge of the identity of the Signatory. The Signatory acknowledged to me that he/she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated. Witness my hand and official stamp or seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

[NOTARY SEAL]

Print Name: \_\_\_\_\_

[Notary Public must sign exactly as on notary seal]

My Commission Expires: \_\_\_\_\_

[Must be legible]

TENANT:

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Lindsey Jayne Nunnery, a Notary Public of Mecklenburg County, State of North Carolina, do hereby certify that Eric M. Newman, (the "Signatory"), personally appeared before me this day and acknowledged that he/she is Manager of BJ RESTAURANT DEVELOPMENT, LLC, a North Carolina limited liability company, and that he/she being authorized to do so, executed of the foregoing instrument. I certify that the Signatory personally appeared before me this day and I have personal knowledge of the identity of the Signatory. The Signatory acknowledged to me that he/she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated. Witness my hand and official stamp or seal this 20<sup>th</sup> day of March, 2008.

Lindsey Jayne Nunnery  
Notary Public

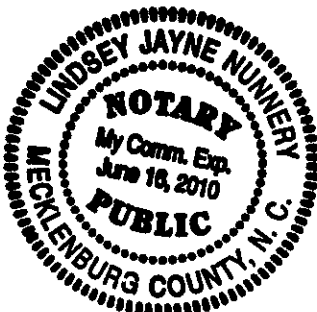
[NOTARY SEAL]

Print Name: Lindsey Jayne Nunnery

[Notary Public must sign exactly as on notary seal]

My Commission Expires: June 16, 2010

[Must be legible]





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

LANDLORD  
BOJO WALKERTOWN, LLC

Maureen McLaughlin  
Witness

By: William G. Seymour  
Print Name: WILLIAM G. SEYMOUR  
Title: MEMBER / MANAGER

TENANT  
BJ RESTAURANT DEVELOPMENT, LLC

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: Manager

LENDER  
NEW DOMINION BANK

(Bank Seal)  
Attest: Beth Wright  
Print name: Beth Wright

By: David L. Miller  
Print Name: David L. Miller  
Title: Vice President

LENDER:

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Theresa M. Bowles, a Notary Public for the County and State aforesaid, certify that David L. Miller (the "Signatory") personally came before me this day and acknowledged that he/she is Vice President of NEW DOMINION BANK, a North Carolina banking corporation, and that he/she, being authorized to do so, executed the foregoing on behalf of said corporation. I certify that the Signatory personally appeared before me this day, and

(check one of the following)

X (I have personal knowledge of the identity of the Signatory); or

\_\_\_\_ (I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:

(check one of the following)

\_\_\_\_ a driver's license; or

\_\_\_\_ in the form of \_\_\_\_\_); or

\_\_\_\_ (a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that he/she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal this 28 day of March, 2008.

Theresa M. Bowles  
Notary Public

Print: Name: Theresa M. Bowles

My Commission Expires: 5-18-2011

[NOTARY SEAL]

**Theresa M. Bowles**  
**Notary Public**  
**Mecklenburg Co., NC**  
**Comm. Exp. 5/18/2011**