

RESOLUTION NO.: R-2010-003

Authorizing the City Manager to execute a Non-Disturbance and Attornment Agreement between the City of Columbia, Marketplace-Columbia, LLC and Chick-Fil-A, Inc. for 0.220 acres (9,569.88 square feet) at the corner of Harden Street and College Street

BE IT RESOLVED by the Mayor and City Council this 20th day of January, 2010, that the City Manager is authorized to execute the attached Non-Disturbance and Attornment Agreement between the City of Columbia as Landlord, Marketplace-Columbia, LLC as Sublandlord, and Chick-Fil-A, Inc. as Subtenant, for 0.220 acres (9,569.88 square feet) at the corner of Harden Street and College Street.

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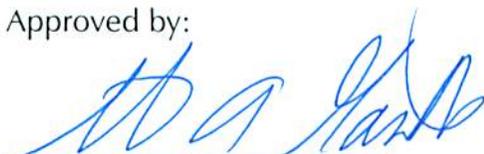
Requested by:

Aston Properties, Inc.



Mayor

Approved by:



City Manager

Approved as to form:



City Attorney

ATTEST:



City Clerk

Introduced: 1/20/2010
Final Reading: 1/20/2010

Please return to:

NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement"), entered into this ____ day of _____, 20__, is made by and among CHICK-FIL-A, INC., a Georgia corporation (the "Subtenant"), CITY OF COLUMBIA, SOUTH CAROLINA (the "Landlord"), and MARKETPLACE-COLUMBIA, LLC, a Delaware limited liability company (the "Sublandlord").

WITNESSETH:

WHEREAS, the Landlord and Sublandlord have entered into a ground lease dated January 2, 1979, an indenture of which was recorded January 24, 1979 in Deed Book 921, Page 755 in the land records of Richland County, South Carolina, as amended by that certain Assignment of Ground Lease dated June 18, 1982, recorded June 18, 1982 in Deed Book 612, Page 708, aforesaid records, as further amended by that certain Assignment of Ground Lease dated February 1, 1989, recorded March 6, 1989 in Deed Book 923, Page 529, aforesaid records, as further amended by that certain Assignment and Assumption of Ground Lease dated May 14, 2001, recorded May 24, 2001 in Deed Book 522, Page 176, aforesaid records, as further amended by that certain First Lease Amendment dated August 3, 2005, recorded August 4, 2005 in Book 1083, Page 89, aforesaid records, as further amended by that certain Assignment and Assumption Agreement dated August 3, 2005, recorded August 4, 2005 in Book 1083, Page 94, aforesaid records (as amended, the "Senior Lease"), for certain real property located near the intersection of Harden Street and College Street in the City of Columbia, County of Richland, South Carolina, being more particularly described in Exhibit A attached hereto, which by this reference is incorporated herein and made a part hereof (the "Property"); and

WHEREAS, Sublandlord has entered into a lease dated November 12, 2009 (the "Sublease") with Subtenant for a portion of the Property, said portion consisting of approximately 0.22 acres, being more particularly described on Exhibit B attached hereto and depicted on Exhibit C, which by this reference are incorporated herein and made a part hereof (the "Demised Premises"); and

WHEREAS, the Landlord, the Sublandlord and the Subtenant desire to establish certain rights, safeguards, obligations and priorities with regard to their respective interests by means of this Agreement; and

NOW, THEREFORE, in consideration of the mutual covenants of the parties and other good and valuable consideration, the Subtenant, the Landlord and the Sublandlord agree as follows:

1. The Landlord consents to the execution and delivery of the Sublease.

2. Provided the Sublease remains in full force and effect and Subtenant is not in default under the Sublease (beyond any period given the Subtenant to cure the default), then:

(a) Landlord shall recognize the Sublease and shall not disaffirm the Sublease even if the Senior Lease is terminated. The Subtenant's right of possession to the Demised Premises and the Subtenant's other rights, duties and obligations arising out of the Sublease shall not be disturbed, modified, enlarged or otherwise affected by the Landlord or by any person or entity which shall have acquired rights through or under the Landlord in the exercise of its rights or in the performance of its obligations or in any other manner under the Senior Lease. Further, the Subtenant shall not be named as a party defendant in any proceedings resulting from a default of the Sublandlord under the Senior Lease nor in any other way be deprived of its rights under the Sublease.

(b) If the Senior Lease or any renewal thereof shall terminate before the expiration of the term of the Sublease, as the Sublease may be renewed in accordance with its terms, the Sublease, if then in existence, shall continue as a lease between the Landlord as lessor, and the Subtenant as lessee, with the same force and effect as if the Landlord and Subtenant had entered into a ground lease as of the date of termination of the Senior Lease, containing the same terms, covenants and conditions as those contained in the Sublease. In such event, the Sublease shall remain in full force and effect in accordance with its terms.

(c) In the event that the Landlord exercises any of its remedies in the event of a default by the Sublandlord, as provided for in the Senior Lease, the Sublease shall not be terminated or affected by the default or action of the Landlord or the Sublandlord or both. The Subtenant covenants and agrees to attorn to the Landlord, as the case may be, as its new lessor if the Sublandlord's rights under the Senior Lease are terminated, and the Sublease shall continue in full force and effect as a direct lease between the Subtenant and the Landlord.

3. The term "Landlord" as used in this Agreement means only the Landlord for the time being of the Demised Premises. In the event of the sale, assignment or transfer of such owner's interest in the Demised Premises, such selling, assigning or transferring owner shall be released and discharged from all covenants and obligations of Landlord thereafter accruing, but such covenants and obligations shall be binding upon each new owner of the Demised Premises for the period of its ownership.

4. Landlord and Sublandlord represent and warrant that the Senior Lease is in full force and effect as of the date hereof.

5. The above provisions shall be self-operative and effective without execution of any further instruments on the part of any party. However, the Subtenant agrees to execute and deliver to the Landlord or to any other person to whom the Subtenant agrees to attorn, such other instruments as either shall reasonably request in order to comply with these provisions.

6. This Agreement may not be modified other than by an agreement in writing signed by the parties or by their respective successors in interest.

7. This Agreement shall run with the land and inure to the benefit of and be binding upon the parties and their successors and assigns.

8. This document may be executed in one or more counterparts which, taken together, shall constitute one and the same instrument. To indicate their agreement to the above, the parties or their authorized representatives or officers have signed this document.

9. Landlord and Sublandlord represent and warrant to Subtenant that (i) the initial term of the Senior Lease expires on December 31, 2038 and (ii) under the terms of the Senior Lease, Sublandlord has two (2) ten-year options to extend the initial term of the Senior Lease (the "Senior Lease Extension Options") exercisable by Sublandlord delivering to Landlord notice of exercise, together with the applicable rent payment (a "Senior Lease Extension Notice"), on or before the expiration of the initial term of the Senior Lease (or, if applicable, the expiration of the first optional extension term of the Senior Lease). Notwithstanding anything to the contrary contained herein, upon Sublandlord's receipt of written request from Subtenant on or before the expiration of the initial term of the Senior Lease (or, if applicable, on or before the expiration of the first option extension term of the Senior Lease), Sublandlord shall immediately (but in any event in compliance with the timing specified in the Senior Lease for valid exercise of a Senior Lease Extension Option) deliver to Landlord a Senior Lease Extension Notice sufficient to validly exercise the applicable Senior Lease Extension Option. Sublandlord and Landlord acknowledge and agree that notwithstanding whether Subtenant requests that Sublandlord extend the term of the Senior Lease, Sublandlord shall be solely responsible for any rental payment required to be paid by Sublandlord to Landlord in connection with extension of the Senior Lease. Notwithstanding any other provision of this Agreement to the contrary, it is the intent of Landlord, Sublandlord and Subtenant that Sublandlord shall not, due to clerical oversight or other unintentional reasons, be considered to have waived any of Sublandlord's rights to extend the term of the Senior Lease. Accordingly, if Landlord does not receive notice from Sublandlord of Sublandlord's election to extend the term of the Senior Lease for any of the option periods, then Landlord shall notify Sublandlord and Subtenant in writing thereof ("Landlord's Option Notice"). Sublandlord and Subtenant's right to occupy the Property following expiration of the then-current Senior Lease term and Sublandlord's right to exercise any of the Senior Lease Extension Options shall not expire unless (i) Sublandlord fails to give Landlord notice of the extension within thirty (30) days of the receipt by Sublandlord and Subtenant of Landlord's Option Notice, or (ii) Sublandlord and Subtenant advise Landlord in writing that Sublandlord has elected not to extend the term of the Senior Lease. During any such period following expiration of the then-current Senior Lease term, all terms of the Senior Lease shall remain in full force and effect, except that rent shall be increased to the amount that would have applied if Sublandlord had timely exercised its option to extend the term of the Senior Lease.

[SIGNATURES COMMENCE ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, Landlord, Sublandlord, and Subtenant have caused this Agreement to be executed and sealed the day, month and year first above written.

“SUBLANDLORD”

MARKETPLACE-COLUMBIA, LLC,
a Delaware limited liability company

By: ASTON PROPERTIES, INC.,
its Manager

By: [Signature]
Its: SENIOR VICE PRESIDENT

Date: 12.14.09

STATE OF North Carolina
COUNTY OF Mecklenburg

The foregoing instrument was acknowledged before me this 14th day of December 2009
by Randolph W. Green, as Senior Vice President of Aston Properties, Inc.

Jennifer L Williams
Notary Public
My Commission Expires: Nov. 19, 2011

[NOTARY SEAL]



[Signatures continue on following page]

"LANDLORD"

CITY OF COLUMBIA, SOUTH CAROLINA

By: SA Gantt

Name: Steven A. Gantt

Title: City Manager

[CITY SEAL]

STATE OF South Carolina
COUNTY OF Richland

The foregoing instrument was acknowledged before me this 27 day of January, 20 10,
by Steven A. Gantt, as City Manager of City of Columbia.

Erika D. Solley
Notary Public
My Commission Expires: 05/21/2012

[NOTARY SEAL]

[Signatures continue on following page]



"SUBTENANT"

CHICK-FIL-A, INC.,
a Georgia corporation

By: B. Lynn Chastain

Title: Vice President

By: S. Truett Cathy

Title: Chairman and CEO

[CORPORATE SEAL]

STATE OF Georgia
COUNTY OF Pike

The foregoing instrument was acknowledged before me this 17 day of November, 2009,
by B. Lynn Chastain and S. Truett Cathy, as Vice President and
Chairman and CEO, respectfully, of Chick-fil-A, Inc.

Traci D. Shirah

Notary Public
My Commission Expires:

[NOTARY SEAL]



EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT A

PARCEL A

Beginning at an iron on the southern corner of the terminus of Senate Street and running North 70 degrees 06 minutes East for a distance of 69.15 feet to an iron; thence turning and running South 20 degrees 00 minutes East for a distance of 27.19 feet to an iron; thence turning and running South 70 degrees 06 minutes West for a distance of 65.74 feet to a concrete retaining wall; thence continuing to run South 70 degrees 06 minutes West for a distance of 3.5 feet to an iron; thence turning and running North 27 degrees 09 minutes West for a distance of 27.4 feet to the point of commencement. Said parcel containing 0.04 acres.

PARCEL B

Beginning at an iron on the southern side of the right of way of Senate Street and running North 70 degrees 06 minutes East for a distance of 228.65 feet to an iron; thence turning and running South 20 degrees 00 minutes East for a distance of 27.19 feet to an iron; thence turning and running South 70 degrees 06 minutes East for a distance of 228.65 feet to an iron; thence turning and running North 20 degrees 00 minutes West for a distance of 27.19 feet to the point of commencement. Said parcel containing 0.14 acres.

PARCEL C

Beginning at an iron on the northern side of the right of way of College Street and running North 20 degrees 00 minutes East for a distance of 24.65 feet to an iron; thence turning and running North 70 degrees 06 minutes East for a distance of 269.48 feet to an iron; thence turning and running South 20 degrees 00 minutes East for a distance of 22.75 feet to an iron; thence turning and running South 69 degrees 42 minutes West for a distance of 269.48 feet to the point of commencement. Said parcel containing 0.15 acres.

PARCEL D

Beginning at an iron on the western side of the right of way of Harden Street and running South 20 degrees 00 minutes East for a distance of 984.41 feet to an iron; thence turning and running South 69 degrees 42 minutes West for a distance of 19.0 feet to an iron; thence turning and running North 20 degrees 00 minutes West for a total distance of 984.54 feet to an iron; thence turning and running along the right of way of Senate Street North 70 degrees 06 minutes East for a distance of 15 feet to the point of commencement. Said parcel containing 0.43 acres.

All of above parcels being shown on plat prepared for B.F.T. Investments by Tetterton and Riddick, Surveyors dated November 30, 1977, revised August 4, 1978.

EXHIBIT "B"

LEGAL DESCRIPTION OF DEMISED PREMISES

All that tract or parcel of land lying and being in the City of Columbia, Richland County, State of South Carolina and being more particularly described as follows;

Beginning at the intersection of the northern right-of-way of College St. and the western right-of-way of Harden St.; thence with the right-of-way of Harden St. N 20°30'51" W a distance of 144.02'; thence leaving said right-of-way N 70°04'29" E a distance of 24.03'; thence S 20°29'47" E a distance of 160.66'; thence with a curve turning to the right with an arc length of 8.62', with a radius of 5.50', with a chord bearing of S 24°25'43" W, with a chord length of 7.77'; thence S 69°21'13" W a distance of 260.73'; thence N 20°50'45" W a distance of 23.66' to the northern right-of-way of College St.; thence with said right-of-way N 69°38'40" E a distance of 242.37' to The True Point of Beginning.

Parcel having an area of 9569.88 square feet/0.220 acres.

EXHIBIT "C"

DEPICTION OF DEMISED PROPERTY

