

RESOLUTION NO.: R-2007-054

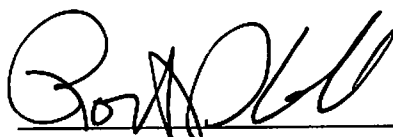
*Authorizing execution of a Subordination, Non-Disturbance and  
Attornment Agreement with Carolina Bank for property known  
as the Suggs and Kelly Parking Lot at 500 Taylor Street*

ORIGINAL  
STAMPED IN REC

BE IT RESOLVED by the Mayor and City Council this 19th day of September, 2007, that  
the City Manager is authorized to execute the attached Subordination, Non-Disturbance and  
Attornment Agreement with Carolina Bank for property known as the Suggs and Kelly Parking  
Lot at 500 Taylor Street.

Requested by:

\_\_\_\_\_



Mayor

Approved by:



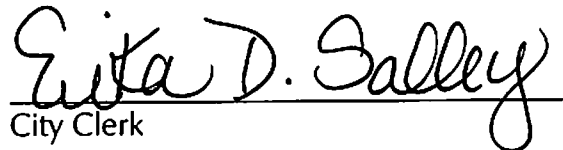
City Manager

Approved as to form:



Interim City Attorney

ATTEST:



City Clerk

Introduced: 9/19/2007

Final Reading: 9/19/2007

SUBORDINATION, NON-DISTURBANCE AND  
ATTORNNMENT AGREEMENT

THIS AGREEMENT is made as of this \_\_\_ day of August, 2007, between CITY OF COLUMBIA (the "Tenant") and CAROLINA BANK (the "Bank").

WITNESSETH:

WHEREAS, the Tenant is the lessee under the lease (the "Lease") dated July 18, 2001 (as amended, the "Lease") with Suggs & Kelly Investments, LLC (the "Landlord"), which Lease demised certain property as more particularly described in the Lease (collectively, the "Demised Premises") to Tenant; and

WHEREAS, the Bank has previously made or will make certain loans to Landlord in the original, aggregate principal amount of up to Five Million Five Hundred Thousand and no/100 Dollars (\$5,500,000.00), as evidenced and secured by that certain promissory note and a first mortgage and security agreement on the premises described in the said mortgage instrument (the "Mortgage Instrument"); and

WHEREAS, the Bank is willing to agree that Tenant's possession of the Demised Premises shall not be disturbed as a result of a foreclosure of the Mortgage Instrument or a transfer in lieu of foreclosure so long as Tenant is not in default (as determined by the Lease) under the Lease and provided Tenant subordinates the Lease to the lien of the Mortgage Instrument and attorns to the purchaser at the foreclosure sale or transferee taking title in lieu of foreclosure and recognizes said purchaser or transferee as lessor under the Lease; and

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged the Bank and Tenant hereto do hereby mutually covenant and agree as follows:

1. Estoppel. Tenant hereby certifies, represents and warrants as follows:
  - (a) That the Lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way except as set forth in the recitals above;
  - (b) That the Lease represents the entire agreement between the parties as to said leasing;
  - (c) That the commencement date of the term of said Lease is July 01, 1999.
  - (d) That the expiration date of the term of the Lease is June 30, 2009. The Tenant has no rights to renew or extend the term of the Lease except as set forth in Section 2 of the Lease;
  - (e) That all conditions of said Lease to be performed by Landlord and necessary to the enforceability of the Lease as of the date hereof have been satisfied;
  - (f) That there are no defaults by either Tenant or Landlord thereunder, and no event has occurred or situation exists which would, with the passage of time, constitute a default under the Lease. All improvements or work required under the Lease to be made by the Landlord to date, if any, have been completed to the satisfaction of the Tenant. As of the date hereof, charges for all labor and materials used or furnished in connection with improvements and/or alterations made for the account of the Tenant in the building have been paid in full;

- (g) That no rents have been prepaid more than two (2) months in advance and full rental, including basic minimum rent, if any, has commenced to accrue;
- (h) That on this date there are no existing defenses, offsets, claims or credits which the Tenant has against the enforcement of the Lease by Landlord;
- (i) The Tenant has all governmental permits, licenses and consents required for the activities and operations being conducted or to be conducted by it in or around the building; and
- (j) That as of this date there are no actions, whether voluntary or otherwise, (i) pending against the Tenant or the operations being conducted on the Demised Premises, which would materially affect the performance of Tenant's obligations under the Lease, or (ii) pending against Tenant under the insolvency laws of the United States or any state thereof.

2. Subordination. The Tenant hereby subordinates the Lease to the Mortgage Instrument and the lien thereof, and to all renewals and extensions of same, to the extent of all advances heretofore or hereafter made to the Landlord secured by the Mortgage Instrument.

3. Non-Disturbance. Provided Tenant complies with this Agreement and is not in default (as determined by the Lease) under the terms of the Lease in the payment of rent or additional rent or the performance of any of the terms, conditions, covenants, clauses or agreements on its part to be performed under the Lease (beyond any period of time given Tenant to cure) as of the date the Bank commences foreclosure proceedings or accepts a deed in lieu of foreclosure, or at any time thereafter, no default under the Mortgage Instrument, as modified, extended, increased, spread or consolidated, and no proceeding to foreclosure the same, will disturb Tenant's possession under said Lease and the Lease will not be affected or cut off thereby.

4. Attornment. In the event that the Bank takes possession of the Demised Premises, either as the result of foreclosure of the Mortgage Instrument or any other transfer in lieu of foreclosure or otherwise or the Demised Premises shall be purchased at such a foreclosure by a third party, the Tenant shall attorn to the Bank or such third party as its landlord under the Lease and the Lease will be recognized as a direct lease from the Bank or such third party, except that the Bank or such third party shall not be:

(a) liable for any previous act or omission of Landlord or any prior landlord under the Lease prior to the date the Bank or such third party took title,

(b) subject to any offset, claim or defense which shall theretofore have accrued to Tenant against Landlord or any other prior landlord,

(c) obligated with respect to any security deposited under the Lease unless such security has been physically delivered to the Bank or such third party, or

(d) bound by any previous modification of the Lease or by any previous prepayment of rent or additional rent for a period greater than two (2) months, unless such modification or prepayment shall have been expressly approved in writing by the Bank or such third party.

Notwithstanding the foregoing, in the event that the construction or renovation of the Demised Premises as contemplated in the Lease has not been substantially completed at the time the Bank or any third party succeeds to the interest of the Landlord under the Lease by reason of foreclosure or other proceedings brought by the Bank or by any transfer in lieu of foreclosure, then, in such event Tenant hereby agrees that

the Bank or any such third party shall have the right to cancel and terminate the Lease upon written notice to Tenant within thirty (30) days after such foreclosure or deed in lieu of foreclosure or other acquisition of the Demised Premises.

5. Agreement to Pay Rent Directly to Bank Upon Notice. Tenant acknowledges that Landlord's right to collect all monies due under the lease has been assigned to Bank. Notwithstanding this assignment, Landlord shall have the right and authority to enforce the lease and collect all rents and monies due under the lease until such time as tenant receives notice from Bank. Upon notification by Bank, Tenant agrees to immediately pay all monies due or to become due under the lease directly to Bank at the address hereinafter designated, regardless of whether Bank initiates any action to take possession of the Demised Premises.

6. No Obligation to Construct Demised Premises. Any provision of this Agreement to the contrary notwithstanding, the Bank shall have no obligation and shall incur no liability with respect to the erection and completion of the building(s) in which the Demised Premises are located or for the completion of the Demised Premises or any improvements for Tenant's use and occupancy.

7. Further Assurances. Tenant will upon request by the Bank, or any subsequent owner, execute a written agreement in a form acceptable to Tenant whereunder Tenant does attorn to the Bank or any such subsequent owner and affirm Tenant's obligation under the Lease and agree to pay all rentals and charges then due or to become due as they become due to the Bank or such subsequent owner.

8. Notices to Landlord. From and after the date hereof Tenant shall send a copy of any notice or statement sent to the Landlord by the Tenant asserting a default under the Lease or seeking to assign or sublet any portion of the Demised Premises, if such assignment or subletting is allowed under the Lease, to the Bank and to the Landlord under the Lease. Such copy shall be sent to the Bank at the same time such notice or statement is sent to the Landlord. Notices shall be sent to the Bank by prepaid, registered or certified mail, addressed to the Bank at the following address, or such other address as the Bank shall designate to Tenant in writing:

Carolina Bank  
3037 West Palmetto Street  
Florence, South Carolina 29501

9. No Lease Amendments, Surrender, Assignment or Subletting. Tenant will not surrender or consent to the modification or amendment of any of the terms of the Lease nor to the termination thereof by the Landlord nor to the assignment or subletting of all or any part of the Lease without the prior written consent of the Bank, which consent shall be obtained in writing thirty (30) days in advance by Landlord.

10. Bank's Right To Cure. 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 thirty (30) days prior written notice of such taking, act, omission or other default to the Bank as hereinafter provided and, in the event any such default or event of default is not cured by the Landlord within any time period provided for under the terms and conditions of the Lease, Tenant will allow the Bank thirty (30) days from the expiration of the Landlord's cure period under the Lease within which the Bank 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 Bank; provided, however, if the act, omission or other default cannot with due diligence be remedied within such thirty (30) day period, the Bank shall have a reasonable time in which to remedy the same provided the Bank commences to remedy the same within such thirty (30) day period and thereafter proceeds with due diligence to complete the remedy

thereof. Notwithstanding the foregoing, Tenant shall have the right without prior notice to the Bank to make repairs if Tenant determines in good faith that a bona-fide emergency precludes the giving of such notice. In the event of such an emergency, Tenant may present to Landlord a demand for reimbursement to the extent permitted under the Lease, but Tenant will not make deductions from or reductions in rental to recoup such expenses until Tenant shall give the Bank notice of such repairs and such demand and a thirty (30) day period to cause such reimbursement to be made and opportunity to cure provided for herein as soon as reasonably practicable.

11. Advance Rent. From and after the date hereof, the Tenant will not pay any rent under said Lease more than two (2) months in advance of its due date.

12. No Impairment of Mortgage Instrument. Nothing contained in this Agreement shall in any way impair or affect the lien created by the Mortgage Instrument, except as specifically set forth herein.

13. Casualty and Condemnation Proceeds. If the Landlord is obligated to restore the Demised Premises or the improvements constructed thereon under the terms of the Lease, the Bank will make such property insurance proceeds or condemnation award available for repair in accordance with the terms of the Mortgage Instrument so long as the terms of the Mortgage Instrument between the Bank and the Landlord concerning such matters have been satisfied. Such proceeds or award, if used for repair or restoration, shall be deposited with and held by the Bank and disbursed periodically as restoration or repair work is performed, such disbursements to be made in the manner that funds are disbursed under (and subject to the requirements of) construction loans made by Bank.

14. No Other Subordination. Tenant agrees not to subordinate the Lease to any other lien or encumbrance which (i) affects the Demised Premises under the Lease or any part thereof, and (ii) is junior to the Mortgage Instrument, without the express prior written consent of the Bank, and any such subordination without consent of the Bank, shall be void and of no force and effect.

15. Waivers to be in Writing. 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.

16. Successors and Assigns. This Agreement shall inure to the benefit of the parties hereto, their successors and assigns; provided, however, that in the event of the assignment or transfer of the interest of the Bank, all obligations and liabilities of the Bank under this Agreement shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the party to whom the Bank's interest is assigned or transferred.



