



NOW, THEREFORE, for and in consideration of \$1.00 and the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

1. **Recitals Incorporated Herein.** The above recitals are incorporated in and made a part of this Agreement as fully as if set forth verbatim herein.

2. **Grant of Easement.** Subject to the terms of this Agreement, Grantor hereby grants, bargains, sells and conveys to Grantee a perpetual, non-exclusive easement over that part of the Property on which the Sidewalk is located (shown as "Concrete Walk" on the Exhibit) for the sole purpose of operation, maintenance, replacement and repair, at Grantee's sole cost, of the Sidewalk in the location shown on the Exhibit, for use by pedestrians in connection with use of other sidewalks operated or maintained by Grantee on adjoining property (the "Easement"). The Easement is hereby dedicated in perpetuity to Grantee and to the common use of the public, subject to the terms of this Agreement. By execution of this Agreement and acceptance of the Easement, Grantee accepts such dedication on behalf of its citizens and the public.

The portion of the Property on which the Sidewalk is located, as shown on the Exhibit, may be referred to in this Agreement as the "Easement Area."

3. **Reservations by Grantor.** Grantor reserves the right to use the Easement Area and the Sidewalk for any lawful purposes not inconsistent with or detrimental to the easement rights granted under this Agreement.

4. **Maintenance; Repair; Alteration.** Grantee shall, at its sole cost, (i) promptly repair and restore any part of the Property disturbed by Grantee as a result of the exercise of its rights under this Agreement and (ii) consistently operate, maintain, replace and repair the Sidewalk in good condition and repair, in compliance with all applicable laws, and pursuant to Grantee's Land Development Standards. Grantee shall not modify, enlarge or relocate the Sidewalk within the Easement Area, or construct or install any other improvements within the Easement Area, without the prior written consent of Grantor. Furthermore, Grantee acknowledges the Property is subject to, among other matters, the Declaration of Cross Easement, Restriction and Maintenance Agreement recorded in Book 4140, Page 636, Office of the Register of Deeds for Union County, North Carolina, which may require third party approval of any modifications to the Sidewalk.

Prior to entering the Easement Area to perform any maintenance, repair, or other work allowed by this Agreement, Grantee shall give reasonable prior written notice to Grantor. The Parties agree that at least 48 hours prior written notice is reasonable. Furthermore, the Parties agree that prior notice will not be required in emergency circumstances, as reasonably determined by such Party.

5. **[Intentionally Deleted].**

6. **Default; Remedies.** If either Party defaults under this Agreement and does not cure such default within ten days after receipt of written notice from the non-defaulting Party, after the expiration of the ten-day cure period, the non-defaulting Party will have the right to exercise all remedies available at law or in equity. The failure of either Party to exercise any of the rights herein granted shall not be construed as a waiver or abandonment thereof.

As long as a Bojangles' restaurant is in operation or under construction on the Property, all rights of Grantor under this Agreement may also be enforced by Bojangles' Restaurants, Inc. or its successors and assigns, and any notice given to Grantor shall also be given to Bojangles' Restaurants, Inc. at: Attn: Corporate Counsel, 9432 Southern Pine Boulevard, Charlotte, North Carolina 28273.

7. **Amendment.** This Agreement may be amended, modified or terminated only by an instrument in writing signed by all of the Parties and recorded in the Office of the Register of Deeds for Union County, North Carolina.

8. **Entire Agreement; Binding Effect.** This Agreement constitutes the entire and full agreement and understanding between the Parties. This Agreement supersedes all prior and/or contemporaneous agreements understandings and discussions between the Parties, written and/or oral, all of which shall be deemed merged into this Agreement and shall be of no further force and effect. The rights, obligations, restrictions, and covenants set forth herein shall run with the land and any part thereof or interest therein, and shall be binding upon, and inure to the benefit of, the Parties and their respective successors and assigns, forever.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

DRAFT

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the Effective Date.

**PRIMAX PROPERTIES, LLC,**  
a North Carolina limited liability company

By: \_\_\_\_\_ (Seal)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_

I certify that the following person personally appeared before me this day, acknowledging to me that she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

\_\_\_\_\_.

Date: \_\_\_\_\_, 2011

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

Printed Name: \_\_\_\_\_

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

[NOTARIAL SEAL]

**TOWN OF INDIAN TRAIL,**  
a North Carolina municipality

By: \_\_\_\_\_ (Seal)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF NORTH CAROLINA

COUNTY OF UNION

I certify that the following person personally appeared before me this day, acknowledging to me that she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

\_\_\_\_\_.

Date: \_\_\_\_\_, 2011

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

Printed Name: \_\_\_\_\_

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

**[NOTARIAL SEAL]**

DRAFT



**CONSENT AND SUBORDINATION**

**BANK OF NORTH CAROLINA**, being the Lender and Beneficiary under (i) the Deed of Trust from PriMax Properties, LLC recorded December 14, 2010, in **Book 5458, Page 73**, Office of the Register of Deeds for Union County, North Carolina ("ROD Office"), (ii) the Assignment of Leases and Rents recorded December 14, 2010, in **Book 5458, Page 81**, in the ROD Office, and (iii) the Collateral Assignment of Licenses and Contracts recorded December 14, 2010, in **Book 5458, Page 89**, in the ROD Office (collectively, the "Security Instruments"), each encumbering the Property as defined in the Sidewalk Easement Agreement by PriMax Properties, LLC in favor of the Town of Indian Trail recorded contemporaneously herewith ("Agreement"), does hereby (a) consent to the recordation of the Agreement and the imposition of the provisions thereof on the Property (as defined in the Agreement), and (b) consent and agree that from and after this date the provisions of the Agreement, including all exhibits, attachments, supplements and amendments thereto, shall be superior to the lien of the Security Instruments on the Property. The undersigned executes this Consent and Subordination solely for the purposes set forth herein. This instrument shall run with title to the Property and any assignment of the Security Instruments, shall bind the undersigned and its successors and assigns, and shall inure to the benefit of any holder of an interest (fee, easement or otherwise) in all or any part of the Property and their respective heirs, successors and/or assigns, forever.

IN WITNESS WHEREOF, the undersigned has caused this Consent and Subordination to be duly executed, sealed and delivered as of the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**BANK OF NORTH CAROLINA**

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

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_

I certify that the following person personally appeared before me this day, acknowledging to me that she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:  
\_\_\_\_\_.

Date: \_\_\_\_\_, 2011

Notary Public: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

[NOTARIAL SEAL]