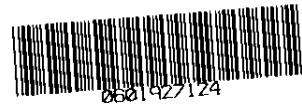


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THIS INSTRUMENT WAS PREPARED BY
AND SHOULD BE RETURNED TO:

Courtney E. Mayster
Schain, Burney, Ross & Citron, Ltd.
222 North LaSalle Street
Suite 1910
Chicago, Illinois 60601



Doc#: 0601927124 Fee: \$40.50
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 01/19/2006 03:06 PM Pg: 1 of 9

SUBORDINATION NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION AGREEMENT (the "Agreement"), made this 2nd day of ~~NOVEMBER~~ 2005, by and between **MB FINANCIAL BANK, N.A.** ("MB") and **922-924 THC LLC**, an Illinois limited liability company ("Landlord") and **POTBELLY SANDWICH WORKS, LLC**, an Illinois limited liability company ("Tenant").

WITNESSETH

WHEREAS, MB is the mortgagee pursuant to a Construction Mortgage, Assignment of Leases and Rents, and Security Agreement dated as of September 28, 2005, made by Landlord in favor of MB, encumbering, among other things, the land described on Exhibit A attached hereto, which mortgage was recorded on October 14, 2005 as Document No. 0528747068 in the Office of the Recorder of Deeds of Cook County, Illinois, (said mortgage, as amended or modified from time to time hereinafter referred to as the "Mortgage"); and

WHEREAS, Landlord and Tenant entered into that certain Lease dated October 7, 2005; (the "Lease"), which Lease demises the premises described therein (the "Premises") to Tenant for a term of ten (10) years, as such term may be extended as permitted in the Lease; and

WHEREAS, Landlord and Tenant have agreed to subordinate the Lease to the Mortgage provided that MB agrees that Tenant's possession of the Premises shall not be disturbed as a result of a foreclosure of the Mortgage or a deed given in lieu thereof so long as Tenant is not in default under the Lease and provided Tenant attorns to the purchaser at the foreclosure sale or at a sale pursuant to the power of sale in the Mortgage through a deed in lieu of foreclosure and recognize said purchaser as Landlord under the Lease); and

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WHEREAS, MB and Tenant are willing to agree to the Subordination, Non-Disturbance and Attornment Agreement under the terms and conditions hereinafter provided.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and notwithstanding anything in the Lease to the contrary, it is agreed as follows:

1. MB, Tenant and Landlord do hereby covenant and agree that the Lease is and shall be subject and subordinate in all respects to the Mortgage and to any renewal, modification, or extension of same with the same force and effect as if the Mortgage had been executed, delivered and recorded prior to the execution and delivery of the Lease.

2. So long as Tenant is not in default (beyond any period given Tenant to cure such default) in the payment of rent or additional rent or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed, Tenant's possession of the Premises and Tenant's rights and privileges under the Lease, or any extensions or renewals thereof which may be effected in accordance with any option therefor in the Lease, shall not be diminished or interfered with by MB, or its successors or assigns, and Tenant's occupancy of the Premises shall not be disturbed by MB, or its successors or assigns, for any reason whatsoever during the term of the Lease or any such extensions or renewals thereof.

3. So long as Tenant is not in default (beyond any period given Tenant to cure such default) in the payment of rent or additional rent or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed, MB, or its successors or assigns, will not join Tenant as a party defendant in any action or proceeding for the purpose of terminating Tenant's interest and estate under the Lease.

4. Notwithstanding any provisions of Paragraphs 2 and 3 hereof to the contrary, in the event of any foreclosure of the Mortgage or conveyance in lieu of foreclosure, MB and Tenant agree that neither MB, its successors or assigns, nor any other party acquiring the Premises upon a foreclosure sale or by a conveyance in lieu of foreclosure, as the case may be (the "Foreclosure Purchaser"), shall in any way or to any extent (i) be bound by any previous modification or amendment of the Lease which would adversely affect any right MB may have under the Lease or by any previous prepayment of rent for a period greater than one (1) month, unless such modification, amendment or prepayment shall have been expressly approved in writing by MB, or its successors or assigns, other than the exercise of rights, options or elections contained in the Lease, (ii) be bound by any assignment of Tenant's interest in the Lease by Tenant or by operation of law or otherwise (except for any assignment of Tenant's interest in the Lease by Tenant made in accordance with the terms of the Lease), without the express prior written consent of MB, or its successors or assigns, (iii) be obligated or liable to Tenant with respect to the construction, completion or renovation of the improvements on the

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Premises or the Premises for Tenant's use other than ordinary maintenance and repair and any unfunded tenant improvements allowance (including allowances for initial construction), or (iv) be obligated or liable to Tenant with respect to any act or failure to act on the part of Landlord, provided, however, that MB, its successors or assigns shall be liable for the performance of any covenant or obligation of Landlord under the Lease that accrues from and after the date that MB takes title to the property (including the obligation to cure any prior default that continues after the date MB takes title to the property); and Tenant shall have no right to assert or claim any of the foregoing or any damages arising therefrom against MB, its successors or assigns, or the Foreclosure Purchaser, whether as an offset or defense or otherwise.

5. Without limitation of the foregoing, Tenant further agrees as follows:

(a) That in the event MB or any successors in interest shall succeed to the rights of landlord under the Lease, whether through possession, surrender, assignment, judicial action, foreclosure of the Mortgage, the exercise of the power of sale thereunder or by a conveyance in lieu of foreclosure, Tenant hereby covenants and agrees to make full and complete attornment to MB or to the Foreclosure Purchaser, as the case may be, for the balance of the term of the Lease, including any extensions and renewals thereof which may be effected in accordance with any option therefor in the Lease, upon the same terms, covenants and conditions as therein provided, so as to establish direct privity of estate and contract as between MB or the Foreclosure Purchaser, as the case may be, and Tenant, and with the same force and effect as though the Lease were originally made directly from MB, or the Foreclosure Purchaser, as the case may be, to Tenant, and Tenant will thereafter make all rent payments and any other payments under the Lease thereafter as directed by MB or the Foreclosure Purchaser, as the case may be.

(b) That in the event of any act or omission by Landlord under the Lease which constitutes a default on the part of Landlord thereunder or which would give Tenant the right to terminate the Lease or to claim a partial or total eviction, notwithstanding any provision of the Lease to the contrary, Tenant will not exercise any such right until: (i) it has given written notice of such act or omission to MB, and (ii) following the giving of such notice, MB shall have failed, with reasonable diligence, to commence, pursue or complete reasonable action to remedy such act or omission within thirty (30) days after receipt of said written notice (or without notice in case of an emergency or a hazardous condition), provided, however, that said thirty (30) day period shall be extended so long as within said thirty (30) day period MB has commenced to cure and is proceeding with due diligence to cure said default.

(c) That Tenant will in no event subordinate or agree to subordinate the Lease to any other lien or encumbrance affecting the Premises without the express written consent of MB and any such attempted subordination or agreement to subordinate without such consent of MB shall be void and of no force and effect.

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6. Tenant acknowledges that Landlord will execute and deliver to MB an assignment of the Lease and the rents thereunder as security for the loan secured by the Mortgage, and Tenant hereby expressly consents to such assignment.

7. Landlord and Tenant hereby certify to MB that (i) a true, correct and complete copy of the Lease, including all exhibits and amendments thereto, has been delivered to MB, and, except as contained in said Lease, the Lease has not been modified, supplemented, amended, assigned, transferred, renewed or otherwise changed in any way, (ii) the Lease has been duly executed by Landlord and Tenant and is in full force and effect, and is the binding obligation of the parties thereto, and (iii) the Lease, as delivered to MB, is the complete statement of the agreement between Landlord and Tenant with respect to the construction and leasing of the Premises.

8. Nothing contained in this Agreement shall in any way impair or affect the lien created by the Mortgage.

9. 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.

10. All notices, demands and requests given or required to be given hereunder shall be in writing. All such notices, demands and requests by MB to Tenant, shall be deemed to have been properly given if served in person, if sent by United States registered or certified mail, postage prepaid, or if sent by reputable overnight courier service, addressed to Tenant at:

Potbelly Sandwich Works, LLC
222 Merchandise Mart Plaza
23rd Floor
Chicago, Illinois 60654

or to such other address as Tenant may from time to time designate by written notice to MB given as herein required with a copy to Lawrence C. Eppley, Bell, Boyd & Lloyd LLC, Three First National Plaza, 70 West Madison Street, Suite 3300, Chicago, Illinois 60602. All notices, demands and requests by Tenant to MB shall be deemed to have been properly given if served in person, if sent by United States registered or certified mail, postage prepaid, or if sent by reputable overnight courier service, addressed to MB at:

MB Financial Bank, N.A.
6111 North River Road
Rosemont, Illinois 60018
Attn: Vincent G. Laughlin

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or to such other address as MB may from time to time designate by written notice to Tenant as herein required with a copy to David J. O'Keefe, Schain, Burney, Ross & Citron, Ltd., 222 North LaSalle Street, Suite 1910, Chicago, Illinois 60601. Notices, demands and requests given by mail by MB to Tenant and by Tenant to MB in the manner aforesaid shall be deemed sufficiently served or given for all purposes hereunder when delivered personally, three (3) business days after the time such notice, demand or request shall be deposited in the mails as aforesaid, or one (1) business day after the time such notice, demand or request shall be delivered to an overnight courier service.

11. This Agreement shall inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that upon the assignment of the interest of either MB or Tenant hereunder, all obligations and liabilities of such assignor under this Agreement shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the party or parties to whom such interest is so assigned.

12. Tenant, MB and Landlord acknowledge and agree that this Agreement satisfies any condition or requirement of the Lease relating to a subordination and non-disturbance agreement.

13. Any provision of this Agreement which is unenforceable or invalid or contrary to law, or the inclusion of which would affect the validity, legality or enforcement of this Agreement, shall be of no effect, and in such case, all the remaining terms and provisions of this Agreement shall subsist and be fully effective according to the tenure of this Agreement as though any such invalid portion had never been included herein.

(SIGNATURES APPEAR ON FOLLOWING PAGE)

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IN WITNESS WHEREOF, the parties have executed the foregoing Subordination, Non-Disturbance and Attornment Agreement as of the day and year first above written.

MB FINANCIAL BANK, N.A.

By: Andrea Bender
Name: Andrea Bender
Title: Banking officer

922-924 THC LLC, an Illinois limited liability company

By: **924 West Belmont Corporation, an Illinois corporation**
Its: **Manager**

By: David Jabonski
Name: David Jabonski
Its: President

POTBELLY SANDWICH WORKS, LLC, an Illinois limited liability company

By: Bryant Keil
Name: Bryant Keil
Title: authorized signatory

\\DOJ\LOANS\MB\LABUNSKI\FULLERTON-CONST\SND\A-POTBELLY-1.DOC

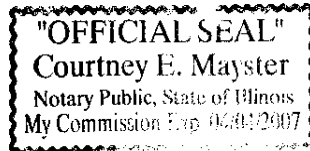
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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, _____, a Notary Public in and for said County, in the State aforesaid. DO HEREBY CERTIFY that _____, personally known to me to be the _____ of **924 West Belmont Corporation**, an Illinois corporation, the Manager of **922-924 THC LLC**, an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as Manager of said company, pursuant to the authority given by the company, as his free and voluntary act and as the free and voluntary act and deed of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial sale this 2nd day of November, 2005.

Courtney E. Mayster
Notary Public
My commission expires: 4.4.07

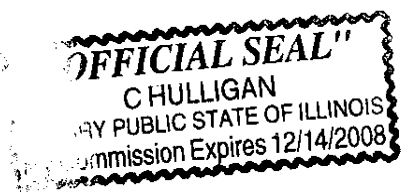


STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Cathy Hulligan, a Notary Public in and for said County, in the State aforesaid. DO HEREBY CERTIFY that Bryant Keil, personally known to me to be the authorized signatory of **Potbelly Sandwich Works, LLC**, an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as authorized signatory of said corporation, pursuant to the authority given by the Board of Directors of said corporation, as his free and voluntary act and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial sale this 12th day of October, 2005.

C. Hulligan
Notary Public
My commission expires 12.14.08



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EXHIBIT "A"

LEGAL DESCRIPTION

LOTS 21 AND 22 IN M.L. SCHUDDERS JR SUBDIVISION OF LOT 1 IN THE RESUBDIVISION OF BLOCK 2 IN HAMBLETON, WESTON AND DAVIS SUBDIVISION OF THE SOUTH ½ OF THE SOUTHEAST ¼ OF THE SOUTHEAST ¼ OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 14-20-426-016-0000

ADDRESS: 922-924 WEST BELMONT AVENUE
CHICAGO, ILLINOIS

Property of Cook County Clerk's Office