

# UNOFFICIAL COPY COPY

THIS INSTRUMENT PREPARED BY AND  
AFTER RECORDING RETURN TO:

Attn: Felix M. Gonzalez  
Tristan & Gonzalez, LLC  
11 E. Adams, Suite 1100  
Chicago, Illinois 60603  
312.345.9200



Doc#: 0807816047 Fee: \$52.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 03/18/2008 03:13 PM Pg: 1 of 9

4386770

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT

THIS AGREEMENT is made as of this 2 day of January, 2008, by and among THE NORTHERN TRUST COMPANY ("Mortgagee"), JAMBA JUICE COMPANY, a California corporation ("Tenant"), and 918-924 BELMONT, LLC, an Illinois limited liability company ("Landlord").

### RECITALS

A. Tenant is the lessee under that certain lease executed between Tenant and Landlord dated May 8, 2007 (the lease and all amendments thereto are hereinafter referred to as the "Lease"), covering all or a portion of property legally described on Exhibit A attached hereto and made a part hereof (the "Property").

B. Mortgagee is making a loan (the "Loan") to Landlord which is secured, in part, by the lien of a mortgage executed and delivered by Landlord to Mortgagee encumbering the Property (the "Mortgage") and an assignment of leases and rents from the Property.

C. The Mortgage constitutes a first lien upon the Property;

D. As a condition to making the Loan, Mortgagee requires that Tenant enter into this Agreement;

E. The parties hereto desire to establish additional rights of quiet and peaceful possession for the benefit of Tenant under the Lease and further to define the terms, covenants and conditions precedent for such additional rights;

# UNOFFICIAL COPY

## AGREEMENTS

1. Subordination. The Lease is and at all times shall be subordinate to the Mortgage and to all renewals, modifications and amendments thereof and thereto.
2. No Amendment. Landlord and Tenant each agree not to amend or modify the Lease without the prior written consent of Mortgagee.
3. Non-Disturbance. In the event of foreclosure of the Mortgage or conveyance in lieu of foreclosure, which foreclosure or conveyance occurs prior to the expiration date of the Lease, including any extensions and renewals of the Lease now provided thereunder, and so long as Tenant is not in default under any of the terms, covenants and conditions of the Lease beyond any applicable grace or cure period, Mortgagee agrees on behalf of itself, its successors and assigns, and on behalf of any purchaser at such foreclosure ("Purchaser") that Tenant shall not be disturbed in the quiet and peaceful possession of the premises demised under the Lease. Tenant acknowledges that Mortgagee has a claim superior to Tenant's claim for condemnation awards and insurance proceeds, if any, received with respect to the Improvements or the Property.
4. Attornment. In the event of foreclosure of the Mortgage or conveyance in lieu of foreclosure, which foreclosure or conveyance occurs prior to the expiration date of the Lease, including any extensions and renewals of the Lease now provided thereunder, Tenant shall attorn to Mortgagee or Purchaser and recognize Mortgagee or Purchaser as its landlord under the Lease, and Mortgagee or Purchaser shall recognize and accept Tenant as its tenant thereunder, whereupon the Lease shall continue, without further agreement, in full force and effect as a direct lease between Mortgagee or Purchaser and Tenant for the full term thereof, together with all extensions and renewals now provided thereunder, upon the same terms, covenants and conditions as therein provided, and Mortgagee or Purchaser shall thereafter assume and perform all of Landlord's obligations, as landlord under the Lease, with the same force and effect as if Mortgagee or Purchaser were originally named therein as Landlord and Tenant shall thereafter make all rent payments directly to either Mortgagee or Purchaser, as the case may be, subject to limitations contained in paragraph 5 below.
5. Limitation of Liability. Notwithstanding anything to the contrary contained herein or in the Lease, in the event of foreclosure of the Mortgage or conveyance in lieu of foreclosure, which foreclosure or conveyance occurs prior to the expiration date of the Lease, including any extensions and renewals of the Lease now provided thereunder, the liability of Mortgagee, its successors and assigns, or Purchaser, as the case may be, shall be limited to its interest in the Property; provided, however, that Mortgagee, its successors and assigns, or Purchaser, as the case may be, shall in no event or to any extent:
  - (a) be liable to Tenant for any past act, omission or default on the part of the original or any prior landlord (other than to cure defaults of a continuing nature with respect to the maintenance or repair of the demised premises or the Property) under the Lease and Tenant shall have no right to assert the same or any damages arising therefrom

# UNOFFICIAL COPY

as an offset, defense or deficiency against Mortgagee, Purchaser or the successors or assigns of either of them;

- (b) be liable to Tenant for any prepayment of rent or deposit, rental security or any other sums deposited with the original or any prior landlord under the Lease and not delivered to Mortgagee;
  - (c) be bound by any amendment or modification of the Lease not consented to by Mortgagee;
  - (d) be bound by any warranty or representation of Landlord relating to work performed by Landlord under the Lease; or
  - (e) be liable to Tenant for construction or restoration, or delays in construction or restoration, of the Improvements or the portion thereof leased to Tenant.
6. Further Documents. The foregoing provisions shall be self-operative and effective without the execution of any further instruments on the part of any party hereto. Tenant agrees, however, to execute and deliver to Mortgagee or to any person to whom Tenant herein agrees to attorn such other instruments as either shall reasonably request in order to effectuate said provisions.
7. Lease. Tenant certifies that there are no defaults on the part of Tenant under the Lease and to the best of its knowledge, no defaults on the part of Landlord under the Lease; the Lease has not been amended and is a complete statement of the agreement of the parties thereto with respect to the letting of the demised premises, except for those amendments and agreements which have been delivered to Mortgagee; and all the agreements and provisions therein contained are in full force and effect on the date of this Agreement.
8. Notice and Cure. Tenant agrees that if there occurs a default by Landlord under the Lease:
- (a) A copy of each notice given to Landlord pursuant to the Lease shall also be given to Mortgagee, and no such notice shall be effective for any purpose under the Lease unless so given to Mortgagee; and
  - (b) If Landlord shall fail to cure any default within the time prescribed by the Lease, Tenant shall give further notice of such fact to Mortgagee. Mortgagee shall be allowed thirty (30) additional days to cure such default or institute and such additional time as may be reasonably necessary to complete foreclosure proceedings (or otherwise acquire title to the Improvements), and so long as Mortgagee shall be proceeding diligently to cure the defaults that are reasonably susceptible of cure or proceeding diligently to foreclose the Mortgage, no such default shall operate or permit Tenant to terminate this Lease.

# UNOFFICIAL COPY

9. Notices. All notices, demands and requests given or required to be given hereunder shall be in writing and shall be deemed to have been properly given when personally served or if sent by U.S. registered or certified mail, postage prepaid, addressed as follows:

Mortgagee: The Northern Trust Company  
 50 South LaSalle Street  
 Chicago, Illinois 60603  
 Attn: Javier Nunez

Tenant: Jamba Juice Company  
 6475 Christie Avenue, Suite 150  
 Emeryville, California 94608  
 Attn : Lease Administration

Landlord: 918-924 Belmont, LLC  
 1405 West Diversey Parkway  
 Chicago, Illinois 60614  
 Attn: David LaBunski

10. Limitation of Liability. If Mortgagee or any Purchaser shall fail to perform any covenant term or condition of the Lease upon Mortgagee's or Purchaser's part to be performed, and as a consequence of such default, Tenant shall recover a money judgment, such judgment shall be satisfied solely out of (a) the proceeds of sale received upon execution of such judgment and levy thereon against the right, title and interest of Mortgagee or Purchaser in the Commercial Space, (b) rents or other income receivable by Landlord (subject to the limitations contained in the Lease), (c) the consideration received by Landlord from Mortgagee or Purchaser from the sale or other disposition of all or any part of Mortgagee's or Purchaser's right, title and interest in the Commercial Space, and (d) any condemnation awards or insurance proceeds; provided, however, that neither Mortgagee nor Purchaser nor any member, manager, partner, joint venture, shareholder, officer, director or employee of Mortgagee or Purchaser shall be personally liable for any deficiency. The provisions contained in the preceding sentence are not intended to and shall not limit any right that Tenant might otherwise have to obtain injunctive relief or specific performance or with respect to any other action or remedy (not involving personal liability of Mortgagee or Purchaser or anyone claiming under Mortgagee or Purchaser) which may be accorded Tenant by applicable Laws or under the terms of the Lease.
11. Binding Effect. The terms, covenants and conditions hereof shall inure to the benefit of and be binding upon the parties hereto, and their respective heirs, executors, administrators, successors and assigns.
12. Modification. This Agreement may not be modified orally or in a manner other than by an agreement signed by the parties hereto or their respective successors in interest.

# UNOFFICIAL COPY

13. Choice of Law. This Agreement shall be governed by the internal law (and not the law of conflicts) of the State of Illinois.

WITNESS the due execution of this instrument by the parties hereto the day and year first above written.

TENANT:

JAMBA JUICE COMPANY

BY: Mital Jev  
ITS: vp, legal affairs

LANDLORD:  
918-924 BELMONT, LLC

By: David Jabonicki  
its: Manager

MORTGAGEE:  
THE NORTHERN TRUST COMPANY

BY: Jain A. Nune  
ITS: Senior Vice President

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF ~~COOK~~ )  
DUPAGE )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Javier Nunez, Senior Vice President of The Northern Trust Company, personally known to me to be the same persons whose name is subscribed to the foregoing instrument as such Senior Vice President, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of The Northern Trust Company, for the uses and purposes therein set forth.

Given under my hand and official seal, this 2ND day of JANUARY 2008.

*Suzanne Mercer*  
NOTARY PUBLIC



# UNOFFICIAL COPY

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Alameda

On Jan 2, 2008 before me, Arlene E. Graves, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Michael Fox  
Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Arlene E. Graves  
Signature of Notary Public

Place Notary Seal Above

### OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

#### Description of Attached Document

Title or Type of Document: SNDA Store # 953

Document Date: 1/2/2008 Number of Pages: 9 (incl certs)

Signer(s) Other Than Named Above: none

#### Capacity(ies) Claimed by Signer(s)

Signer's Name: Michael Fox

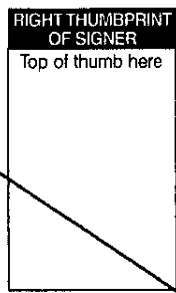
- Individual
- Corporate Officer — Title(s): op, legal affairs
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: Jamba Juice Company

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

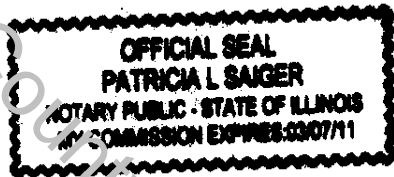
# UNOFFICIAL COPY

STATE OF ILLINOIS )  
 ) SS:  
COUNTY OF Cook )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that David Labunski, personally known to me to be a Member/Manager of 918-924 BELMONT, 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 as such Member/Manager he signed and delivered the said instrument pursuant to authority, given by the Operating Agreement of said Company as his free and voluntary act, and as the free and voluntary act of the Company.

Given under my hand and official seal this 7<sup>th</sup> day of Jan., 2008.

*Patricia L. Saiger*  
Notary Public





# UNOFFICIAL COPY

## EXHIBIT A LEGAL DESCRIPTION

PARCEL 1: LOTS 19 AND 20 IN THE SUBDIVISION OF LOT 1 IN THE RESUBDIVISION OF BLOCK 2 IN HAMBLETON, WESTON AND DAVIS SUBDIVISION OF THE SOUTH  $\frac{1}{2}$  OF THE SOUTHEAST  $\frac{1}{4}$  OF THE SOUTHEAST  $\frac{1}{4}$  OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2: 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  $\frac{1}{2}$  OF THE SOUTHEAST  $\frac{1}{4}$  OF THE SOUTHEAST  $\frac{1}{4}$  OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N.: 14-20-426-016-0000; 14-20-426-017-0000

COMMON ADDRESS: 918-924 W. Belmont, Chicago, Illinois 60657