

# UNOFFICIAL 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#: 0807816048 Fee: \$54.00  
Eugene "Gene" Moore RHSP Fee:\$10.00  
Cook County Recorder of Deeds  
Date: 03/18/2008 03:13 PM Pg: 1 of 10

4386770

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT

THIS AGREEMENT is made as of this 3<sup>rd</sup> day of December, 2007, by and among THE NORTHERN TRUST COMPANY ("Mortgagee"), Potbelly Sandwich Works, LLC, an Illinois limited liability company ("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 October 7, 2005 (the lease and all amendments thereto are herein after 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;

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## 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 paragraphs 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 and the rent, income, profits and proceeds thereof and therefrom; 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 under the Lease other than those defaults of Landlord which are continuing following the date of assumption by Mortgagee, and Tenant shall have no

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right to assert the same or any damages arising therefrom as an offset, defense or deficiency against Mortgagee, Purchaser or the successors or assigns of either of them unless Mortgagee received notice of the default giving rise to such offset right and failed to cure same within the time period provided to Mortgagee or Landlord;

- (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 which increases the obligations of Landlord under the Lease or diminishes the obligations of Tenant under the Lease;
  - (d) be bound by any warranty or representation of Landlord relating to work performed by Landlord under the Lease, provided that in no event shall the foregoing limit or restrict the rights granted to Tenant in the Lease with regard to a breach of any of the foregoing;
  - (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 provided that in no event shall the foregoing limit or restrict the rights granted to Tenant in the Lease with regard to a breach of any of the foregoing; or
  - (f) be liable for consequential damages of any kind.
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

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allowed such additional time as may be reasonably necessary to cure such default or institute and 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.

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: Forbelly Sandwich Works, LLC  
 222 Merchandise Mart Plaza, 23rd Floor  
 Chicago, Illinois 60654  
 Attn: General Counsel

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

With a copy to: Levenfeld Pearlstein, LLC  
 2 North LaSalle Street, Suite 1300  
 Chicago, Illinois 60602  
 Attn: Michael J. Tuchman and Kimberly P. Lehtman

10. Limitation of Personal Liability. Notwithstanding anything to the contrary herein or in the Lease, in the event that Mortgagee or any Purchaser shall acquire title to the Property, Mortgagee or Purchaser shall have no obligation, nor incur any liability, beyond the then interest, if any, of Mortgagee or Purchaser in the Property and the rent, income, profits and proceeds thereof and therefrom. Tenant shall look exclusively to such interest of Mortgagee or Purchaser, if any, in the Property for the payment and discharge of any obligations imposed upon Mortgagee or Purchaser hereunder or under the Lease, and Mortgagee and Purchaser are hereby released and relieved of any other liability hereunder and under the Lease. As regards Mortgagee or Purchaser, Tenant shall look solely to the estate or interest owned by Mortgagee or Purchaser in the Property and the rent, income, profits and proceeds thereof and therefrom and Tenant will not collect or attempt to collect any such judgment out of any other assets of Mortgagee or Purchaser. By executing this Agreement, Landlord specifically acknowledges and agrees that nothing contained in this paragraph 10 shall impair, limit, affect, lessen, abrogate or otherwise modify the obligations of Landlord to Tenant under the Lease.

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

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

TENANT:

POTBELLY SANDWICH WORKS, LLC,  
an Illinois limited liability company

BY: *Anna Rudloff*  
ITS: Authorized Signatory

LANDLORD:

918-924 BELMONT, LLC,  
an Illinois limited liability company

By: *Daniel Jaburki*  
ITS: Manager

MORTGAGEE:  
THE NORTHERN TRUST COMPANY

BY: *Carin A. Huey*  
ITS: Senior Vice President

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STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )  
 Du PAGE

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 19<sup>th</sup> day of December 2007.

*Suzanne Mercer*  
NOTARY PUBLIC



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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 Arthur Rubinfeld as Authorized Signatory of Potbelly Sandwich Works, LLC, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Authorized Signatory, 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 said limited liability company for the uses and purposes therein set forth.

Given under my hand and Notary Seal, this 3 day of December 2007.



C. Hulligan  
Notary Public

Cook County Clerk's Office



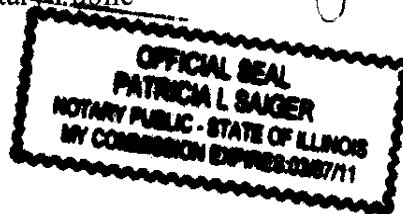
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STATE OF Illinois )  
 ) SS.  
COUNTY OF Cook )

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY, that David Labunski as Manager of 918-924 Belmont, LLC, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such manager, 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 said limited liability company for the uses and purposes therein set forth.

Given under my hand and Notary Seal, this 31 day of Dec., 2007.

Patricia L. Saiger  
Notary Public



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## 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 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.

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 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.

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

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