

**STATE OF ALABAMA
COUNTY OF SHELBY**

After recording, please return to:

Davis, Bingham, Hudson & Buckner, P.C.
Attention: Taylor Buckner
324 East Magnolia Avenue
Auburn, AL 36830

**SUBORDINATION, ATTORNMENT AND
NON-DISTURBANCE AGREEMENT**

This Subordination, Attornment and Non-Disturbance Agreement ("Agreement") made to be effective this 10th day of February, 2019, by and between PJ Cheese, Inc., an Alabama corporation ("Tenant"), and AuburnBank, an Alabama banking corporation ("Mortgagee").

STATEMENT OF PURPOSE

1. Mortgagee is the holder of a mortgage, dated MARCH 12, 2019 ("Mortgage") on the real estate described on Exhibit A attached hereto and incorporated herein by reference (the "Premises"), which Mortgage is recorded in the Office of the Judge of Probate of Jefferson County, Alabama.

2. Tenant and DBSB Investments, LLC, a Nevada limited liability company ("DBSB") entered into that certain Lease Agreement dated October 28, 2016 (the "Lease") for the Premises, which Lease amended and restated the prior Master Lease Agreement dated November 9, 2007 between DBSB and Tenant in its entirety. Subsequently, DBSB sold the Premises to Suttles and Aguilar, LLC, a California limited liability company, on MARCH 12, 2019, and on the same date DBSB assigned and Suttles and Aguilar, LLC, assumed said Lease. Suttles and Aguilar, LLC ("Landlord") has now mortgaged the Premises pursuant to the Mortgage as stated herein.

3. Tenant and Mortgagee desire to confirm their understanding with respect to the Lease and the Mortgage.

AGREEMENT

NOW, THEREFORE, in consideration of mutual covenants and agreements, together with \$1.00 and other valuable consideration, the adequacy, sufficiency and receipt of which are hereby acknowledged by the parties, Mortgagee and Tenant hereby agree and covenant as follows:

1. The Lease shall be subject and subordinate to the Mortgage and to all renewals, modifications or extensions thereof.
2. Provided Tenant is not in material default (beyond any period given Tenant to cure such default) in the payment of rent or in the performance of any of its terms, covenants or

conditions of the Lease to be performed by Tenant, (i) Tenant's rights and privileges under the Lease shall not be diminished or interfered with by Mortgagee; (ii) Tenant's occupancy of its portion of the Premises shall not be disturbed by Mortgagee for any reason whatsoever during the Lease term; (iii) Mortgagee shall not in any manner disaffirm the Lease; and (iv) Tenant shall not be named a party to any foreclosure proceeding unless required by state law.

3. If the interests of Landlord are transferred to Mortgagee by reason of foreclosure or other proceedings brought by Mortgagee and Mortgagee succeeds to the interest of Landlord under the Lease, Tenant shall be bound to Mortgagee under all of the terms, covenants and conditions of the Lease for the balance of the Lease Term with the same force and effect as if Mortgagee were Landlord under the Lease, and Tenant does hereby attorn to Mortgagee as its Landlord, said attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties hereto immediately upon Mortgagee succeeding to the interest of Landlord under the Lease. Tenant shall be under no obligation to pay rent to Mortgagee until Tenant receives written notice from Mortgagee that it has succeeded to the interest of Landlord under the Lease. Tenant may rely on such written notice and begin paying rent to Mortgagee without taking further action and Tenant shall incur no liability to Landlord in the event Tenant relies in good faith on such written notice to begin rent payments to Mortgagee. The respective rights and obligations of Tenant and Mortgagee upon such attornment (including, but not limited to, the disposition of fire insurance proceeds and/or condemnation awards), to the extent of the then remaining balance of the Term of the Lease shall be and are the same as set forth in the Lease, it being the intention of the parties to incorporate the Lease in this Agreement by reference with the same force and effect as if set forth herein.

4. If Mortgagee succeeds to the interest of Landlord under the Lease, Mortgagee shall assume Landlord's obligations under the Lease and be bound to Tenant under all terms, covenants and conditions of the Lease, and Tenant shall, from and after Mortgagee's succession to the interest of Landlord under the Lease, have the same remedies against Mortgagee for the breach of any provision contained in the Lease after the date of Mortgagee's succession to the interest of Landlord under the Lease that Tenant might have had under the Lease against Landlord if Mortgagee had not succeeded to the interest of Landlord.

5. All notices, consents and other communications pursuant to the provisions of this Agreement shall be given and deemed to have been properly served if delivered in writing (i) by a nationally recognized overnight courier providing signed proof of delivery or refusal thereof, or (ii) by electronic transmission; provided that a second copy of such notice is given by nationally recognized overnight courier on the date of electronic transmission. Notices shall be addressed as follows:

If to Mortgagee: AuburnBank
100 N. Gay Street
Auburn, AL 36830
ATTN: James Salter
Email: jsalter@auburnbank.com

With a copy to: Davis, Bingham, Hudson & Buckner, P.C.
324 East Magnolia Avenue
Auburn, AL 36830
ATTN: Taylor Buckner
Email: taylor@davislaw78.com

If to Tenant: PJ Cheese, Inc.
2300 Resource Drive
Birmingham, Alabama 35242
ATTN: Brad Leonard
Email: Brad.Leonard@pjunited.com

With a copy to: Bingham Greenebaum Doll LLP
3500 PNC Tower
101 S. Fifth Street
Louisville, Kentucky 40202
ATTN: Tandy C. Patrick, Esq.
Email: tpatrick@bgdlegal.com

Date of service of a notice shall be the date of receipt. Each party may designate a change of address by notice to the other party, given at least fifteen (15) days before such change of address is to become effective. Final execution and delivery of this Agreement shall be construed in accordance with the laws of the state where the Demised Premises are located.

6. The Lease now is, and shall at all times continue to be, subject and subordinate in each and every respect, to the Mortgage and to any and all renewals, modifications and extensions, but any and all such renewals, modifications and extensions shall nevertheless be subject to and entitled to the benefits of the terms of this Agreement.

7. This Agreement may not be modified orally or in any other manner than by an agreement in writing signed by both parties hereto or their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns.

8. Capitalized terms not defined herein shall have the definitions given them in the Lease.

9. Tenant hereby executes and agrees to the provisions of this Subordination, Attornment and Non-Disturbance Agreement as of the date hereof, which approval shall be null and void if a fully executed and recorded original of this Agreement shall not be received by Tenant no later than thirty (30) days from the date of this Agreement.

IN WITNESS WHEREOF, the parties hereto have hereunder caused this Agreement to be duly executed on the dates shown hereinafter below.

TENANT:

PJ Cheese, Inc.,
an Alabama corporation

By: Brad Leonard
Brad Leonard, Treasurer

STATE OF Alabama

COUNTY OF Shelby

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that Brad Leonard, as Treasurer of **PJ Cheese, Inc.**, an Alabama corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal this 18 day of February, 2019.

SEAL

Amber D. L. Hause
Notary Public
My Commission Expires: 4/16/2019

MORTGAGEE:

AuburnBank



By: James Salter

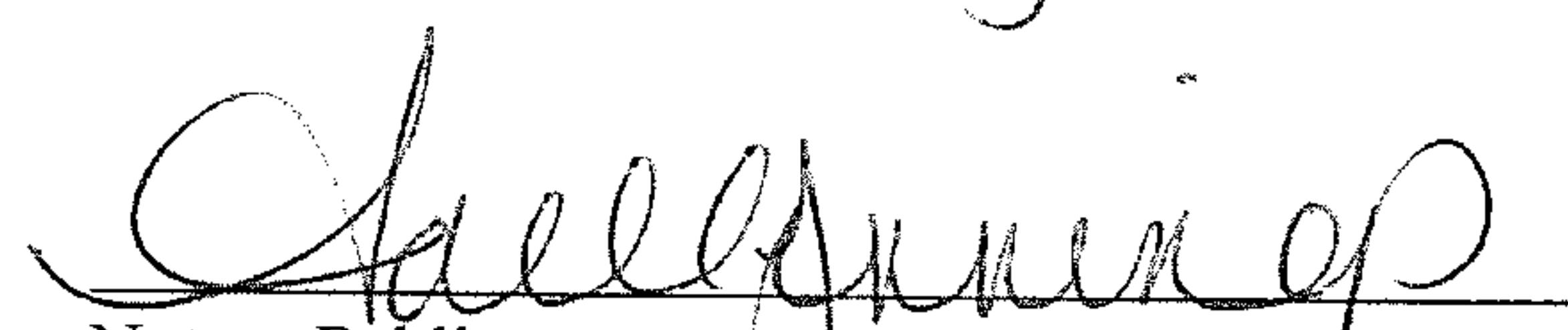
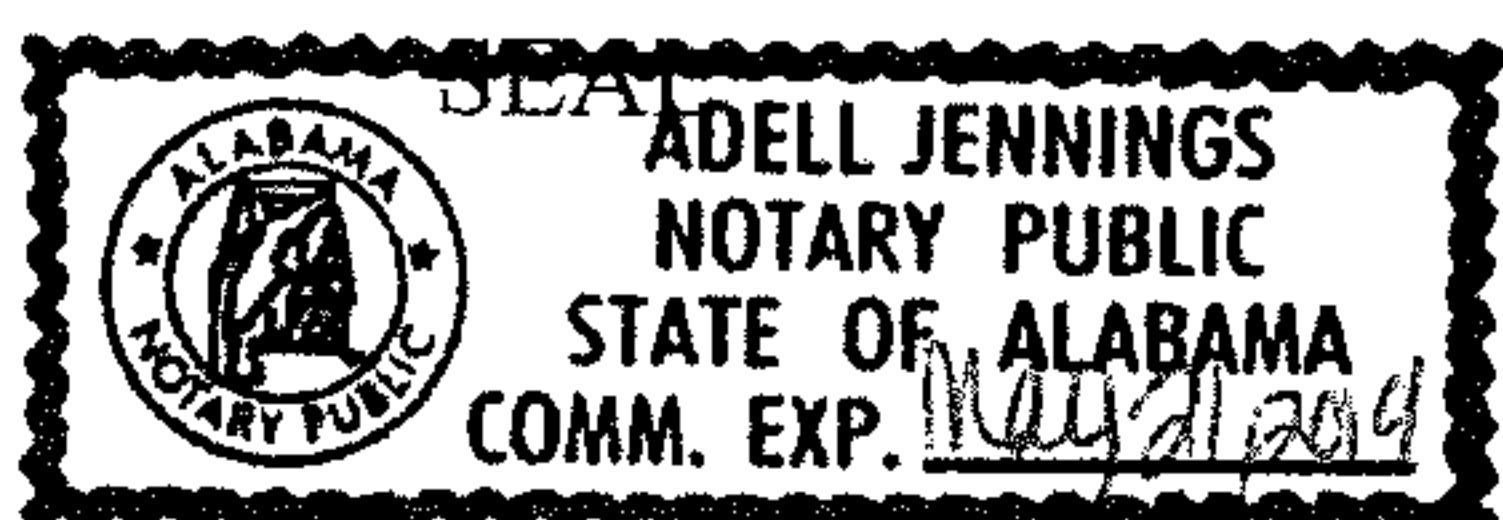
Its: Vice President

STATE OF ALABAMA

COUNTY OF LEE

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that **James Salter**, as **Vice President of AuburnBank**, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing instrument, he as such officer and with full authority, executed the same voluntarily for and as the act of said banking corporation.

Given under my hand and seal this 21 day of February, 2019.



Adell Jennings
Notary Public
My Commission Expires: May 21, 2019

EXHIBIT A

PREMISES

Lot 9-F, according to the Survey of Meadow Brook Corporate Park South, Phase II, Resurvey No.3, as recorded in Map Book 23, Page 108, in the Office of the Judge of Probate of Shelby County, Alabama.

Street Address: 2300 Resource Drive, Suite A & B, Birmingham, AL 35242

19945622.2



Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
03/14/2019 03:39:58 PM
\$30.00 CATHY
20190314000082860

Allie S. Boyd