

AFTER RECORDING RETURN TO:

Jamba Juice Company
1700 17th Street
San Francisco, CA 94103-5136
Attn: Lease Administration



200610170065
Skagit County Auditor

10/17/2006 Page

1 of

9 11:20AM

MEMORANDUM OF EXCLUSIVE USE
(Retail Development in Burlington, Washington)

GRANTORS: GULL BURLINGTON CROSSING LLC, a Washington limited liability company
MARKET PLACE DRIVE ASSOCIATES, L.L.C., a Washington limited liability company

GRANTEE: JAMBA JUICE COMPANY, a California corporation

"PARCEL A" LEGAL DESCRIPTION: Lots B & C, SCSP # 65-78 at Recorder's #885815
Official legal description on Exhibit A
SKAGIT COUNTY

"PARCEL B" LEGAL DESCRIPTION: Ptn of SE ¼ NE ¼ Sec 7, Twnbsp 34 N, R 4 E, WM
Official legal description on Exhibit B
SKAGIT COUNTY

ASSESSORS' TAX PARCEL ID NOS. 23976; 23982

REFERENCE NO.: N/A

CHICAGO TITLE CO.

ACCOMMODATION RECORDING

Chicago Title Company has placed this document for recording as a customer courtesy and accepts no liability for its accuracy or validity

MEMORANDUM OF EXCLUSIVE USE
(Retail Development in Burlington, Washington)

¹⁸⁰
31 THIS MEMORANDUM OF EXCLUSIVE USE ("Memorandum") is executed this day of July, 2006, by and among Gull Burlington Crossing LLC, a Washington limited liability company ("Parcel A Owner"), Market Place Drive Associates, L.L.C., a Washington limited liability company ("Parcel B Owner") and Jamba Juice Company, a California corporation ("Tenant"), as a memorandum of that certain exclusive use (the "Exclusive") set forth in an unrecorded Commercial Lease ("Lease") of even date herewith between Parcel A Owner and Tenant, concerning Parcel A (the premises covered by such lease are referred to herein as the "Premises"). Parcel B Owner has agreed to subject Parcel B to the Exclusive in accordance with the terms of this Memorandum. Parcel A Owner and Parcel B Owner are collectively referred to herein as the "Owners." Parcel A and Parcel B are collectively referred to herein as the "Property."

1. **EXCLUSIVE USE.** The Owners hereby agree that no other occupant of the Property may use the Property for any of the following uses during the period of time Tenant is entitled to such Exclusive pursuant to the terms of the Lease:

No other occupant of the Property shall (i) derive more than five percent (5%) of its respective gross sales from its premises from the sale of juice and/or blended drinks (including but not limited to smoothies), or (ii) devote in excess of the lesser of (1) five percent (5%) of the floor area within its store, or (2) one hundred (100) square feet of floor area within its store, to the sale of juice and/or blended drinks (including but not limited to smoothies). The covenants contained in this provision shall terminate if following the initial opening of the Premises for business under the Lease, the Premises is not used for the primary purpose of the sale of juice and/or blended drinks (including but not limited to smoothies) for a continuous period of ninety (90) days, unless because of casualty, condemnation or other force majeure event or due to closure for purposes of renovation or remodeling (provided that Tenant may only close for in excess of ninety (90) days for renovation or remodeling one time in any period of sixty (60) consecutive months during the Term). This exclusive shall not apply to any occupant under a lease or occupancy agreement for part of the Property (A) for premises in excess of 10,000 square feet of floor area, (B) for the sale of coffee-based or espresso-based beverages (blended or otherwise) by a "Starbucks" coffee operation; or (C) entered into prior to the date hereof, except, however, that to the extent that any occupant under such an existing lease or occupancy agreement requests consent or approval of Parcel A Owner or Parcel B Owner or their affiliates, as applicable, to a change in use which would violate the provisions of this exclusive if applicable to such occupant, then Parcel A Owner or Parcel B Owner or their affiliates, as applicable, shall withhold such consent or approval so long as the withholding of such consent or approval would not constitute a default by Parcel A Owner or Parcel B Owner or their affiliates, as applicable, under the applicable tenant's lease.

2. **MISCELLANEOUS.** This Memorandum is not a complete summary of the Lease. As between Parcel A Owner and Tenant, provisions in this Memorandum shall not be used in interpreting the Lease provisions.



3. **RELEASE.** In the event the Lease expires or otherwise terminates or Tenant's exclusive terminates in accordance with the terms of the Lease, Tenant shall execute, acknowledge and deliver to the Owners a release of this Memorandum, which the Owners may record in the real property records of Skagit County, Washington. Failure to so deliver a release within twenty (20) days of a request from an Owner shall give rise to a right of action for damages and attorneys fees for the Owners.

[SIGNATURES ON FOLLOWING PAGE]



IN WITNESS WHEREOF, the parties have executed this Memorandum as of the date first written above.

PARCEL A OWNER:

GULL BURLINGTON CROSSING LLC, a
Washington limited liability company

By: Gull Industries, Inc., a Washington
corporation, its manager

By: [Signature]
Name: William T. Vivian
Its: Vice President

PARCEL B OWNER:

MARKET PLACE DRIVE ASSOCIATES, L.L.C.,
a Washington limited liability company

By: [Signature]
Name: Bruce Vanderwall
Its: Managing Member

GRANTEE:

JAMBA JUICE COMPANY, a Washington
corporation

By: [Signature]
Name: Donald Green
Its: CFO

Exhibits

Exhibit A Legal Description of Parcel A
Exhibit B Legal Description of Parcel B

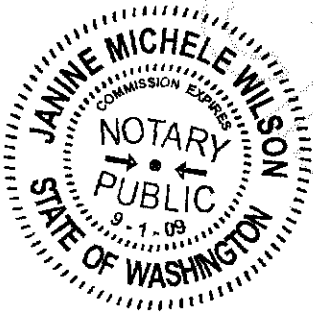


STATE OF WASHINGTON
COUNTY OF KING

ss.

I certify that I know or have satisfactory evidence that William T. Vivian is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the Vice President of GULL INDUSTRIES, INC., a Washington corporation, the manager of GULL BURLINGTON CROSSING LLC, a Washington limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 31 day of July, 2006.



Janine Michele Wilson
(Signature of Notary)

Janine Michele Wilson
(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington,
residing at Kent

My appointment expires 9/1/09



STATE OF WASHINGTON

ss.

COUNTY OF King

I certify that I know or have satisfactory evidence that Bruce Vanderwall is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the Managing Member of MARKET PLACE DRIVE ASSOCIATES, L.L.C., a Washington limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 8 day of August, 2006.

Janine Michele Wilson
(Signature of Notary)

Janine Michele Wilson
(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington,
residing at Kent

My appointment expires 9/1/09

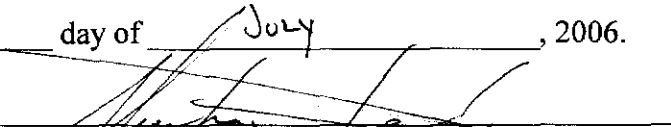


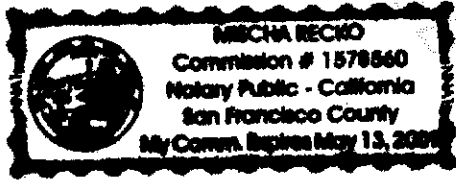
CALIFORNIA
STATE OF ~~WASHINGTON~~
COUNTY OF
SAN FRANCISCO

SS.

I certify that I know or have satisfactory evidence that Donald Breen is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the CFO of JAMBA JUICE COMPANY, a California corporation, to be the free and voluntary act of such corporation for the uses and purposes mentioned in the instrument.

Dated this 20th day of July, 2006.


(Signature of Notary)



(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of
CALIFORNIA, residing at SAN FRANCISCO

My appointment expires MAY 13, 2009



EXHIBIT A

LEGAL DESCRIPTION OF PARCEL A

LOTS "B" AND "C" OF SKAGIT COUNTY SHORT PLAT NO. 65-78, APPROVED AUGUST 17, 1978 AND RECORDED AUGUST 18, 1978 IN VOLUME 2 OF SHORT PLATS, PAGE 251 UNDER AUDITOR'S FILE NO. 885815; BEING A PORTION OF THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 34 NORTH RANGE 4 EAST, W.M.

SITUATE IN THE COUNTY OF SKAGIT, STATE OF WASHINGTON



EXHIBIT B

LEGAL DESCRIPTION OF PARCEL B

THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 7, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M., AS DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 30 FEET WEST AND 812.13 FEET SOUTH OF THE NORTHEAST CORNER OF SAID SUBDIVISION, SAID POINT BEING ON THE WEST LINE OF STATE HIGHWAY 99;
THENCE NORTH 88°50'30" WEST PARALLEL WITH THE NORTH LINE OF SAID SUBDIVISION A DISTANCE OF 400.27 FEET;
THENCE SOUTH 1°28'37" EAST A DISTANCE OF 160.00 FEET
THENCE SOUTH 88°50'30" EAST A DISTANCE OF 400.75 FEET TO THE WEST LINE OF SAID STATE HIGHWAY;
THENCE NORTH 1°39'30" WEST ALONG SAID HIGHWAY LINE, 160 FEET TO THE POINT OF BEGINNING.

SITUATE IN THE COUNTY OF SKAGIT, STATE OF WASHINGTON

