

UNOFFICIAL COPY

00099411

36

12/14/0167 32 001 Page 1 of 6

2000-02-08 15:12:44

Cook County Recorder 31.50

PREPARED BY:

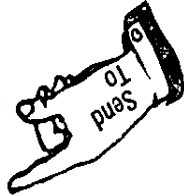
Karen M. Lieberman
Burke, Warren, MacKay
& Serritella
330 N. Wabash
22nd Floor
Chicago, Illinois 60611



00099411

Upon Recordation Return to:

Wexford Bancgroup
180 N. Wacker Drive
Chicago, IL 60606
Attn: Steve Byers



Subordination, Non-Disturbance and Attornment Agreement.

THIS SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE AGREEMENT ("Agreement") is made and entered into as of the 12~~th~~ day of October, 1999 between Wexford Bancgroup and its successors and assigns ("Lender"), and Subway Restaurants, Inc. ("Tenant").

RECITALS

R-1. Lender is or will become the beneficiary under that certain (Deed of Trust or Mortgage) dated ~~October 9, 1999~~ ^{Feb 9, 2000} (the "Mortgage"), from Learsy & Co., Inc., ("Landlord") to Lender, which has been or will be recorded among the Land Records Cook County, Illinois, encumbering a parcel or parcels of land and the improvements now existing or hereafter erected thereon (the "Mortgaged Premises"), more particularly described in Exhibit A attached hereto and made a part hereof by reference.

R-2. Tenant is the tenant under that certain Lease Agreement (the "Lease") dated February 8, 1988, whereby Tenant leases certain space (the "Demised Premises") in the Mortgaged Premises as further described in the Lease. Landlord intends to purchase the Mortgaged Premises from American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated December 30, 1987 and known as Trust Number 104351-05 and as purchaser will become the successors to the landlord under the Lease.

R-3. Landlord has assigned to Lender by the Mortgage or by a certain Assignment of Leases and Rents (the "Lease Assignment") all of Landlord's interest in the Lease and all rents, rentals, fees, profits, payments and other sums of money now or hereafter arising therefrom.

R-4. Tenant and Lender desire to confirm certain agreements and understandings with respects to the Lease.

1st AMERICAN TITLE order # CC192225

9818 JK

UNOFFICIAL COPY

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for Ten Dollars (\$10.00) and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Lender and Tenant hereby covenant and agree as follows:

1. The Lease is and shall continue to be subject and subordinate in all respects to the lien, operation, and effect of the Mortgage and to all extensions, renewals and modifications of, or substitutions for, the same. This provision shall be self-operative, and no further instrument of subordination shall be required.

2. So long as Tenant complies with this Agreement and is not in default (beyond any period given Tenant under the Lease to cure such default) in the payment of rent or additional rent or other sums as provided in the Lease, or in the performance or observance of any other term, covenant or condition of the Lease on Tenant's part to be performed or observed, the, except in accordance with the terms of the Lease: (a) Tenant's possession of the Demised Premises and Tenant's rights and privileges under the Lease, or any extensions, renewals or modifications thereof, shall not be diminished or interfered with by Lender; (b) Tenant's occupancy of the Demised Premises shall not be disturbed by Lender for any reason whatsoever during the term of the Lease or any extensions or renewals thereof, and (c) Lender 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 because of any default under the Mortgage or the Lease Assignment.

3. Tenant agrees that, without Lender's prior written consent, Tenant will not prepay by more than one (1) month any rent or additional rent or other sums due or to become due under the Lease, and Tenant will not hereafter alter, amend, modify, cancel, surrender or terminate the Lease without Lender's prior, written approval.

4. If the Demised Premises shall be transferred by reason of foreclosure of the Mortgage or by deed in lieu of foreclosure, or if in any other manner (the person or entity who succeeds to the interest of Landlord under the Lease being hereinafter referred to as "New Owner"), then:

(a) Tenant shall be bound under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining, and any extensions or renewals thereof which may be effected in accordance with any option contained in the Lease, with the same force and effect as if the New Owner were the original landlord under the Lease, and Tenant hereby attorns to the New Owner as its landlord, such 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 the New Owner's succeeding to the interest of Landlord under the Lease; provided, however, that Tenant shall be under no obligation to pay rent or additional rent (or other sums payable under the Lease) to the New Owner until Tenant receives written notice from the New Owner that the New Owner has succeeded to the interest of Landlord under the Lease or that the New Owner has exercised its right to receive payment of the rent and additional rent (and/or other sums) pursuant to the provisions of the Mortgage and/or the Lease Assignment; and

(b) Upon the request of the New Owner, Tenant will execute a written agreement whereunder Tenant attorns to the New Owner and affirms Tenant's obligations under the Lease and agrees to pay all rentals, additional rentals and other sums due or to become due under the Lease as they shall become due and payable to the New Owner; and

00099411

UNOFFICIAL COPY

(c) The New Owner shall be bound to Tenant under the terms of the Lease; provided, however, that, in no event, shall the New Owner: (k) be liable to Tenant for any act or omission of any prior landlord or for any liability or obligation of any prior landlord occurring prior to the date that the New Owner acquires title to the Demised Premises; (ii) be subject to any offset or defense which Tenant might have against any prior landlord; (iii) be bound by any previous amendment, modification, assignment or subletting of the Lease or by any previous payment of rent or additional rent (or other sums) for a period greater than one (1) month unless such amendment, modification, assignment, subletting or prepayment shall have been expressly approved in writing by the Lender; (iv) be liable to Tenant for any security or other deposits given to secure the performance of Tenant's obligations under the Lease, except to the extent that the New Owner shall have actually received of such security or other deposits in writing; or (v) be liable for any obligations of landlord under the lease relating to any period after the New Owner shall have transferred title to any third party.

5. From and after the date hereof, Tenant agrees to send to Lender a copy of any notice or statement under the Lease at the same time Tenant sends any such notice or statement to Landlord under the Lease.

6. Tenant hereby agrees that from and after the date hereof in the event of any act or omission by Landlord under the Lease which would give Tenant the right, either immediately or after the lapse of a period of time, to terminate the Lease, or to claim a partial or total eviction, Tenant will not exercise any such right until (i) it has given written notice of such act or omission to Lender by delivering such notice of such act or omission by certified or registered mail, return receipt requested, addressed to Lender, at Lender's address as set forth herein, or at the last address of Lender furnished to Tenant in writing, and (ii) a reasonable period of time for remedying such act or omission shall have lapsed following the giving of such notice and following the time when Lender shall have become entitled under the Mortgage to remedy the same, which period shall be no less than 30 days.

7. Nothing contained in this Agreement shall in any way impair, diminish or otherwise affect in any manner the lien created by the Mortgage, except as specifically set forth herein.

8. Tenant shall not change the terms, covenants, conditions and agreements of the Lease in a manner which reduces the rent or other charges payable or space demised thereunder, or has an adverse effect upon the value of the Landlord's interest thereunder without the express consent in writing of Lender.

9. Anything herein or in the Lease to the contrary notwithstanding, in the event that a New Owner shall succeed to the interests of the Landlord under the Lease, the New Owner shall have no obligation, nor incur any liability, beyond its then interest, if any, in the Mortgaged Premises and Tenant shall look exclusively to such interest of the New Owner, if any, in the Mortgaged Premises for the payment and discharge of any obligations imposed upon the New Owner hereunder or under the Lease and the New Owner hereby released or relieved of any other liability hereunder and under the Lease. Tenant agrees that with respect to any judgment which may be obtained or secured by Tenant against the New Owner, Tenant shall look solely to the estate or interest owned by the New Owner in the Mortgaged Premises and Tenant will not collect or attempt to collect any such judgment out of any other assets of the New Owner.

00099411

UNOFFICIAL COPY

10. No modification, amendment, waiver or release of any provision of this Agreement or 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.

11. Tenant agrees that this Agreement satisfies any condition or requirement in the Lease relating to the granting of a non-disturbance agreement.

12. Tenant certifies that the Lease is presently in full force and effect and unmodified and no rent payable thereunder has been paid more than one (1) month in advance of its due date, and that no default by Tenant exists under the Lease which was continued beyond the expiration of any applicable grace period.

13. Tenant and Lender each hereby forever waives the provision of any statute or rule of law now or hereafter in effect which may give or purport to give Lender or Tenant any right (other than in accordance with the express terms of the Lease), to terminate or otherwise adversely affect the Lease and the respective obligations of the landlord and tenant thereunder in the event that any foreclosure proceeding is prosecuted or completed or any other right is asserted under the Mortgage.

14. This Agreement shall become effective upon the complete execution hereof by all parties hereto and the recording of the Mortgage, and not before.

15. In the event of a foreclosure, all rights of first refusal, options to purchase, or similar rights in favor of the Tenant and relating to the Demised Premises or the Mortgaged Premises provided for in the Lease shall terminate.

16. This Agreement shall be governed in all respects by the laws of the jurisdiction where the Mortgaged Premises is located and applicable federal law and shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Instrument or have caused the same to be executed by their representative thereunto duly authorized.

[Corporate Seal]

ATTEST OR WITNESS:

Jamy Razi

TENANT:

Subway Restaurants, Inc.

By:

Name:

Its:

Shireen Jamil

SHIREEN JAMIL

00099111

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

This instrument was acknowledged before me on ^{Nov} ~~October~~ 12, 1999 by SHIREEN JAMIL
the OWNER of Subway Restaurants, Inc., a _____, on behalf
of said Corporation.

Ann Brownlow
Notary Public

My Commission Expires: 7-30-02
OFFICIAL SEAL
ANN BROWNLOW
(Notarial Seal) Notary Public, State of Illinois
My Commission Exp. 07/30/2002

[Corporate Seal]
ATTEST:

Wexford Bancgroup

By: Steve Byers

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Kathleen Stancik, a Notary Public in and for the said County in the State
aforesaid, DO HEREBY CERTIFY that Steve Byers as CEO
of Wexford Bancgroup, an IL LLC who is 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 the said instrument as his own
free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 3 ^{Feb, 2000} day of ~~October~~, 1999.

OFFICIAL SEAL
KATHLEEN A STANCIK
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES: 06/24/02

Kathleen Stancik
Notary Public

My Commission Expires: _____

(Notarial Seal)

00099411

UNOFFICIAL COPY

EXHIBIT A

Legal Description:

Parcel 1:

The north 183 feet of the south 233 feet of the east 350 feet of the west 383 feet of the south east 1/4 of Section 1, Township 37 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois excepting therefrom the coal and other minerals underlying the surface of said land and all rights and easements in favor of mineral estate.

PIN: 25-01-433-003

Parcel 2:

The north 183 feet of the south 233 feet of the west 380 feet of the east 569 feet of the south west 1/4 of Section 1, Township 37 North Range, 14 East of the Third Principal Meridian, in Cook County, Illinois excepting therefrom the coal and other minerals underlying the surface of said land and all rights and easements in favor of mineral estate.

Common Address: Northeast and northwest corners of 95th Street and Jeffery Avenue, Chicago, Illinois.

PIN: 25-01-324-031
25-01-324-034