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Cook County Recorder 43.50

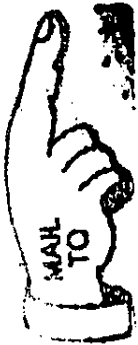
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Julie M. Mandanas, Esq.
c/o Jenner & Block
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SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT, made this 27 day of February, 2001 by and between BAYERISCHE HYPO-UND VEREINSBANK AG, NEW YORK BRANCH, as agent for the lenders under the Credit Agreement (as hereinafter defined), having an address at 150 East 42nd Street, New York, New York 10017 (together with its successors and assigns, "Lender") and CITADEL INVESTMENT GROUP, L.L.C., having an address at 225 W. Washington Street, Suite 900, Chicago, Illinois 60606 (together with its successors and assigns, "Tenant").

WHEREAS, Tenant has entered into a certain Lease Agreement ("Lease") dated February 9, 2001 (as amended by that certain First Amendment to Lease dated as of February 21, 2001) with Dearborn Center, L.L.C. ("Landlord"), as landlord demising the premises described more particularly in the Lease (hereinafter the "Premises");

WHEREAS, Lender is the holder of a certain Mortgage dated January 5, 2001 (hereinafter the "Mortgage"), which encumbers the building and land (hereinafter the "Property") of which the Premises are a part, the Property being more fully described on Exhibit A which is attached hereto and by this reference made a part hereof and was granted to Lender by Landlord in connection with that certain Credit Agreement dated January 5, 2001 (the "Credit Agreement") by and between Landlord and Lender; and

WHEREAS, Tenant and Lender desire to be assured of their rights and obligations under and with respect to the Lease and are willing to enter into this agreement to so reflect such rights and obligations.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and Ten Dollars (\$10.00) and other good and valuable consideration each to the other in hand paid, receipt of which is hereby acknowledged, Lender and Tenant hereby agree as follows:

1. The Lease and any and all modifications thereof and amendments thereto, all of Tenant's rights thereunder, and Tenant's leasehold interest and estate in the Premises shall be and are hereby made junior, inferior, subordinate and subject in all respects to the lien and encumbrance of the Mortgage and to all renewals, modifications, consolidations, replacements and extensions of the Mortgage, to the full extent of the principal sum secured thereby, all interest thereon and all other sums due or hereafter becoming, due thereunder.

2. In the event of the foreclosure of the Mortgage or a sale of the Property under a power of sale in the Mortgage, or the acquisition of the Property in lieu of foreclosure by the Lender prior to the expiration of the Lease, including any expansion, extensions and renewals of the Lease now provided thereunder, and subject to the observance and performance by Tenant of all of the monetary obligations thereunder, and all other material terms, covenants and conditions of the Lease on its part to be observed and performed, Lender does hereby agree as follows:

(a) Tenant's occupancy of the Premises shall not be disturbed by Lender;

(b) The Lease shall continue in full force and effect and Lender shall not interfere with Tenant's rights and privileges thereunder and will thereby establish direct privity of estate and contract as between Lender and Tenant and with the same force and effect and relative priority in time and right as though the Lease were originally made directly from Lender to Tenant; and

(c) Lender shall not join Tenant as a party defendant in any action for the purpose of terminating Tenant's interest under the Lease due to any default by Landlord or its successors under the Mortgage;

provided, however, that Lender shall have no further obligations to Tenant under the Lease or otherwise from and after such time as Lender ceases to be the owner of the Property; and provided further, that (unless Dearborn Center, L.L.C. becomes an affiliate of Lender such that both Lender and Dearborn Center, L.L.C. are each more than 51% owned and controlled by the same person or entities in which event Lender shall be liable to Tenant for the matters described in subparagraphs (i) through (v) below), Lender shall not in any way or to any extent be liable to Tenant:

- (i) For any past act or omission to act or default on the part of the original or any prior landlord under the Lease, and Tenant shall have no right to assert any damages arising therefrom against Lender or as an offset, counterclaim or defense against Lender; provided, however, that (A) Tenant shall have the continuing rights to any offsets provided for in Section 19D of the Lease, rent credits provided for in Section 2A(vi) and Section 2B(ii) of the Lease, reimbursements required by Paragraph 2(j) of the Work Letter (as defined in the Lease) and rent abatements provided for in Section 19C of the Lease and Paragraph 2(b)(ii) of the Work Letter and (B) the foregoing provisions of this subparagraph (i) shall not be deemed to permit the repetition or continuation of any such act or omission (or the continuation of a condition resulting from a past act or omission) not otherwise permitted under the Lease.
- (ii) For any prepayment of rents, deposits, rental security or any other sums paid to or deposited with the original or any prior Landlord under the Lease and not delivered to the Lender; provided, however, that Tenant shall have the continuing right to any offsets provided for in Section 19D of the Lease, rent credits provided for in Section 2A(vi) and Section 2B(ii) of the Lease, reimbursements required by Paragraph 2(j) of the Work Letter and rent abatements provided for in Section 19C of the Lease and Paragraph 2(b)(ii) of the Work Letter.
- (iii) For any modification or amendment to the Lease without the Lender's written consent.
- (iv) For any indemnification obligations of the Landlord under Section 39B of the Lease regarding Hazardous Materials.

- (v) For performing Landlord's initial construction obligations under the Work Letter (as defined in the Lease) to construct the Building; provided, however, that (A) Lender shall make available to Tenant any unfunded portion of the Landlord's Contribution (as defined in the Work Letter) and Tenant may offset any such unpaid amounts against Rent (as defined in the Lease), (B) Tenant shall have the continuing right to any and all rent abatement provided for in the Work Letter, (C) Lender shall be liable to Tenant for all reimbursement obligations set forth in Paragraph 2(j) of the Work Letter, and (D) Tenant shall have the right to enforce all of its terminations rights in the Work Letter against Lender.

3. In the event of the foreclosure of the Mortgage or a sale of the Property by power of sale or judicial order, or the acquisition of a deed to the Property in lieu of foreclosure by Lender prior to the expiration date of the Lease, including any extension and renewal of the Lease provided thereunder, Tenant hereby covenants and agrees that Tenant shall make full and complete attornment to Lender for the balance of the term of the Lease, including any extension and renewal thereof provided thereunder (to the extent elected by Tenant from time to time), upon the same terms, covenants and conditions as therein provided, so as to establish direct privity of estate and contract as between Lender and Tenant and with the same force and effect and relative priority in time and right as though the Lease were originally made directly from Lender to Tenant, and Tenant will thereafter make all rent payments directly to Lender.

4. Unless and until Lender shall become the owner of the Property, Lender shall not have any responsibility as owner of the Property or as landlord under the Lease and if Lender becomes the owner of the Property its obligations to Tenant shall be limited as herein provided. Tenant hereby acknowledges and agrees that in the event Lender becomes the owner of the Property, any liability or obligation of the landlord under the Lease shall be limited to the landlord's interest in the Property and no recourse shall be had to any other assets of Lender.

5. Tenant shall send a copy of any notice or statement under the Lease to Lender (at Lender's address as given herein or the last address of Lender furnished to the Tenant in writing) at the same time as such notice or statement is sent to Landlord under the Lease, whenever any such notice or statement alleges a default by, or failure on the part of, Landlord to perform its duties under the Lease. Notwithstanding anything contained herein to the contrary but subject to Paragraph 7 below, failure to send such notice shall not impair the validity of Tenant's notice to Landlord.

6. Without limiting Tenant's rights to terminate the Lease as expressly provided in Section 19C of the Lease and Paragraphs 1(d) and 2 of the Work Letter (but subject to the requirements of Paragraph 7 below), Tenant shall not enter into any agreement with Landlord to terminate the Lease without first obtaining the written consent of Lender.

7. Except with respect to Tenant's rights to cancel or terminate the Lease pursuant to Section 19C of the Lease and Paragraphs 1(d) and 2 of the Work Letter, 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 upon notice or the lapse of a period of time or both, to terminate the Lease as to all or any portion of the Premises, or to claim a partial or total eviction, Tenant will not exercise any such right (a) until it has given written notice ("Default Notice") of such act or omission, by registered or certified mail, return receipt requested, addressed to Lender, at Lender's address as given herein or at the last address of Lender furnished to Tenant in writing (by registered or certified mail addressed to Tenant at Tenant's address as given herein or the last address of Tenant furnished to Lender by written notice in the manner above specified), and (b) if the default by Landlord is of a nature which can be cured by Lender and if Lender is proceeding with diligence to cure such default, until expiration of sixty (60) days beyond the later of: (i) Lenders' receipt of the Default Notice; and (ii) the period for Landlord's cure of such default (provided that Tenant has not been materially deprived of the effective use and occupancy of the Premises for the normal operation of Tenant's business). Furthermore, provided that Tenant continues to have effective use and occupancy of the Premises for the normal operation of Tenant's business, Lender shall have a period ending sixty (60) days after the date upon which it obtains possession of the Property to cure or correct such default, if (i) such default is of a nature that it cannot be cured by Lender until it obtains possession, but is curable by Lender thereafter, and (ii) Lender diligently proceeds to pursue its remedies, with the purpose and eventual effect of curing such default. Notwithstanding anything to the contrary in this Agreement, Lender and Tenant do not intend, and this Agreement shall not, restrict, nullify, diminish or delay (a) any and all rights of Tenant to reimbursement, rent abatement, rent offset, and/or rent credit provided for in Sections 2A(vi), 2B(ii), 19C and 19D of the Lease and Paragraphs 2(b)(ii) and 2(j) of the Work Letter, and (b) any and all rights of Tenant to cancel or terminate the Lease pursuant to Section 19C of the Lease and Paragraphs 1(d) and 2 of the Work Letter.

8. Tenant will neither offer nor make prepayment of rent for a period in excess of one (1) month, and agrees that any change in the terms, covenants, conditions and agreements of the Lease in any manner, without the express consent in writing of Lender, shall not be binding upon Lender.

9. Upon written notice from Lender that Landlord is in default under the Mortgage and that Lender requests Tenant to pay all rent and other sums due under the Lease directly to Lender, Tenant shall, subject to Tenant's rent abatement, rent credit and offset rights set forth in Section 2A(vi), Section 2B(ii) and Section 19 of the Lease and Paragraph 2(b)(ii) of the Work Letter, thereafter pay the rent and all other sums due under the Lease to Lender.

10. The terms, covenants and conditions hereof shall inure to the benefit of and be binding upon the respective parties hereto, and their respective successors and assigns. For the purposes hereof, any purchaser at a sale foreclosing the Mortgage or at a sale conducted under a power of sale in the Mortgage or otherwise acquiring the Property (for the purposes hereof, acquisition of title to the Property by deed in lieu of mortgage foreclosure, shall be deemed a purchase at a sale) shall be deemed a successor to Lender.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed, sealed and delivered in their respective names and behalf, by their officers duly authorized, the day and year first written above.

TENANT:

CITADEL INVESTMENT GROUP, L.L.C., a Delaware limited liability company

By: _____

Its: Resident

LENDER:

BAYERSICHE HYPO- UND VEREINSBANK AG, NEW YORK BRANCH, as agent under the Credit Agreement

By: _____

Its: _____

By: _____

Its: _____

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed, sealed and delivered in their respective names and behalf, by their officers duly authorized, the day and year first written above.

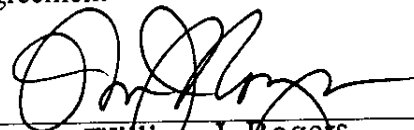
TENANT:


CITADEL INVESTMENT GROUP, L.L.C., a
Delaware limited liability company

By: _____
Its: _____

LENDER:

BAYERSICHE HYPO- UND VEREINSBANK
AG, NEW YORK BRANCH, as agent under the
Credit Agreement

By: 
Its: William J. Rogers
Managing Director

By: 
Its: HELGA BLUM
Director

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ACKNOWLEDGMENT

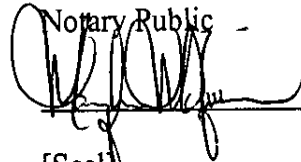
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STATE OF ILLINOIS)

COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Kenneth C. Griffin, the President of CITADEL INVESTEMENT GROUP, L.L.C., who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such manager of said limited liability company, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act of said limited liability company, as manager, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 23 day of February, 2001.

Notary Public

[Seal]



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ACKNOWLEDGMENTS

STATE OF NEW YORK)
)
COUNTY OF NEW YORK) ss.:

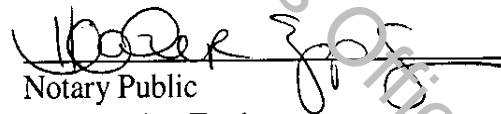
On the 21st day of February in the year 2001, before me, the undersigned, a Notary Public in and for said State, personally appeared William Rogers, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


Notary Public
Commission Expires

STATE OF NEW YORK)
)
COUNTY OF NEW YORK) ss.:

HEATHER EPPLEY
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31-OEP5053195
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MARCH 22, 2002

On the 21st day of February in the year 2001, before me, the undersigned, a Notary Public in and for said State, personally appeared Helga Blum, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(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 capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


Notary Public
Commission Expires

HEATHER EPPLEY
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31-OEP5053195
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MARCH 22, 2002

The undersigned, being the Landlord under the Lease and Mortgagor under the Mortgage hereby agrees for itself and its successors and assigns, that (i) the within Agreement does not (a) constitute a waiver by Lender of any of its rights against the undersigned under the Mortgage or any Loan Document and/or (b) in any way release the undersigned from its obligation to comply with the terms, provisions, conditions, covenants, agreements and clauses of the Mortgage and the Loan Documents, (ii) the provisions of the Mortgage and the Loan Documents remain in full force and effect and must be complied with by the undersigned, (iii) in the event Tenant receives from Lender notice of a default by Landlord under the Mortgage or Loan Documents Tenant shall pay the rent and all other sums due under the Lease to Lender, and (iv) the undersigned has requested Tenant to execute and deliver the within Agreement.

LANDLORD:

DEARBORN CENTER, L.L.C., a Delaware limited liability company

By: Prime/Beitler Development Company, L.L.C., a Delaware limited liability company, its sole member

By: Penny Beilter L.L.C., an Illinois limited liability company, its managing member

By:

Its:

Member

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ACKNOWLEDGMENT

STATE OF ILLINOIS)

COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that John Ambuster, the manager *a member* of PENNY BEITLER L.L.C., the managing member of PRIME/BEITLER DEVELOPMENT COMPANY, L.L.C., the sole member of DEARBORN CENTER, L.L.C., who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such manager of said limited liability company, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act of said limited liability company, as manager, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 21 day of February, 2001.

Notary Public

Regina G Richee

[Seal]



Exhibit A

Legal Description

LOTS 5, 6, 7 AND THAT PART OF LOT 8 LYING EAST OF THE EAST LINE OF DEARBORN STREET (EXCEPTING THEREFROM THE NORTH 9 FEET OF SAID LOTS TAKEN FOR ALLEY) IN BLOCK 141 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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