

UNOFFICIAL COPY



0716633166

Doc#: 0716633166 Fee: \$40.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 08/15/2007 02:11 PM Pg: 1 of 9

Property of Cook County Clerk's Office

COOK COUNTY RECORDING

- DEED
- MORTGAGE
- ASSIGNMENT
- POWER OF ATTORNEY
- RELEASE
- SUBORDINATION AGREEMENT
- OTHER

9

RETURN TO:

UNOFFICIAL COPY

Subordination, Non-Disturbance and Attornment Agreement

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") is made as of this 18th day of April, 2007, which date shall be the effective date of this Agreement, between PRESIDENTIAL MARKET, INC., an Illinois corporation (the "Tenant") and BANK OF AMERICA, N.A., a national banking association, a wholly owned subsidiary of BankAmerica Corporation, and having its principal offices in Charlotte, North Carolina (together with its successors and/or assigns the "Lender").

The Tenant is the lessee under the lease described in Exhibit A attached hereto (as the same may from time to time be assigned, subleased, renewed, extended, amended, modified or supplemented, collectively the "Lease").

The Lender has previously made or is about to make a loan to PT Chicago, L.L.C., a Delaware limited liability company or its successor and/or assigns with respect to the landlord's interest under the Lease (the "Landlord"), evidenced by a promissory note in the original principal amount of approximately \$325,000,000.00 executed by the Landlord and payable to the Lender and secured by a first priority deed of trust, mortgage or deed to secure debt on certain real and personal property and improvements (the "Premises"), recorded or to be recorded in the appropriate records of Cook County, Illinois (the "Security Instrument").

The Lender has requested the Tenant to confirm the fact that the Lease is subject and subordinate to the Security Instrument.

The Tenant is willing to confirm the subordination of the Lease, provided it obtains assurance from the Lender that its possession of the premises demised under the Lease (the "Demised Premises), which Demised Premises is all or a portion of the Premises, and its right to use any common areas will not be disturbed by reason of or in the event of the foreclosure of the Security Instrument.

The Lender is willing to give such assurance.

NOW, THEREFORE, for and in consideration of the mutual agreements herein contained and other good and valuable consideration, the parties hereto do hereby mutually covenant and agree as follows:

1. The Tenant hereby subordinates the Lease and all terms and conditions contained therein and all rights, options, liens and charges created thereby to the Security Instrument and the lien thereof, and to all present or future advances under the obligations secured thereby and to all renewals, extensions, amendments, modifications and/or supplements of same, to the full extent of all amounts secured thereby from time to time.

2. So long as no event of default on the part of the Tenant under the Lease shall exist which would entitle the Landlord to terminate the Lease, or if such an event of default shall exist, so long as the Tenant's time to cure the default shall not have expired, the term of the Lease shall not be terminated or modified in any respect whatsoever and the Tenant's right of possession to the Demised Premises and its rights in and to any common areas and its other rights arising out of the Lease will all be fully recognized and protected by the Lender and shall not be disturbed, canceled, terminated or otherwise affected by reason of the Security Instrument or any action or proceeding instituted by the Lender to foreclose the Security Instrument, or any extension, renewal, consolidation or replacement of same, irrespective of whether the Tenant shall have been joined in any action or proceeding.

3. In the event that the Lender takes possession of the Premises, either as the result of foreclosure of the Security Instrument or accepting a deed to the Premises in lieu of foreclosure, or otherwise, or the Premises shall be purchased at such a foreclosure by a third party, the Tenant shall attorn to the Lender or such third party and recognize the Lender or such third party as its landlord under the Lease, and the Lender or such third party will recognize and accept the Tenant as its tenant thereunder, whereupon, the Lease shall continue in full force and effect as a direct lease between the Lender or such third party and the Tenant for the full term thereof, together with all extensions and renewals thereof, and the Lender or such third party shall thereafter assume and perform all of the

8352734
67#
5401A
20f3

UNOFFICIAL COPY

Landlord's obligations, as the landlord under the Lease with the same force and effect as if the Lender or such third party were originally named therein as the Landlord; provided, however, that the Lender or such third party shall not be:

- (a) liable for any act or omission of any prior landlord (including the Landlord), except to the extent the Lender was furnished notice and opportunity to cure the same in accordance with the provisions of this Agreement prior to taking possession of such Premises; or
- (b) subject to any offsets or defenses which the Tenant might have against any prior landlord (including the Landlord), except to the extent the Lender was furnished notice and opportunity to cure the same in accordance with the provisions of this Agreement prior to taking possession of such Premises; or
- (c) bound by any rent or additional rent which the Tenant might have paid for more than two (2) months in advance to any prior landlord (including the Landlord); or
- (d) bound by any amendment or modification of the Lease not consented to in writing by the Lender.

4. Notwithstanding anything to the contrary in this Agreement or otherwise, in the event the Lender or a third party takes possession of the Premises as provided in paragraph 3 above, the liability of the Lender or such third party under the Lease shall be limited to the Lender's or such third party's, as the case may be, interest in the Premises, and upon any assignment or other transfer of the Lender's or such third-party's interest in the Premises, the Lender or such third party, as applicable, shall be discharged and released from any obligation or liability under the Lease arising or accruing after the date of such assignment or transfer.

5. Tenant agrees not to subordinate the Lease to any other lien or encumbrance which (i) affects the Premises under the Lease, or any part thereof, or (ii) is junior to the Security Instrument, without the express written consent of the Lender, and any such subordination or any such attempted subordination or agreement to subordinate without such consent of Lender, shall be void and of no force and effect.

6. Tenant agrees to provide copies of all notices given Landlord under the Lease to Lender at the following address:

Lender:	Bank of America, N.A. Attn: Capital Markets Servicing Group NC1-026-06-01 900 West Trade Street, Suite 650 Charlotte, North Carolina 28255 Telephone: (866) 531-0957 Telecopy: (704) 317-0771
---------	---

or to such other address as Lender shall designate in writing; and all such notices shall be in writing and shall be considered as properly given if (i) mailed to the addressee by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the addressee, or (iii) by delivery to a third party commercial delivery service for same day or next day delivery to the office of the addressee with proof of delivery; any notice so given shall be effective, as applicable, upon (a) the third (3rd) day following the day such notice is deposited with the United States mail, (b) delivery to the addressee, or (c) upon delivery to such third party delivery service; and any notice given in any other manner shall be effective only if and when received by the addressee.

7. In the event Landlord shall fail to perform or observe any of the terms, conditions or agreements in the Lease, Tenant shall give written notice thereof to Lender and Lender shall have the right (but not the obligation) to cure such default. Tenant shall not take any action with respect to such default under the Lease (including without limitation any action in order to terminate, rescind or avoid the Lease or to withhold any rent or other monetary obligations thereunder) for a period of thirty (30) days following receipt of such written notice by Lender; provided, however, that in the case of any default which cannot with diligence be cured within such thirty (30) day period, if Lender shall proceed promptly to cure such default and thereafter prosecute the curing of such default with

UNOFFICIAL COPY

diligence and continuity, then the time within which such default may be cured shall be extended for such period as may be necessary to complete the curing of such default with diligence and continuity.

8. Nothing contained in this Agreement shall in any way impair or affect the lien created by the Security Instrument, except as specifically set forth herein.

9. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that in the event of the assignment or transfer of the interest of the Lender to a party that assumes the Lender's obligations and liabilities hereunder, all obligations and liabilities of the Lender under this Agreement shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the party to whom the Lender's interest is assigned or transferred.

10. In the event of any litigation or other legal proceeding arising between the parties to this Agreement, whether relating to the enforcement of a party's rights under this Agreement or otherwise, the prevailing party shall be entitled to receive its reasonable attorney's fees and costs of suit from the non-prevailing party in such amount as the court shall determine.

WITNESS/ATTEST:

Mark Segal

TENANT:

PRESIDENTIAL MARKET, INC., an Illinois corporation

WITNESS/ATTEST:

W. Hill

By:

Name:

Title:

Daniel Levia
Daniel Levia
Authorized Representative

WITNESS/ATTEST:

LENDER:

BANK OF AMERICA, N.A., a national banking association

WITNESS/ATTEST:

By:

Name:

Title:

Property of Cook County Clerk's Office

UNOFFICIAL COPY

diligence and continuity, then the time within which such default may be cured shall be extended for such period as may be necessary to complete the curing of such default with diligence and continuity.

8. Nothing contained in this Agreement shall in any way impair or affect the lien created by the Security Instrument, except as specifically set forth herein.

9. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that in the event of the assignment or transfer of the interest of the Lender to a party that assumes the Lender's obligations and liabilities hereunder, all obligations and liabilities of the Lender under this Agreement shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the party to whom the Lender's interest is assigned or transferred.

10. In the event of any litigation or other legal proceeding arising between the parties to this Agreement, whether relating to the enforcement of a party's rights under this Agreement or otherwise, the prevailing party shall be entitled to receive its reasonable attorney's fees and costs of suit from the non-prevailing party in such amount as the court shall determine.

WITNESS/ATTEST:

WITNESS/ATTEST:

WITNESS/ATTEST:

 _____

WITNESS/ATTEST:

 _____

TENANT:

PRESIDENTIAL MARKET, INC., an Illinois corporation

By: _____
Name: _____
Title: _____

LENDER:

BANK OF AMERICA, N.A., a national banking association


By: _____
Name: _____
Title: _____

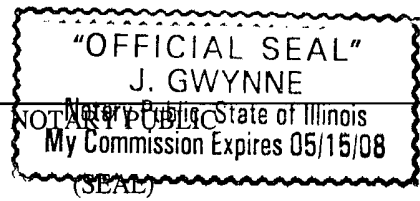
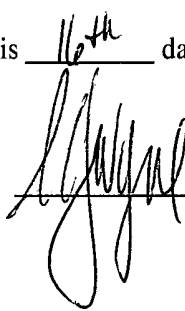
Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF)
) ss.
COUNTY OF)

I, J GWYNNE, a Notary Public in and for said County, in the State aforesaid, do hereby certify that DANIEL WEUTN, the ~~AUTHORIZED REPRESENTATIVE~~ of Presidential Market, Inc., an Illinois corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument in such capacity, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 16th day of April, 2007.



Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

Description of Lease

1. Presidential Towers Retail Lease between LaSalle National Bank, as Trustee under Trust Agreement dated September 15, 1980 as Trust Number 1032000, and Presidential Market, Inc., dated November 12, 1985.
2. Lease Amendment dated June 1, 1990
3. Lease Extension Agreement dated November 29, 1994
4. Amendment to Lease dated September 11, 1995
5. Fourth Amendment to Lease dated July 31, 2006

Prepared by:

Leventfold Pearlstein, LLC
2 N. LaSalle, Suite 1300
Chicago, IL 60602

Return to:

Chicago Title
Attn: Jeff York
171 N. Clark St.
Chicago, IL 60601

UNOFFICIAL COPY

STREET ADDRESS: 555 WEST MADISON

CITY: CHICAGO

COUNTY: COOK

TAX NUMBER: 17-16-101-022, 023, 024, 026, 027, 028, 029

LEGAL DESCRIPTION:**PARCEL 1:**

ALL OF ORIGINAL LOTS 1, 2, 3 AND 4 IN BLOCK 25 AND ALL OF ORIGINAL LOTS 5, 6, 7 AND 8 IN BLOCK 25 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN; TOGETHER WITH THE NORTH 1/2 OF VACATED WEST ARCADE PLACE LYING SOUTH OF AND ADJOINING SAID LOTS 1, 2, 3 AND 4; AND THE SOUTH 1/2 OF VACATED WEST ARCADE PLACE LYING NORTH OF AND ADJOINING SAID ORIGINAL LOTS 5, 6, 7 AND 8 (SAID WEST ARCADE PLACE AND THE ALLEY LYING WITHIN RESUBDIVIDED ORIGINAL LOT 1, ALL BEING VACATED BY ORDINANCE RECORDED MAY 22, 1981 AS DOCUMENT 25879485);

PARCEL 2:

ALL OF ORIGINAL LOTS 1, 2, 3 AND 4 IN BLOCK 48 AND ALL OF ORIGINAL LOTS 5 (SAID ORIGINAL LOT 5 ALSO BEING DESCRIBED AS LOTS 1 THROUGH 8, BOTH INCLUSIVE, IN WARD'S SUBDIVISION OF SAID ORIGINAL LOT 5, AND THE NORTH-SOUTH 8 FOOT ALLEY VACATED BY ORDINANCE RECORDED JANUARY 11, 1910 AS DOCUMENT 4494315, (SAID VACATED ALLEY LYING WEST OF AND ADJOINING SAID SUB-LOTS 1 THROUGH 6, BOTH INCLUSIVE); SAID LOTS 1 THROUGH 8, BOTH INCLUSIVE, BEING TAKEN TOGETHER WITH THE SAID VACATED ALLEY, COMPRISING ALL OF ORIGINAL LOT 5), 6, 7 AND 8 IN BLOCK 48 IN SCHOOL SECTION ADDITION AFORESAID; TOGETHER WITH THE NORTH 1/2 OF VACATED WEST ARCADE PLACE LYING SOUTH OF AND ADJOINING SAID LOTS 1, 2, 3 AND 4; AND THE SOUTH 1/2 OF VACATED WEST ARCADE PLACE LYING NORTH OF AND ADJOINING SAID ORIGINAL LOTS 5, 6, 7 AND 8 (SAID WEST ARCADE PLACE TOGETHER WITH ALL ALLEYS LYING WITHIN RESUBDIVIDED ORIGINAL LOT 1, WITHIN RESUBDIVIDED ORIGINAL LOT 4, ALL VACATED BY AFORESAID DOCUMENT 25879485), ALL IN COOK COUNTY, ILLINOIS;

PARCEL 3:

PASSAGEWAY FOR ACCESS BETWEEN AND FOR THE MUTUAL BENEFIT OF PARCELS 1 AND 2 AS CREATED BY THE ORDINANCE ENACTED BY THE CITY COUNCIL OF THE CITY OF CHICAGO ON MARCH 31, 1983 AND RECORDED ON JULY 14, 1983 AS DOCUMENT 26688854, OVER AND ACROSS THE FOLLOWING DESCRIBED SPACE TO WIT:

THE SPACE ABOVE SOUTH JEFFERSON STREET ENCLOSED BY TWO HORIZONTAL PLANES, WHOSE ELEVATIONS WITH REFERENCE TO THE CITY OF CHICAGO DATUM ARE 29.00 FEET AND 55.00 FEET ABOVE DATUM, DESCRIBED AS FOLLOWS:

BEGINNING ON THE EAST LINE OF SOUTH JEFFERSON STREET AT A POINT 118.75 FEET SOUTH OF THE SOUTH LINE OF WEST MADISON STREET, THENCE WEST 80 FEET, TO A POINT ON THE WEST LINE OF SOUTH JEFFERSON STREET, SAID POINT BEING 118.71 FEET SOUTH OF THE SOUTH LINE OF WEST MADISON STREET; THENCE SOUTH ALONG THE WEST LINE OF SOUTH JEFFERSON STREET 15.00 FEET; THENCE EAST 80.00 FEET, TO A POINT ON THE EAST LINE OF SOUTH JEFFERSON STREET, SAID POINT BEING 133.75 FEET SOUTH OF THE SOUTH LINE OF WEST MADISON STREET; THENCE NORTH, ALONG THE EAST LINE OF SOUTH JEFFERSON STREET 15.00 FEET TO THE POINT OF BEGINNING, IN SCHOOL ADDITION TO CHICAGO, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS,

ALSO

THE SPACE ABOVE SOUTH JEFFERSON STREET ENCLOSED BY TWO HORIZONTAL PLANES, WHOSE ELEVATIONS WITH REFERENCE TO THE CITY OF CHICAGO DATUM ARE 29.00 FEET AND 55.00 FEET ABOVE DATUM, DESCRIBED AS FOLLOWS:

BEGINNING ON THE EAST LINE OF SOUTH JEFFERSON STREET AT A POINT 157.75 FEET SOUTH OF THE SOUTH LINE OF WEST MADISON STREET; THENCE SOUTHWEST TO A POINT ON THE WEST LINE OF SOUTH JEFFERSON STREET, SAID POINT BEING 239.71 FEET SOUTH OF THE SOUTH LINE OF WEST MADISON STREET; THENCE

UNOFFICIAL COPY

SOUTH, ALONG THE WEST LINE OF SOUTH JEFFERSON STREET 45.00 FEET; THENCE NORTHEAST, ALONG A LINE WHICH FORMS AN INTERIOR ANGLE OF 45 DEGREES 23 MINUTES WITH THE LAST DESCRIBED LINE, 53.38 FEET; THENCE EAST TO A POINT ON THE EAST LINE OF SOUTH JEFFERSON STREET, SAID POINT BEING 246.92 FEET SOUTH OF THE SOUTH LINE OF WEST MADISON STREET; THENCE NORTH, ALONG THE EAST LINE OF SOUTH JEFFERSON STREET, 89.17 FEET, TO THE POINT OF BEGINNING, IN SCHOOL ADDITION TO CHICAGO, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office