

Record and Return to:



200406180092
Skagit County Auditor

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Ptn SE NE 7-34-4

LAND TITLE OF SKAGIT COUNTY 11234-S

**SUBORDINATION, NONDISTURBANCE AND
ATTORNMENT AGREEMENT WITH ESTOPPEL CERTIFICATE**

THIS AGREEMENT is made and entered into as of the 22nd day of April, 2004, by and among Frontier Bank, a Washington Banking Corporation ("Lender"), **SHDP Associates, LLC**, a Washington Limited Liability Company ("Borrower"), and **Subway Real Estate Corp.**, a Delaware Corporation ("Tenant"). Lender, Borrower and Tenant are sometimes singularly referred to as a "Party" and collectively referred to as the "Parties."

RECITALS:

A. Tenant has a lease (herein the "Lease") with its landlord, **SHDP Associates, LLC** (herein "Borrower") dated **December 16th, 2003**. Under that Lease, Tenant is leasing the real property located in **Skagit** County, Washington, commonly known as **Burlington Retail** (herein the "Property") and legally described on Exhibit "A" which is attached hereto and incorporated herein by this reference and briefly described as follows:

Assessor's Property Tax Parcel Account Number(s): **340407-1-026-0015** and **340407-1-055-0011**

B. A loan (herein "Loan") has been made or is about to be made by Lender to Borrower and Lender, as a condition precedent to disbursement of loan proceeds, has required that Tenant subordinate the Lease and its interest in the Property.

C. Tenant believes it will benefit from this Agreement and is willing to give such subordination and make such acknowledgment on the terms and conditions hereinafter set forth.

NOW, THEREFORE, the parties agree as follows:

1. Tenant hereby agrees that the Lease and all rights, options, liens and charges created thereby, are subordinate to the lien of Lender's Deed of Trust ("Deed of Trust") in the principal amount of \$ 3,337,838.49 dated 4/15/04 and recorded 4/16/04 under Skagit County Auditor's File No.

200404160016, and any and all instruments held by Lender as security for the Loan. Tenant further agrees that the Lease shall be subordinate to the Lien of any renewal, modification, extension, substitution, replacement or consolidation of said Deed of Trust and other security instruments.

2. So long as Tenant is not in default under the Lease, Lender hereby agrees that it will not disturb Tenant's quiet possession of the leased premises, nor deprive Tenant of any of its rights under the Lease.

3. If Lender becomes the owner of the Property or if the Property shall be sold by reason of foreclosure or other proceedings brought to enforce the Deed of Trust, or if the Property is transferred by deed in lieu of foreclosure, the Lease shall continue in full force and effect as a direct lease between the then owner of the Property (including the Lender or other grantee under a deed in lieu of foreclosure) and Tenant for the balance of the term of the Lease and Tenant agrees to attorn unto the then owner as its landlord. From and after said owner's acquisition of title, Tenant shall have the same remedies for breach of a covenant under the Lease that Tenant might have against its present landlord except that said owner shall not be: ~~(a) liable for any act or omission of any prior landlord (including Borrower); (b) subject to any offsets or defenses which Tenant might have against any prior landlord (including Borrower); (c) bound by any payment of rent or which Tenant might have paid for more than one (1) month in advance; (d) bound by any amendment or modification of the Lease or by any waiver or forbearance on the part of any prior landlord (including Borrower) made or given without the written consent of Lender; (e) bound by a guarantee of work performed by or for the landlord or any warranty of workmanship or materials or of any other personal guaranty of the landlord; or (f) bound for return of any security deposit unless the same has been specifically transferred to said owner.~~ This leasing arrangement shall be effective and self-operative without the execution of any further instruments. Tenant, however, shall be under no obligation to pay rent to Lender until Tenant receives written notice from Lender or the new owners that it has succeeded to Borrower's interest under the Lease.

4. Tenant agrees that Borrower shall not be in default under the Lease unless written notice specifying such default is given to Lender. Tenant agrees that Lender shall have the right to cure such default on behalf of Borrower within thirty (30) days after the receipt of such notice. Tenant further agrees not to invoke any of its remedies under the Lease until said thirty (30) days have elapsed, or during any period that Lender is proceeding to cure such default with due diligence, or is diligently taking steps to obtain the right to enter the lease premises and cure the default, whichever is later.

5. Any options or rights contained in the Lease to acquire title to the Property are hereby made subject and subordinate to the rights of Lender under the Deed of Trust, and any acquisition of title to the Property made by Tenant during the term of the Deed of Trust shall be made subordinate and subject to the Deed of Trust.

~~6. Tenant subordinates its right, title and interest under the Lease to the interest of Lender in any award of condemnation or eminent domain, and Tenant does assign and transfer to~~



~~Lender the right and privilege to receive any interest of Tenant in and to the full extent of such award of condemnation or eminent domain, or, if said Deed of Trust is not yet fully satisfied, to the extent necessary to pay in full any and all sums secured by the Deed of Trust (Tenant authorizing Lender to apply any funds so received in satisfaction of any sums secured by the Deed of Trust). Notwithstanding the foregoing, Tenant shall be entitled to retain any amounts payable to Tenant in connection with relocation or destruction expenses or as compensation for Tenant improvements.~~

7. Tenant represents to Lender that the exercise by Lender of its rights and remedies under the Deed of Trust, or related loan documents, including without limitation its right of foreclosure, shall not constitute an event of default under the Lease.

8. Tenant waives presentment, demand, protest, and notice and agrees that Lender, without notice to or consent of Tenant, upon such terms as Lender may deem advisable, without releasing or discharging Tenant from this Agreement or affecting the lien or priority of the Deed of Trust, may:

- a) extend, in whole or in part, by renewal or otherwise, the time for payment or performance of any obligations secured by the Deed of Trust;
- b) release, surrender, exchange or modify any obligations secured by the Deed of Trust, or any security for such obligations; and/or
- c) settle or compromise any claim with respect to any obligation secured by the Deed of Trust or any claim against any person who has given security for such obligation.

Tenant hereby ratifies any such extension, renewal, release, surrender, exchange, modification, settlement or compromise and waives all defenses, counterclaims or offsets which it might have by reason thereof.

9. Tenant hereby certifies to Lender that:

- a) The Lease is dated **December 16, 2003**, is in full force and effect, and has not been modified, changed, altered or amended.
- b) The Lease term commenced on **March 5, 2004**, and terminates on **March 4, 2010**, subject to earlier termination and renewal as set forth in the Lease.
- c) Tenant has taken possession to the demised premises and has accepted the same.
- d) The minimum monthly rent is **\$2,590.00**, and Tenant has made no agreements



concerning free rent, partial rent, rebate of rental payments or any other type of rental concessions.

e) Tenant agrees not to ~~cancel, modify, assign, renew, extend or~~ prepay more than one (1) month's rent without Lender's prior written consent.

f) Tenant knows of no uncured default by Borrower (as landlord) under the Lease.

g) Tenant does not have an option to purchase the Property, nor does it have a right of first refusal or any other right to acquire the Property at any time.

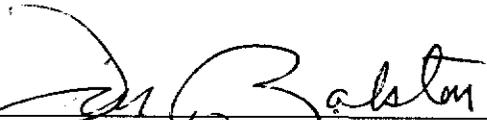
10. Tenant acknowledges that the interest of Borrower in the Lease has been assigned to Lender as security under the Deed of Trust described in Paragraph 1 above and that until Lender obtains title to the Property, Lender assumes no duty, liability or obligation under the Lease or any extension or renewal of the Lease, either by virtue of said assignment or by any subsequent receipt or collection of rents under the assignment.

11. This Agreement may not be modified except in writing and executed by the parties hereto or their successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto, and their successors and assigns.

12. In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of Lender, not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

DATED as of the date first above written.

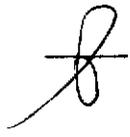
Lender:
FRONTIER BANK

By: 
Its: Vice President

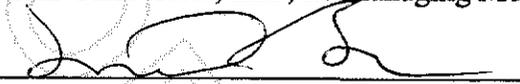
Tenant:
SUBWAY REAL ESTATE CORP.
By:  4/22/04
Its: Theodore M. Parent
its Vice President



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Borrower:
SHDP ASSOCIATAES, LLC
By SHD Associates, LLP, its Managing Member

By: 
Mack H. DuBose
Its: General Partner

UNOFFICIAL DOCUMENT



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Skagit County Auditor

ACKNOWLEDGEMENTS

STATE OF Connecticut)
) ss.
COUNTY OF New Haven)

I, the undersigned, a notary public in and for the State of Connecticut, hereby certify that on this 22 day of April, 2004, personally appeared before me Theodore M. Parent, to me known to be the V.P., respectively of **Subway Real Estate Corp.**, the entity that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said entity, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute the said instrument.

GIVEN UNDER MY HAND and official seal this 22 day of April, 2004.

ROBERT R. GRESKO
NOTARY PUBLIC
MY COMMISSION EXPIRES JAN. 31, 2009


(Name _____)
NOTARY PUBLIC in and for the State of _____,
residing at _____,
My commission expires: _____.

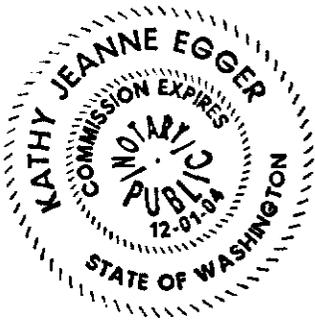


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STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I, the undersigned, a notary public in and for the State of Washington, hereby certify that on this 22nd day of April, 2004, personally appeared before me **Mack H. DuBose**, to me known to be the **General Partner of SHD Associates, LLP, the Managing Member of SHDP Associates, LLC**, the entity that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said entity, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute the said instrument.

GIVEN UNDER MY HAND and official seal this 22nd day of April, 2004.



Kathy Jeanne Egger
(Name Kathy Jeanne Egger)
NOTARY PUBLIC in and for the State of
Washington, residing at Kirkland.
My commission expires: 12/01/04.



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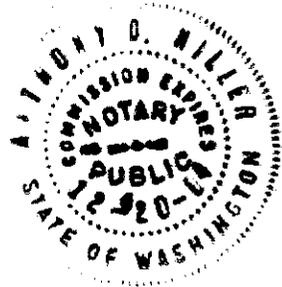
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STATE OF WASHINGTON)
) ss.
COUNTY OF Snohomish)

I, the undersigned, a notary public in and for the State of WA, hereby certify that on this 22nd day of April, 2004, personally appeared before me Don Balston, to me known to be the Vice President of **FRONTIER BANK**, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/~~she~~ is authorized to execute the said instrument.

GIVEN UNDER MY HAND and official seal this 22nd day of April, 2004.



A. D. Miller
(Name Anthony D. Miller)
NOTARY PUBLIC in and for the State
of WA, residing at Kenmore
My commission expires: 12-20-04



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Skagit County Auditor

UNOFFICIAL DOCUMENT



EXHIBIT "A"

PARCEL "A":

That portion of the Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 7, Township 34 North, Range 4 East, W.M., described as follows:

Beginning at a point on the West line of State Highway No. 99, that is 30 feet West and 305.07 feet South of the Northeast corner of said subdivision;
thence North $88^{\circ}50'30''$ West parallel to the West line of said subdivision, 398.8 feet, more or less, to the West line of that certain tract deeded to Emil Hanson by Deed recorded under Auditor's File No. 362759;
thence Southerly parallel to the East line of said subdivision, 101.55 feet;
thence South $88^{\circ}50'30''$ East to the West line of said Highway;
thence North along said West line to the point of beginning,

EXCEPT that portion thereof lying East of a line drawn 40 feet West of and parallel with the East line of said subdivision.

Situate in the City of Burlington, County of Skagit, State of Washington.

PARCEL "B":

That portion of the Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 7, Township 34 North, Range 4 East, W.M., described as follows:

Beginning at a point on the West line of State Highway No. 99, that is 30 feet West and 406.62 feet South of the Northeast corner of said subdivision;
thence North $88^{\circ}50'30''$ West parallel to the North line of said subdivision, 399.09 feet, more or less, to the West line of that certain tract deeded to Emil Hanson by Deed recorded under Auditor's File No. 362759;
thence Southerly parallel to the East line of said subdivision, 50 feet;
thence South $88^{\circ}50'30''$ East to the West line of said Highway;
thence North along said West line to the point of beginning,

EXCEPT that portion thereof lying East of a line drawn 40 feet West of and parallel with the East line of said subdivision.

Situate in the City of Burlington, County of Skagit, State of Washington.

PARCEL "C":

A non-exclusive easement for ingress, egress and utilities in favor of the above described Parcels "A" and "B" over and across an adjoining portion of the Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 7, Township 34 North, Range 4 East, W.M., as established and more particularly described on Easement Agreement dated September 30, 1998 and recorded November 2, 1998, under Auditor's File No. 9811020023.

Situate in the City of Burlington, County of Skagit, State of Washington.



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Skagit County Auditor

ESTOPPEL CERTIFICATE

This ESTOPPEL CERTIFICATE is given the 22nd day of April 2004, to FRONTIER BANK by **Subway Real Estate Corp.** ("Tenant") under that certain lease agreement dated **December 16, 2003** and recorded under **N/A** number **N/A**, ("Lease") by and among Tenant and **SHDP Associates, LLC**, ("Landlord") relating to that certain real property described in Exhibit "A" attached hereto ("Property").

WHEREAS, Landlord has entered into an agreement with FRONTIER BANK dated April 15, 2004 pursuant to which Landlord has agreed to assign its interest in the Lease to FRONTIER BANK as partial security for a loan be FRONTIER BANK to Landlord:

AND WHEREAS, Tenant consents to the assignment of the Lease to FRONTIER BANK by Landlord and gives this ESTOPPEL CERTIFICATE in order to verify the conditions of the Lease and Landlord's status hereunder.

NOW, THEREFORE, Tenant hereby consents to the assignment of Landlord's interest under the Lease to FRONTIER BANK and certifies to FRONTIER BANK as follows:

- 1) The Lease is in full force and effect and has not been amended except **Rider to Lease**.
- 2) Landlord is presently not in default under the Lease and is in compliance with all Lease provisions.
- 3) The term of the Lease commenced on **March 5, 2004** and runs for a period of **Ten (10) years**.
- 4) The rental payment called for under the Lease is **\$2,590.00** per month subject to adjustment as provided in Paragraph 4. of the Lease.
- 5) Pursuant to Paragraph 1.1 (i) of the Lease, there is **Two (2) successive Five (5) years** renewal options.
- ~~6) Tenant agrees that if Landlord defaults under its loan agreement with FRONTIER BANK or the provisions of the Lease, FRONTIER BANK may manage and operate the Property or may reassign its interest in the Lease, and Tenant agrees that its consent to any such reassignment, if requested, will not be unreasonably withheld;~~
- 7) Tenant agrees that so long as FRONTIER BANK has not entered premises for the purpose of managing and operating the leasehold property, FRONTIER BANK will have no liability under the Lease, including, without limitation, liability for maintenance and/or repairs;
- 8) If FRONTIER BANK enters the premises and take possession for the purpose of managing and operating the leasehold property, Tenant agrees that all payments due under the Lease and Attributable to that period of time will be made to FRONTIER BANK.
- 9) Tenant agrees not to terminate the Lease despite default be Landlord, without giving FRONTIER BANK at least sixty (60) days prior written notice of the default and an opportunity to cure the default.
- 10) ~~Tenant agrees that any personal property on the premises, in which FRONTIER BANK has a security interest, is severable and may be removed without further consent from Tenant in the event Landlord defaults under the loan or the Lease. Any liens Tenant may have against the personal property will be subordinate to the security interest of FRONTIER BANK in the personal property.~~
- 11) For and in Consideration of the agreements of FRONTIER BANK contained herein, Tenant hereby subordinates its interest in said property to the interest of FRONTIER BANK under its Deed of Trust recorded under _____ County Auditors File No. _____



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Skagit County Auditor

TENANT:

Subway Real Estate Corp.

By: Theodore M. Parent 4/22/04

Title: its Vice President

FRONTIER BANK:

By: Don Ralston

Title: Vice President

TENANT

STATE OF Connecticut)
)ss
COUNTY OF New Haven)

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgement is the persons whose true signatures appear on this document:

On this 22nd day of April, 2004, before me personally appeared Theodore M. Parent to me known to be the Vice President of **Subway Real Estate Corp. dba Subway** the entity that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said entity, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above-written.

Cora M. Curtiss
Notary Public in and for the State of Connecticut
Residing at: Millford, Connecticut
My Commission expires: _____

CORA M. CURTISS
NOTARY PUBLIC
MY COMMISSION EXPIRES JAN. 31, 2008



FRONTIER BANK

STATE OF WASHINGTON)
)ss
COUNTY OF Snohomish)

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgement is the person whose true signature appears on this document:

On this 22nd day of April, 2004, before me personally appeared Don Ralston to me known to be the Vice President of **FRONTIER BANK**, a Washington Corporation, the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above-written.

A. D. Miller
Notary Public in and for the State of WA
Residing at: Kenmore, WA
My Commission expires: 12-20-04

