

UNOFFICIAL COPY

09001539

8067/0269 27 001 Page 1 of 7
1999-10-25 12:59:53
Cook County Recorder 33.00



This instrument was prepared by
and,
after recording, return to
Randall S. Kulat
MELTZER, PURTILL &
STELLE
Suite 250
1515 East Woodfield Rd.
Schaumburg, IL 60173-5431

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7824193 02 01

Property of Cook County Clerk's Office

Permanent Real Estate Tax Index No.:
See Exhibit "A" Attached

7
BAR

Location:
Milwaukee and Dundee Roads in
Wheeling, Illinois

**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT (Z-teca)**

Re: Retail Development, Dundee and Milwaukee, Wheeling

THIS AGREEMENT is made and entered into as of this 2nd day of July, 1999, by and between **ZT OF WHEELING, L.L.C.**, an Illinois limited liability company (hereinafter referred to as "Tenant"), with a mailing address of 1305 South Madison Street, Normal, Illinois 61761, and **MILWAUKEE-DUNDEE ASSOCIATES, L.L.C.**, an Illinois limited liability company, with a mailing address of 1400 South Wolf Road, Building 100, Wheeling, Illinois 60090 (hereinafter referred to as "Landlord"), and **COLE TAYLOR BANK**, Landlord's Mortgagee (hereinafter referred to as "Mortgagee") with a mailing address of 5501 West 79th Street, Burbank, Illinois 60459.

WITNESSETH:

WHEREAS, Tenant has entered into a lease dated June 14, 1999 with Landlord, whereby Landlord has demised to Tenant the premises described in said lease, which are hereinafter referred to as the "Leased Premises") located on certain real estate legally described in Exhibit "A" attached hereto and made a part hereof; said lease together with any amendments or modifications thereof, whether now or hereafter existing, shall be hereinafter referred to as the "Lease"; and

WHEREAS, Landlord has executed and delivered to Mortgagee, a Mortgage and Security Agreement dated as of July 2, 1999 and recorded on July 7, 1999 as Document No. 99647570, together with related security documents (collectively the "Mortgage") encumbering the Leased Premises and other property owned by Landlord, to secure an indebtedness due by Landlord to Mortgagee; and

WHEREAS, Mortgagee and Tenant, in connection with the Lease and the Mortgage, have each requested the execution of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein

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contained and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties do hereby covenant and agree as follows:

1. The Lease is and shall continue to be subject and subordinate to the Mortgage and to all renewals, modifications, consolidations, replacements, and extensions thereof, to the full extent of the principal sum secured thereby and interest accrued and from time to time unpaid thereon, subject to the terms of this Agreement.

2. So long as Tenant is not in Default of the Lease, as defined in said Lease and after notice and an opportunity to cure the same as provided in the Lease, Tenant shall not be disturbed by Mortgagee in Tenant's possession, enjoyment, use and occupancy of the Leased Premises during the term of the Lease, and in the event that Mortgagee shall succeed to the interest of Landlord under the Lease and/or shall obtain possession of the Leased Premises, Mortgagee agrees to be bound by the Lease and all of the terms and conditions thereof (subject to paragraph 6 below). In the event of a conflict between the provisions of the Lease and the provisions of the Mortgage, the provisions of the Lease shall prevail.

3. Tenant agrees that upon receipt of written notice from Mortgagee of an uncured default by Landlord under the Mortgage, all rentals and other sums payable by Tenant under the Lease shall be delivered to and drawn to the exclusive order of Mortgagee until Mortgagee or a court of competent jurisdiction shall direct otherwise. Such payment of rent and other sums to Mortgagee hereunder shall not relieve Landlord of any of its obligations under said Lease nor modify or diminish any rights granted to Tenant by said Lease or this Agreement, including but not limited to, Tenant's rights of offset or deduction. Landlord specifically consents to this paragraph 3. Landlord relieves Tenant of all liability for the payment of any sums as required under this paragraph 3. Tenant shall have no liability nor obligation to verify the existence of any default of the Mortgage by Landlord so alleged by Mortgagee. Tenant may rely on Mortgagee's notice under this paragraph 3 regardless of any conflicting or contrary demands by Landlord.

4. (a) Tenant shall use reasonable efforts to give written notice to Mortgagee of all defaults by Landlord of those obligations under the Lease which are of such a nature as to give Tenant a right to terminate the Lease, to reduce rent, or to credit or offset any amounts against future rents, and Mortgagee shall have the same opportunity as provided to Landlord in said Lease (but shall not be required) to cure the same. Tenant's failure to so provide a notice to Mortgagee hereunder shall not be a default of this Agreement or the Lease, except that Mortgagee shall not be bound by defaults, offsets or deductions that Mortgagee has not been notified of (as more fully set forth in paragraph 6 below).

(b) All notices under this Agreement shall be in writing and addressed to each party at the mailing address set forth on page one of this Agreement, provided that each party by like notice may designate any future or different addresses to which subsequent notices shall be sent. Notices shall be deemed given upon receipt or upon refusal to accept delivery.

5. In the event it should become necessary to foreclose the Mortgage, the Mortgagee thereunder will not join the Tenant as a party defendant in any foreclosure proceedings so long as the Tenant is not in Default, as defined in the Lease and after notice and an opportunity to cure the same, under any of the terms, covenants or conditions of the Lease (except to the extent necessary to accomplish the foreclosure and then not to disturb Tenant's possession nor interfere with any of Tenant's rights under the Lease, and at no cost, expense or attorneys fees to be incurred by Tenant).

6. In the event that the Mortgagee or its designee shall, in accordance with the foregoing, succeed to the interest of the Landlord under the Lease and/or shall obtain possession

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of the Leased Premises, the Mortgagee agrees to be bound (or to cause its designee to be bound) to the Tenant under all of the terms, covenants and conditions of the Lease, and the Tenant agrees, from and after such event, to attorn to the Mortgagee, its designee or the purchaser at any foreclosure sale of the Leased Premises (or a deed in lieu thereof) and all rights and obligations under the Lease shall continue as though the interest of Landlord has not terminated or such foreclosure proceedings had not been brought, and the Tenant shall have the same remedies against the Mortgagee, its designee or purchaser for the breach of the Lease that Tenant might have under the Lease against the Landlord; provided, however, that the Mortgagee, its designee or purchaser shall not be: (a) liable for any act or omission of any prior landlord (including the Landlord) except for any defaults of which Tenant has notified both Landlord and Mortgagee, as provided for in the Lease and this Agreement; (b) subject to any offsets or defenses which the Tenant might have against any prior landlord (including the Landlord) except for any defaults of which Tenant has notified both Landlord and Mortgagee, as provided for in the Lease and this Agreement; (c) bound by any rent or other sums payable by Tenant under the Lease which Tenant might have paid for more than the current month to any prior landlord (including Landlord) except to the extent such prepayment by Tenant for more than the current month was required by the terms of the Lease; or (d) bound by any amendment or modification of the Lease made without the consent of Mortgagee subsequent to the date hereof.

7. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Mortgagee shall promptly notify Tenant upon the release and/or satisfaction of its Mortgage.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

TENANT:

ZT OF WHEELING, L.L.C., an Illinois
limited liability company

By: Ingal C. Hogan
Its: Manager

LANDLORD:

MILWAUKEE-DUNDEE ASSOCIATES,
L.L.C., an Illinois limited liability company, by its
managing member

By: Kellen B. [Signature]
A Manager

(signatures continued on the following page)

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STATE OF ILLINOIS)
) SS
COUNTY OF McLean)

I, Kelly K. Delaney, a Notary Public, do hereby certify that Inge
Hogan, personally known to me to be the manager of ET of
Wheeling, L.L.C., an Illinois limited liability company, and 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 as such manager he or she signed and delivered the
said instrument as manager of said limited liability company, pursuant to authority
given by the Operating Agreement of said limited liability company 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 August, 1999.

Kelly K Delaney
Notary Public

My commission Expires:

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

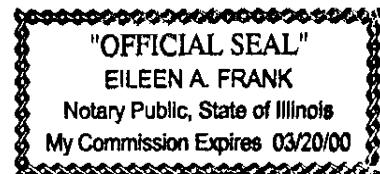


I, the undersigned, a Notary Public in and for said County, in the State aforesaid,
do hereby certify that Eileen Butler, a manager ("Manager") of MILWAUKEE-DUNDEE
ASSOCIATES, L.L.C ("Mortgagor"), who is personally known to me to be the same person
whose name is subscribed to the foregoing instrument as such Manager of Mortgagor, appeared
before me this day in person and acknowledged that he or she signed and delivered the said
instrument as his/her own free and voluntary act and as the free and voluntary act of the
Mortgagor, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 30 day of June, 1999.

Eileen A Frank
Notary Public

My commission Expires:



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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that William Krinsky, Senior V.P. and James Houwiler a Asst. V.P. of COLE TAYLOR BANK ("Mortgagee"), who is personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Senior V.P. and Asst. V.P., appeared before me this day in person and acknowledged they signed and delivered the said instrument as their own free and voluntary act of said Assignee, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 7th day of October, 1999.



Cheryl Moore
Notary Public

My commission expires: 2/05/2002

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EXHIBIT A

Legal Description

LOTS 3, 4, 5 AND 6 IN ONE MILWAUKEE PLACE SUBDIVISION, BEING A SUBDIVISION OF THAT PART OF THE EAST ½ OF THE SOUTHEAST ¼ OF SECTION 2, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, RECORDED MARCH 15, 1999 AS DOCUMENT 9924118

P.I.N.: 03-02-410-008-0000
03-02-410-009-0000
03-02-410-010-0000
03-02-410-011-0000
03-02-410-012-0000
03-02-410-031-0000
03-02-410-032-0000
03-02-410-033-0000
03-02-410-034-0000
03-02-410-036-0000
03-02-410-038-0000
03-02-410-102-0000
03-02-410-103-0000
03-02-410-114-0000

Milwaukee & Dundee, Wheeling

RECORDED IN COOK COUNTY CLERK'S OFFICE

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