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THE SUMITOMO TRUST & BANKING CO., LTD.,
Mortgagee

312

AND

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GRANT/JACOBY, INC.,

DEPT-01 RECORDING \$22.50
TRAN 2948 07/25/90 14:34:00
#1276 * D * -90-358288
COOK COUNTY RECORDER

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SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT

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Dated: As of July 18, 1990

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323

Location: 737 North Michigan Avenue
Chicago, Illinois

90358288

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PREPARED BY AND AFTER THIS INSTRUMENT IS FILED FOR
RECORD RETURN TO:

325
326
327

Battle Fowler
280 Park Avenue
New York, New York 10017

328

Attention: Alan S. Weil, Esq.

TAX PARCEL NOS. 17-10-200-067; 17-10-200-069 through 17-10-200-086, BOTH INCL.

-90-358288

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SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (Lease)

July

THIS AGREEMENT made as of the ^{18th} day of July, 1990, between THE SUMITOMO TRUST & BANKING CO., LTD., a Japanese banking corporation acting through its New York Branch, having an office at 527 Madison Avenue, New York, New York (hereinafter referred to as Mortgagee), and GRANT/JACOBY, INC., a Delaware corporation having an address at 737 North Michigan Avenue, Chicago, Illinois 60611 (hereinafter referred to as Tenant);

W I T N E S S E T H:

WHEREAS Mortgagee is the present owner and holder of the mortgage described in EXHIBIT A attached hereto (hereinafter referred to as the Mortgage) covering certain premises described in EXHIBIT B attached hereto (hereinafter referred to as the Premises) and of the note, bond or other obligation described in EXHIBIT A attached hereto secured thereby (hereinafter referred to as the Note);

WHEREAS Tenant is the holder of a leasehold estate in a portion of the Premises under and pursuant to the provisions of a certain lease more particularly described in EXHIBIT C attached hereto (hereinafter referred to as the Lease); and

WHEREAS Tenant has agreed to subordinate the Lease to the Mortgage and to the lien thereof and Mortgagee has agreed to grant non-disturbance to Tenant under the Lease on the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of Ten Dollars (\$10) and other good and valuable consideration, the receipt of which is hereby acknowledged, Mortgagee and Tenant hereby covenant and agree as follows:

1. Tenant agrees that the Lease and all of the terms, covenants and provisions thereof and all rights, remedies and options of Tenant thereunder are and shall at all times continue to be subject and subordinate in all respects to the Mortgage and to the lien thereof and to all renewals, modifications, spreaders, consolidations, replacements and extensions thereof and to all sums secured thereby with the same force and effect as if the Mortgage had been executed, delivered and recorded prior to the execution and delivery of the Lease.

2. Mortgagee agrees that if any action or proceeding is commenced by Mortgagee for the foreclosure of the Mortgage or the sale of the Premises, Tenant shall not be named as a party therein, and the sale of the Premises in any such action or proceeding and the exercise by Mortgagee of any of its other rights under the Note or the Mortgage shall be made subject to all rights of Tenant under the Lease, provided that at the time of the commencement of any such action or proceeding or at the time of any such sale or exercise of any such other rights (i) the term of the Lease shall have commenced pursuant to the provisions thereof, (ii) Tenant shall be in possession of the premises demised under the Lease, (iii) the Lease shall be in full force and effect and (iv) Tenant shall not be in default under any of the terms, covenants or conditions of the Lease or of this Agreement on Tenant's part to be observed or performed.

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3. Tenant agrees that if Mortgagee shall become the owner of the Premises by reason of the foreclosure of the Mortgage or the acceptance of a deed or assignment in lieu of foreclosure or otherwise, the Lease shall not be terminated or affected thereby but shall continue in full force and effect as a direct lease between Mortgagee and Tenant upon all of the terms, covenants and conditions set forth in the Lease and in that event Tenant agrees to attorn to Mortgagee and Mortgagee agrees to accept such attornment, provided, however, that the provisions of the Mortgage shall govern with respect to the disposition of any casualty insurance proceeds or condemnation awards and Mortgagee shall not be (i) obligated to complete any construction work required to be done by Landlord (as hereinafter defined) pursuant to the provisions of the Lease or to reimburse Tenant for any construction work done by Tenant, (ii) liable for any accrued obligation of Landlord, or for any act or omission of Landlord, whether prior to or after such foreclosure or sale, (iii) required to make any repairs to the Premises or to the premises demised under the Lease required as a result of fire, or other casualty or by reason of condemnation unless Mortgagee shall be obligated under the Lease to make such repairs and shall have received sufficient casualty insurance proceeds or condemnation awards to finance the completion of such repairs, (iv) required to make any capital improvements to the Premises or to the premises demised under the Lease which Landlord may have agreed to make, but had not completed, or to perform or provide any services not related to possession or quiet enjoyment of the premises demised under the Lease, or (v) subject to any offsets or counterclaims which shall have accrued to Tenant against Landlord prior to the date upon which Mortgagee shall become the owner of the Premises.

4. Tenant shall not, without obtaining the prior written consent of Mortgagee, (i) enter into any agreement amending, modifying or terminating the Lease, (ii) prepay any of the rents, additional rents or other sums due under the Lease for more than one (1) month in advance of the due dates thereof, (iii) voluntarily surrender the premises demised under the Lease or terminate the Lease without cause or shorten the term thereof, or (iv) assign the Lease or sublet the premises demised under the Lease or any part thereof other than pursuant to the provisions of the Lease; and any such amendment, modification, termination, prepayment, voluntary surrender, assignment or subletting, without Mortgagee's prior consent, shall not be binding upon Mortgagee.

5. Tenant hereby represents and warrants to Mortgagee that as of the date hereof (i) Tenant is the owner and holder of the tenant's interest under the Lease, (ii) the Lease has not been modified or amended, except as specifically set forth in Exhibit C, (iii) the Lease is in full force and effect and the term thereof commenced on August 1, 1986, pursuant to the provisions thereof, (iv) the premises demised under the Lease have been completed and Tenant has taken possession of the same on a rent paying basis, (v) neither Tenant nor Landlord is in default under any of the terms, covenants or provisions of the Lease and Tenant to the best of its knowledge knows of no event which but for the passage of time or the giving of notice or both would constitute an event of default by Tenant or Landlord under the Lease, (vi) neither Tenant nor Landlord has commenced any action or given or received any notice for the purpose of terminating the Lease, (vii) all rents, additional rents and other sums due and payable under the Lease have been paid in full and no rents, additional rents or other sums payable under the Lease have been paid for more than one (1) month in advance of the due dates thereof, (viii) there are no offsets or defenses to the payment of the rents, additional rents, or other sums payable under the Lease, and (ix) Landlord has satisfied all of its obligations under the Tenant Work Agreement, including, but not limited to, the payment of any Landlord's allowance or contribution.

6. Tenant shall notify Mortgagee of any default by Landlord under the Lease which would entitle Tenant to cancel the Lease or abate the rents, additional rents or other sums payable thereunder, and agrees that,

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109 notwithstanding any provisions of the Lease to the contrary, no notice of
110 cancellation thereof shall be effective unless Mortgagee shall have received
111 notice of the default giving rise to such cancellation and shall have failed
112 within sixty (60) days after receipt of such notice to cure such default, or
113 if such default cannot be cured within sixty (60) days, shall have failed
114 within sixty (60) days after receipt of such notice to commence and to
115 thereafter diligently pursue any action necessary to cure such default.

116 7. Neither the Mortgagee nor its nominee, successors or assigns
117 shall have any obligation to perform any of the obligations of Landlord under
118 the Lease, unless and until the Mortgagee or its nominee, successors or
119 assigns (as the case may be) shall acquire title to, or take possession of,
120 the Premises and, further, from and after the date on which Mortgagee or its
121 nominee, successors or assigns (as the case may be) shall so acquire title to,
122 or take possession of, the Premises, Mortgagee, or its nominee, successors or
123 assigns (as the case may be) shall have no liability to Tenant pursuant to the
124 Lease, this Agreement or otherwise, beyond their respective interests in the
125 Premises. Tenant agrees that with respect to any money judgment which may be
126 obtained or secured by Tenant against Mortgagee or its nominee, successors or
127 assigns (as the case may be) on account of claims arising under the Lease,
128 this Agreement or any other documents or instruments executed in connection
129 with the Premises, Tenant shall look solely to the estate or interest owned by
130 Mortgagee or its nominee, successors or assigns (as the case may be) in the
131 Premises, or any portion thereof, and Tenant will not collect or attempt to
132 collect any such judgment out of any other assets of Mortgagee or its nominee,
133 successors or assigns (as the case may be). Without limiting the generality
134 of the foregoing, neither the Mortgagee, nor its nominee, successors or
135 assigns shall have any obligations or liabilities to the Tenant hereunder or
136 under the Lease beyond the obligations and liabilities of Landlord under the
137 Lease (to the extent that such obligations and liabilities are to be assumed
138 by Mortgagee or its nominee, successors or assigns (as the case may be) under
139 this Agreement).

140 8. All notices, consents and other communications pursuant to
141 the provisions of this Agreement shall be in writing and shall be sent by
142 registered or certified mail, return receipt requested, and shall be deemed
143 given when postmarked and addressed as follows:

144 If to Mortgagee:

145 The Sumitomo Trust & Banking Co., Ltd.
146 New York Branch
147 527 Madison Avenue
148 New York, New York 10022

149 Attention: Albert C. Tew II

150 with a copy to:

151 Battle Fowler
152 280 Park Avenue
153 New York, New York 10017

154 Attention: Alan S. Weil, Esq.

155 If to Tenant:

156 Grant/Jacoby, Inc.
157 737 North Michigan Avenue
158 Chicago, Illinois 60611

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160 Each party may designate a change of address by notice to the other party,
161 given at least fifteen (15) days before such change of address is to become
162 effective.

163 9. This Agreement shall be binding upon and inure to the
164 benefit of Mortgagee and Tenant and their respective successors and assigns.

165 10. The term "Mortgagee" as used herein shall include the
166 successors and assigns of Mortgagee and any person, party or entity which
167 shall become the owner of the Premises by reason of a foreclosure of the
168 Mortgage or the acceptance of a deed of assignment in lieu of foreclosure or
169 otherwise. The term "Landlord" as used herein shall mean and include the
170 present landlord under the Lease and such landlord's predecessors and
171 successors in interest under the Lease. The term "Premises" as used herein
172 shall mean the Premises, the improvements now or hereafter located thereon and
173 the estates therein encumbered by the Mortgage.

174 11. This Agreement may not be modified in any manner or
175 terminated except by an instrument in writing executed by the parties hereto.

176 12. This Agreement shall be governed by and construed under the
177 laws of the State in which the Premises are located.

178 IN WITNESS WHEREOF, Mortgagee and Tenant have duly executed this
179 Agreement as of the date first above written.

180 THE SUMITOMO TRUST & BANKING CO., LTD.,
181 a Japanese banking corporation

182 By: Joseph M. Kelly
183 Name: Joseph M. Kelly
184 Title: Vice President

185 GRANT/JACOBY, INC., a Delaware
186 corporation

187 By: Timothy J. Cook
188 Name: Timothy J. Cook
189 Title: VP/CEO

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190 STATE OF New York)
191) ss.:
192 COUNTY OF New York)

193 I, David Tenzer, a Notary Public, in and for said County, in
194 the state aforesaid, DO CERTIFY THAT John J. Kelly, the Vice President of THE
195 SUMITOMO TRUST & BANKING CO., LTD., a Japanese bank acting through its New
196 York branch, who is personally known to me to be the person whose name is
197 subscribed to the foregoing instrument as such Vice President,
198 appeared before me this day in person and acknowledged that he signed and
199 delivered the said instrument as his own free and voluntary act and as the
200 free and voluntary act of The Sumitomo Trust & Banking Co., Ltd., for the uses
201 and purposes therein set forth.

202 Given under my hand and notarial seal this 20th day of July,
203 1990.

David Tenzer
Notary Public

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207 My Commission Expires:

DAVID TENZER
Notary Public, State of New York
No. 4847306
Qualified in New York County
Commission Expires February 27, 1991

[SEAL]

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203 STATE OF Illinois)
209) ss.:
210 COUNTY OF Cook)

211 I Lucille Simon, a Notary Public, in and for said County, in
212 the state aforesaid, DO CERTIFY THAT James Jacoby the VPCFO of
213 GRANT, JACOBY, INC., who is personally known to me to be the person whose name
214 is subscribed to the foregoing instrument as such
215 appeared before me this day in person and acknowledged that he signed and
216 delivered the said instrument as his own free and voluntary act and as the
217 free and voluntary act of said Grant/Jacoby, Inc., for the uses and purposes
218 therein set forth.

219 Given under my hand and notarial seal this 13th day of July,
220 1990.

Lucille P. Simon
Notary Public

(SEAL)

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224 My Commission Expires:
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EXHIBIT A

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1. The Mortgage: Mortgage dated as of July 18, 1990, in the principal sum of \$80,000,000 given by LaSalle National Bank, not personally but as Trustee under Trust Agreement dated August 15, 1979 and known as Trust Number 101565 to The Sumitomo Trust & Banking Co., Ltd. covering the fee estate in the Premises.

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2. The Note: Note dated as of July 18, 1990, in the principal sum of \$80,000,000 given by LaSalle National Bank, not personally but as Trustee under Trust Agreement dated August 15, 1979 and known as Trust Number 101565 and Chicago Superior Associates to The Sumitomo Trust & Banking Co., Ltd.

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EXHIBIT B

(Description of Premises)

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238 PARCEL 1:

239 THAT PART OF THE NORTHWEST 1/4 OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14
240 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS ONE TRACT, AND BOUNDED AND
241 DESCRIBED AS FOLLOWS:

242 BEGINNING AT THE SOUTHWEST CORNER OF LOT 3 IN LILL'S CHICAGO BREWERY COMPANY'S
243 SUBDIVISION IN BLOCK 54 IN KINSIE'S ADDITION TO CHICAGO, BEING A SUBDIVISION
244 IN SAID SECTION 10; THENCE NORTH 0 DEGREES 10 MINUTES 52 SECONDS EAST ALONG
245 THE WEST LINE OF SAID LOT 3, BEING ALSO THE EAST LINE OF NORTH MICHIGAN
246 AVENUE, A DISTANCE OF 131.60 FEET TO THE POINT OF INTERSECTION WITH THE SOUTH
247 LINE OF THE NORTH 2.20 FEET OF SAID LOT 3; THENCE SOUTH 89 DEGREES 54 MINUTES
248 30 SECONDS EAST ALONG SAID SOUTH LINE A DISTANCE OF 64.20 FEET TO A POINT ON
249 THE EAST LINE OF SAID LOT 3; THENCE SOUTH 0 DEGREES 10 MINUTES 52 SECONDS WEST
250 ALONG SAID EAST LINE A DISTANCE OF 8.00 FEET TO THE POINT OF INTERSECTION WITH
251 THE SOUTH LINE OF THE NORTH 10.20 FEET OF LOT "A" IN LILL'S CHICAGO BREWERY
252 COMPANY'S SUBDIVISION AFORESAID; THENCE SOUTH 89 DEGREES 54 MINUTES 30 SECONDS
253 EAST ALONG SAID SOUTH LINE A DISTANCE OF 45.80 FEET TO THE EAST LINE OF THE
254 WEST 45 FEET 9 1/2 INCHES OF SAID LOT "A"; THENCE NORTH 0 DEGREES 10 MINUTES
255 52 SECONDS EAST ALONG SAID EAST LINE A DISTANCE OF 10.20 FEET TO A POINT ON
256 THE NORTH LINE OF SAID LOT "A", BEING ALSO THE SOUTHERLY TERMINUS OF A 15 FOOT
257 PUBLIC ALLEY; THENCE SOUTH 89 DEGREES 54 MINUTES 30 SECONDS EAST 15.00 FEET
258 ALONG THE NORTH LINE OF LOT "A" TO THE POINT OF INTERSECTION WITH THE
259 SOUTHERLY EXTENSION OF THE WEST LINE OF LOT 1 IN WARE'S RESUBDIVISION OF LOT 5
260 IN LILL'S CHICAGO BREWERY COMPANY'S RESUBDIVISION OF LOTS 1 AND 2 IN LILL'S
261 CHICAGO BREWERY SUBDIVISION IN BLOCK 54 AFORESAID; THENCE NORTH 0 DEGREES 10
262 MINUTES 52 SECONDS EAST ALONG SAID EXTENDED LINE AND SAID WEST LINE OF LOT 1,
263 BEING ALSO THE EAST LINE OF A 15 FOOT PUBLIC ALLEY, A DISTANCE OF 149.96 FEET
264 TO THE NORTHWEST CORNER OF LOT 1 IN WARE'S RESUBDIVISION AFORESAID; THENCE
265 SOUTH 89 DEGREES 47 MINUTES 58 SECONDS EAST ALONG THE NORTH LINE OF LOTS 1, 2,
266 3 AND 4 OF WARE'S RESUBDIVISION AND ALONG THE NORTH LINE OF LOTS 11, 12, 13
267 AND 14 IN LILL'S CHICAGO BREWERY COMPANY'S RESUBDIVISION AFORESAID, BEING ALSO
268 THE SOUTH LINE OF EAST CHICAGO AVENUE, A DISTANCE OF 175.11 FEET TO THE
269 NORTHEAST CORNER OF LOT 14 IN LILL'S CHICAGO BREWERY COMPANY'S RESUBDIVISION
270 AFORESAID; THENCE SOUTH 0 DEGREES 10 MINUTES 52 SECONDS WEST ALONG THE EAST
271 LINE OF SAID LOT 14 A DISTANCE OF 130.00 FEET TO THE SOUTHEAST CORNER OF SAID
272 LOT; THENCE NORTH 89 DEGREES 47 MINUTES 58 SECONDS WEST ALONG THE SOUTH LINE
273 OF LOTS 12, 13 AND 14 OF LILL'S CHICAGO BREWERY COMPANY'S RESUBDIVISION, BRING
274 ALSO THE NORTH LINE OF A PUBLIC ALLEY A DISTANCE OF 65.05 FEET TO THE EASTERLY
275 TERMINUS OF AN ALLEY VACATED BY DOCUMENT NO. 22596871, RECORDED JANUARY 16,
276 1974; THENCE SOUTH 0 DEGREES 10 MINUTES 52 SECONDS WEST ALONG SAID TERMINAL
277 LINE A DISTANCE OF 16.25 FEET; THENCE CONTINUING SOUTH 0 DEGREES 10 MINUTES 52
278 SECONDS WEST ALONG THE EAST LINE OF A 10 FOOT PRIVATE ALLEY LYING EAST AND
279 ADJOINING LOTS 'C' AND 10 IN LILL'S CHICAGO BREWERY SUBDIVISION AFORESAID, A
280 DISTANCE OF 126.92 FEET TO THE SOUTHERLY TERMINUS OF SAID 10 FOOT PRIVATE
281 ALLEY; THENCE WEST ALONG SAID TERMINAL LINE AND ALONG THE SOUTH LINE OF LOTS 3
282 TO 10 OF LILL'S CHICAGO BREWERY SUBDIVISION AFORESAID, BEING ALSO THE NORTH
283 LINE OF EAST SUPERIOR STREET, A DISTANCE OF 235.06 FEET TO THE SOUTHWEST
284 CORNER OF LOT 3, BEING THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

285 PARCEL 2:

286 EASEMENT AND OTHER RIGHTS APPURTENANT TO AND FOR THE BENEFIT OF PARCEL ONE AS
287 CREATED BY DECLARATION OF EASEMENTS AND AGREEMENTS DATED JUNE 17, 1981 AND
288 RECORDED JULY 27, 1981 AS DOCUMENT NO. 25950376 OVER AND UPON THAT PROPERTY
289 LABELED 'VEHICULAR MANEUVERING AREA' ON EXHIBIT J TO SAID DECLARATION. IN COOK
290 COUNTY, ILLINOIS.

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EXHIBIT C

(Description of Lease)

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293 Lease dated as of March 14, 1986, between Olympia & York Illinois
294 Developments Corporation, as agent for Owner, as Landlord, and Grant/Jacoby,
295 Inc., as Tenant, as amended pursuant to a certain First Amendment to Lease
296 dated October 15, 1987 between O&Y (U.S.) Development Company, L.P., as agent
297 for Owner and successor in interest to Olympia & York Illinois Developments
298 Corporation, as agent for Owner, and Grant/Jacoby, Inc., as further amended
299 pursuant to a certain Second Amendment to Lease dated November 1, 1987 between
300 O&Y (U.S.) Development Company, L.P., as agent for Owner and successor in
301 interest to Olympia & York Illinois Developments Corporation, as agent for
302 Owner, and Grant/Jacoby, Inc., as further amended pursuant to a certain Third
303 Amendment to Lease dated February 29, 1988 between O&Y (U.S.) Development
304 Company, L.P., as agent for Owner and successor in interest to Olympia & York
305 Illinois Developments Corporation, as agent for Owner, and Grant/Jacoby, Inc.,
306 as further amended pursuant to a certain Fourth Amendment to Lease dated
307 December 23, 1988 between O&Y (U.S.) Development Company, L.P., as agent for
308 Owner and successor in interest to Olympia & York Illinois Developments
309 Corporation, as agent for Owner, and Grant/Jacoby, Inc.

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