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COOK COUNTY, ILLINOIS
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THIS INSTRUMENT WAS PREPARED BY AND
AFTER RECORDING SHOULD BE MAILED TO:
THOMAS P. DUFFY, ESQ.
WILDMAN, HARROLD, ALLEN & DIXON
225 WEST WACKER DRIVE
SUITE 2600
CHICAGO, ILLINOIS 60606
Duffy\Cole\Subord

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SUBORDINATION, ATTORNMENT AND NONDISTURBANCE AGREEMENT

THIS SUBORDINATION, ATTORNMENT AND NONDISTURBANCE AGREEMENT (hereinafter referred to as the "Agreement") is made as of the 23 day of September, 1993, by and among COLE TAYLOR BANK, an Illinois banking corporation (hereinafter referred to as "Mortgagee"), COLE TAYLOR BANK, as Trustee under a Trust Agreement dated July 24, 1987 and known as Trust No. 87-168 (hereinafter referred to as "Landlord"), and MALK & HARRIS (hereinafter referred to as "Tenant"):

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WITNESSETH:

WHEREAS, Mortgagee has agreed to make a loan in the principal amount of approximately Two Million and No/100 (\$2,000,000.00) Dollars (hereinafter referred to as the "Loan") to Landlord and 212 East Ohio Street Limited Partnership, an Illinois limited partnership (individually and collectively, "Borrower") which Loan is secured by that certain Mortgage dated August 27, 1993, made by Landlord to Mortgagee and recorded in Cook County, Illinois as Document No. 93766328 (hereinafter referred to as the "Mortgage") encumbering the real estate legally described on Exhibit A attached hereto and made a part hereof (hereinafter referred to as the "Premises"), and other Loan Documents (as defined in the Mortgage), and evidenced by that certain Note dated as of August 27, 1993, made by Borrower to Mortgagee in the original principal amount of Two Million and No/100 Dollars (\$2,000,000.00) (hereinafter referred to as the "Note") (Mortgagee is hereby authorized to fill in the preceding blanks with appropriate identifying information after execution of this Agreement); and

WHEREAS, by Lease dated September 23, 1993, (hereinafter referred to as the "Lease"), by and between Landlord and Tenant, a portion of the Premises was leased to Tenant, said leased premises being more particularly described in the Lease and on Exhibit B attached hereto (hereinafter referred to as the "Leased Premises"); and

WHEREAS, as a condition precedent to making and disbursing the Loan to Borrower, Mortgagee has required this Agreement; and

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WHEREAS, Mortgagee, Landlord and Tenant are willing to agree to a subordination, attornment and nondisturbance agreement on the terms and conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises, the mutual covenants contained herein, and other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, Mortgagee, Landlord and Tenant hereby agree as follows:

1. **Subordination.** Tenant hereby covenants, agrees and declares that the Lease and any renewal, extension, modification or amendment thereof and all of Tenant's right, title and interest under the Lease, including any options to expand, renew or purchase contained in the Lease, in and to said Leased Premises are and shall be fully subject and subordinate in all respects to the Mortgage and the indebtedness evidenced by the Note, and to any future advance, disbursement, renewal, increase, replacement, extension or other modification or amendment thereof, with the same force and effect as if the Mortgage and the indebtedness evidenced by the Note, and any future advance, disbursements, renewal, increase, replacement, extension or other modification or amendment thereof, had been executed, delivered and recorded prior to the execution and delivery of the Lease.

2. **Attornment.** Tenant hereby further covenants and agrees as follows:

(a) That in the event of Landlord's default under the Loan Documents and Mortgagee's election to exercise any of its rights or remedies thereunder, including, without limitation, in the event of Mortgagee's exercise of its rights under any Assignment of Leases, Rents and Profits made by Landlord to Mortgagee or in the event of a foreclosure of the Mortgage or a conveyance in lieu of foreclosure, any of which occurs prior to the expiration date of the Lease, including any extensions and renewals thereof, Tenant hereby covenants and agrees to make full and complete attornment to Mortgagee, its successors, nominees or assigns, or to the purchaser of any foreclosure sale or grantee of any deed-in-lieu of foreclosure, and their successors, nominees and assigns, as the case may be, (all of said parties being hereinafter also collectively referred to as "Mortgagee") for the balance of the term of the Lease, including any extensions and renewals thereof, subject to and upon the same terms and conditions as therein provided, so as to establish direct privity of estate and contracts as between the Tenant and Mortgagee with the same force and effect as though the Lease were originally made directly from Mortgagee to Tenant, and Tenant thereafter shall make all rent payments and any other payments and otherwise perform under the Lease directly to and for the benefit of Mortgagee. The parties acknowledge and agree that the foregoing agreement of Tenant to attorn to Mortgagee is conditioned upon Mortgagee's agreement to recognize the Lease and Tenant's rights thereunder.

(b) That said attornment shall be effective and self-operative without the execution of any further instruments on the part of any of the parties hereto; provided, however, that upon the election and written demand of Mortgagee, Tenant shall execute an instrument, satisfactory to Mortgagee, confirming and acknowledging said attornment.

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3. **Nondisturbance.** In the event of Landlord's default under the Loan Documents and Mortgagee's election to exercise any of its rights or remedies thereunder, including, without limitation, in the event of foreclosure of the Mortgage or conveyance in lieu of foreclosure, any of which occurs prior to the expiration date of the Lease, including any extensions and renewals thereof, then Mortgagee agrees as follows:

(a) That no proceeding to foreclose the Mortgage and no conveyance in lieu of foreclosure thereof, will disturb Tenant's rights under the Lease, and any rights of Tenant under the Lease will not be diminished, affected or cut off thereby and Tenant will not be named by Mortgagee as a party defendant to said foreclosure proceeding; and

(b) The Lease shall continue in full force and effect and Mortgagee shall recognize the Lease and the Tenant's rights thereunder, so as to establish direct privity of estate and contract between Tenant and Mortgagee, with the same force and effect as though the Lease were originally made directly from Mortgagee to Tenant, and Mortgagee shall perform Landlord's obligations arising thereafter for the benefit of Tenant, subject to the terms of Section 4 hereof.

Mortgagee's obligation under Sections 3 (a) and (b) is subject to the condition that as of the date Mortgagee commences to exercise any right or remedy and at all times thereafter the following conditions have been and continue to be fulfilled:

i) Tenant shall be and remain in compliance with the terms and provisions of this Agreement and shall not, after the expiration of any applicable grace periods, be in default in the performance or observance of any of the terms, covenants, or conditions contained in the Lease to be performed or observed by Tenant thereunder and Tenant shall continue to atton to Mortgagee; and

In the event that the condition set forth in subsection i) above has not been fulfilled, then the foregoing nondisturbance agreement shall be inoperative between Mortgagee and Tenant and unless the parties can reach mutual agreement otherwise to keep the Lease or an amended or modified version thereof in effect, Mortgagee shall have the right and option through the process of foreclosure or otherwise to terminate or extinguish the Tenant's rights in and to the Leased Premises.

4. **Landlord's Prior Act.**

(a) In the event of Landlord's default under the Loan Documents and Mortgagee's election to exercise any of its rights or remedies thereunder, including without limitation, in the event of foreclosure of the Mortgage or conveyance in lieu of foreclosure, Mortgagee and Tenant agree that Mortgagee shall not in any way or to any extent

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i) be obligated or liable to Tenant for any security deposit or any other sums deposited with Landlord under the Lease and not physically delivered to Mortgagee; or

ii) be bound by any previous prepayment of rent for a period greater than one (1) month, unless such prepayment shall have been expressly approved in writing by Mortgagee; and

iii) Tenant shall have no right to assert any of the foregoing or any damages arising therefrom in any claim or suit against Mortgagee personally or as an offset or defense against Mortgagee's enforcement of the Lease against Tenant or as a grounds for termination of the Lease. The foregoing shall not limit Tenant's rights of recourse, if any, against Landlord for its breach of any such obligations under the Lease.

(b) In the event of Landlord's default under the Loan documents and Mortgagee's election to exercise any of its rights and remedies thereunder, including without limitation, in the event of foreclosure of the Mortgage or conveyance in lieu of foreclosure, Mortgagee and Tenant agree that Mortgagee shall not

i) be obligated or liable to Tenant with respect to construction and completion of any improvements in the Leased Premises; or

ii) be obligated or liable to Tenant for, or be bound by, any other prior act, omission, breach or default on the part of Landlord under the Lease, and Tenant shall have no right to assert any of the foregoing or any damages arising therefrom in any claim or suit against Mortgagee personally. However, the foregoing shall not limit Tenant's rights of recourse, if any, against Landlord for such failure to complete or other such breach of its obligations under the Lease or limit Tenant's rights under the Lease to terminate the Lease based on such failure or breach, if not otherwise performed, or limit Tenant's right of set-off, defense or other rights or remedies under the Lease with respect to such failure or breach.

(c) Tenant expressly acknowledges and agrees that, except as otherwise herein expressly provided in Sections 3(a) and (b) with respect to Mortgagee's non-disturbance agreement, Mortgagee shall not be obligated to perform or fulfill any obligation of Landlord under the Lease and shall not be deemed to have made a covenant or promise of Mortgagee to perform Landlord's obligations under the Lease.

5. **Additional Covenants.** Tenant hereby further covenants and agrees as follows:

(a) Tenant agrees to give to you, by certified mail, a copy of any notice of default under the Lease served by Tenant upon Landlord. Tenant further agrees that if

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Landlord shall have failed to cure such default within the time provided in the Lease, then you shall have an additional thirty (30) days after the expiration of Landlord's cure period within which to cure such default, or, if such default cannot be cured within that time, then such additional time as may be necessary if, within your initial thirty (30) day cure period, you shall have commenced and shall be diligently pursuing the remedies necessary to cure such default (including, but not limited to, commencement of foreclosure proceedings if necessary to effect such cure). Such period of time shall be extended by any period within which you are prevented from commencing or pursuing such foreclosure proceedings by reason of the bankruptcy of Landlord. Until the time allowed as aforesaid for you to cure such default has expired without cure, Tenant shall have no right to and shall not terminate the Lease on account of default.

(b) That Tenant hereby agrees that it shall in no event:

- i) make prepayment of rent for a period in excess of one (1) month;
- ii) except as allowed under the express terms of the Lease, sublet the Leased Premises or any part thereof or assign its interest under the Lease, or permit its interest under the Lease to be assigned by operation of law or otherwise;

without in each and every instance the express prior written consent of Mortgagee or its successors, nominees or assigns.

(c) That except as provided herein, Tenant hereby agrees that it shall in no event subordinate or agree to subordinate the Lease to any other lien or encumbrance affecting the Premises and/or the Leased Premises without the express written consent of Mortgagee and any such attempted subordination or agreement to subordinate without such consent of Mortgagee shall be void and of no force and effect.

6. **Modification.** No modification, amendment, waiver or release of any provision of this Agreement or of any right, obligation, claim or cause of action arising hereunder shall be valid or binding for any purpose whatsoever unless in writing and duly executed by the party against whom the same is sought to be enforced.

7. **Notices.** All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given if mailed by first-class United States mail, postage prepaid, registered or certified with return receipt requested, or by delivering same in person to the intended address or by prepaid messenger or reliable overnight service as follows:

If to Tenant:

MALK & HARRIS
212 East Ohio Street, Suite 500
Chicago, Illinois 60611

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If to Mortgagee:

Cole Taylor Bank
5501 West 79th Street
Burbank, Illinois 60459
Attn: Real Estate Department

Copy to:

Wildman, Harrold, Allen & Dixon
225 West Wacker Drive
Suite 2600
Chicago, Illinois 60606
Attention: Thomas P. Duffy

If to Landlord:

Cole Taylor Bank, as Trustee
under Trust No. 87-168
350 East Dundee
Wheeling, Illinois 60090
Attn: Land Trust Department

Copy to:

212 East Ohio Street Limited Partnership
212 East Ohio Street, Suite 500
Chicago, Illinois 60611
Attn: Charles R. Malk

or to such other place as any party hereto may by notice in writing designate as a place for service of notice hereunder. Notice so mailed shall be effective three (3) days after the date of its deposit. Notice given in any other manner shall be effective only if and when received by the addressee.

8. **Successors and Assigns.** This Agreement shall inure to the benefit of, and be binding upon, the parties hereby and their respective successors or assigns; provided, however, that upon the assignment of the interest of the original or any successor Mortgagee hereunder, all obligations of such Mortgagee under this Agreement shall terminate, and thereupon all such obligations shall be the responsibility of the party or parties to whom such Mortgagee's interest is so assigned.

9. **Estoppel Certificates.** Tenant shall, at any time and from time to time, upon not less than ten (10) days prior written request from Mortgagee, execute, acknowledge and deliver to Mortgagee in form reasonably satisfactory to Mortgagee, a written statement certifying that Tenant has or has not accepted the Leased Premises, that the Lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications), that the Landlord, to its knowledge, is or is not in default thereunder, and specifying the nature of any default then known about, the date to which the rental and other charges have been paid in advance, if any, or such other accurate certification as may be required by Mortgagee.

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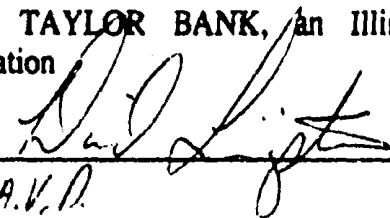
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10. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, Mortgagee, Tenant and Landlord have respectively executed this Agreement as of the day and year first above written.

MORTGAGEE:

COLE TAYLOR BANK, an Illinois banking corporation

By 
Its: A.V.D.

LANDLORD:

COLE TAYLOR BANK, not personally but solely as Trustee under a Trust Agreement dated July 24, 1987, and known as Trust No. 87-168

By 
Its: V.P.

By 
Its: VP

TENANT:

MALK & HARRIS

By: 
Charles R. Malk, a partner

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MORTGAGEE'S ACKNOWLEDGEMENT

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 David Livingston personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Asst. Vice Pres. of COLE TAYLOR BANK, an Illinois banking corporation, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said national banking association, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 27th day of September, 1993

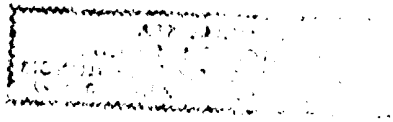
Janice M. Rosa
Notary Public

My Commission Expires: 3-6-97



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LANDLORD'S ACKNOWLEDGEMENT

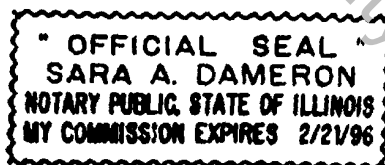
STATE OF ILLINOIS

COUNTY OF

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, do hereby certify that Mary Ann Tondai and Kathleen D. Ryan, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President and Vice President of Cole Taylor Bank, not personally but solely as Trustee under a Trust Agreement dated July 24, 1987, and known as Trust No. 87-168 appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Bank, as Trustee, for the uses and purposes therein set forth.

1988 GIVEN under my hand and notarial seal this 23rd day of September,

Sara A. Dameron
Notary Public



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JAMES M. HANCOCK
CLERK OF COOK COUNTY
PROVIDED TO STATE OF ILLINOIS
BY THE CLERK OF COOK COUNTY

03/03/2014



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CHICAGO TITLE INSURANCE COMPANY

ORDER NUMBER: 1401 007462876 D1
STREET ADDRESS: 212 E. OHIO
CITY: CHICAGO **COUNTY:** COOK
TAX NUMBER: 17-10-206-029-0000

LEGAL DESCRIPTION:

LOTS 39, 40 AND 41 IN BLOCK 1 IN SUBDIVISION OF BLOCK 31 IN KINZIE'S ADDITION TO CHICAGO, IN THE NORTH FRACTIONAL SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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