

UNOFFICIAL COPY

Subject Property

1158 West Armitage Avenue
Chicago, Illinois

98595276

Prepared By and

To Be Mailed To:

John J. Turner, Esq.
527 South Wells Street
Chicago, IL 60607
(312) 987-1910

DEPT-01 RECORDING \$37.00
720009 TRAN 3153 07/10/98 11:41:00
43172 + RC: #--98-595276
COOK COUNTY RECORDER

SUBORDINATION AGREEMENT

This Subordination Agreement ("Agreement"), made as of January 26, 1998, is by and among: **LAKESIDE BANK**, an Illinois banking corporation ("Lakeside"); **W&A BAKER BUILDING TRUST**, an Illinois general partnership (the "Partnership"); **1158 ARMITAGE L.L.C.**, an Illinois limited liability company (the "Company"); **LAKESIDE BANK**, not personally but in its capacity as a "land trustee" (the "Trustee") under Trust Agreement No. 10-1914 dated January 26, 1998 (the "Trust"); and **NU-D-ZINE BEDDING & BATH, INC.**, a Florida corporation ("Tenant").

Recitals:

A. This Agreement pertains to the real estate legally described in attached Exhibit A (the "Property"), commonly known as the first floor of 1158 Armitage Avenue, Chicago, Illinois.

The Property: (i) is the subject of "Articles of Agreement For Deed" dated August 27, 1997 (the "Articles"), under which the Company is the contract seller and the Partnership is the contract purchaser, a memorandum thereof having been recorded August 29, 1997 as Document No. 97639748; and (ii) constitutes the demised premises under a "Commercial Store Lease" dated June 30, 1997 (the "Lease"), under which the Tenant is the lessee and the Partnership (as the Company's assignee pursuant to the Articles), is successor lessor. Record title to the Property has been or is being conveyed to the Trustee on or about the date hereof.

B. To secure its obligations under the Lease, Tenant has caused to be established in favor of the Partnership, as beneficiary thereunder, an Irrevocable Standby Letter of Credit No. RAOKD4, issued October 2, 1997 (the "Letter of Credit") by Paine Webber Incorporated (the "Issuer").

BOX 303-CTI

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D. The Company, the Partnership, and the Trustee are indebted to Lakeside under a \$256,000.00 loan (the "Loan") which is evidenced and secured by their note in like amount (the "Note") and those certain documents described in the Note as "Loan Documents" (the Note and said documents being collectively referred to hereinafter as the "Loan Documents"), including a mortgage of and an assignment of rents and leases (including the Lease) with respect to the Property (the "Mortgage" and the "Assignment" respectively). Lakeside has required as a condition of its funding of the Loan, and Section 24.1 of the Lease provides for, a written subordination to Lakeside by the Tenant of its rights under the Lease.

* (2000-02-09) AS DOCUMENT
100-985316-9 (100-985316)

Agreements

THEREFORE, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the parties hereto hereby agree as follows:

1. The foregoing Recitals are hereby restated. The Lease is hereby incorporated herein by reference.

2. The Partnership and Tenant represent that the Lease, a true, complete and current copy of which has been heretofore delivered to Lakeside, remains unmodified and in full force and effect, and that neither of them is in default hereunder.

3. All of Tenant's rights and interests under the Lease and in and to the Property, are and shall be subject and subordinate to Lakeside's rights, interest and liens under the Loan Documents, and to all the terms, conditions and provisions thereof, to all advances made or to be made thereunder, and to any renewals, extensions, modifications or replacements thereof.

4. Provided that Tenant is not then in default in the payment of rent, additional rent, taxes, utility charges or any other sums payable by it under the terms of the Lease (singly and collectively, "Rents"), or in default under any other provision of the Lease, and that Tenant is then in possession of the Premises: (a) Tenant's rights as lessee under the Lease shall not be affected or disturbed by Lakeside's exercise of any of its rights and remedies under the Loan Documents; and (b) any use or occupancy of the Premises pursuant to the exercise of any of Lakeside's said rights and remedies shall be subject to the Lease and the rights of Tenant thereunder; Tenant will attorn to Lakeside; and the Lease shall continue, in accordance with its terms, between Tenant and Lakeside.

5. Lakeside shall be entitled, but not obligated, to exercise the claims, rights, powers, privileges and remedies of a lessor under the Lease and shall be further entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by Tenant under the Lease as though Lakeside were named therein as the lessor. Lakeside shall not, by virtue of its Mortgage or Assignment or this Agreement, be or become subject to any liability or obligation to Tenant under the Lease or otherwise, until Lakeside shall have obtained title to the Premises, by foreclosure or otherwise, and then only to the extent of liabilities or obligations accruing subsequent to the date that Lakeside has obtained such title.

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6. Tenant shall not pay, and Lakeside shall not be bound by any payment of, any installment of Rent or part thereof more than one month in advance of the due date of such installment. The Partnership and Tenant shall not modify, and Lakeside shall not be bound by any modification of, the Lease without the Lakeside's advance written consent, which shall not be unreasonably withheld.

7. Upon Lakeside's written notice to Tenant that the Assignment has been activated for the Company's or the Partnership's default under the Loan Documents, Tenant shall commence to pay all Rentals to Lakeside, and notwithstanding any contrary order or direction of the Partnership.

8. The Letter of Credit. The Partnership hereby grants Lakeside a security interest in and collaterally assigns to it the Partnership's rights under the Letter of Credit and the proceeds thereof.

9. This Agreement shall inure to the benefit of and shall be binding upon Tenant, Landlord and Lakeside, and their respective heirs, personal representatives, successors and assigns. In the event 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 not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. This Agreement shall be governed by and construed according to the laws of the state of Illinois.

10. Any notice, demand or other communication intended to be given pursuant to the terms hereof (collectively, "notice") shall be in writing and shall be delivered by personal service (including private courier service with charges prepaid) or mailed to the following addresses or such other address within the United States as the party to receive such notice hereafter designates to the other parties by written notice:

If to the Company
or the Trustee: c/o Warren Baker
6316 N. Lincoln Avenue
Chicago, IL 60659

If to Tenant: c/o George Gonzalez
1006 Lincoln Road
Miami Beach, FL 33139

If to Lakeside: LAKESIDE BANK
55 West Wacker Drive
Chicago, Illinois 60601
Attn: Commercial Real Estate Department

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Any such notice shall be deemed given as of the date of its delivery if delivered by personal service, or, if sent by certified or registered mail with postage prepaid and return receipt requested, as of the second business day following the date of its mailing. Refusal of a notice, or the inability to deliver same because of an address change of which no notice was given, shall be deemed to constitute receipt thereof as of the date of the first attempted delivery. Personal service upon the Lakeside shall be valid only if made upon one of its officers.

LAKESIDE BANK, as Lender as aforesaid.

LAKESIDE BANK, not personally
but as Trustee as aforesaid.

By: [Signature]
Its: Assistant Vice President

By: [Signature]
Its: ASST. TRUST OFFICER

SEE RIDER ATTACHED HERETO
AND MADE A PART HEREOF.

W&A BUILDING TRUST

1158 ARMITAGE L.L.C.

By: [Signature]
Its: Partners

By: [Signature]
Its: Manager

NU-D-ZINE BEDDING & BATH, INC.

By: Joe Carlucci
Its: _____

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FROM :

02 23 95

10:07

FAX 312 877 3803

PHONE NO. :

KATZ, RANDALL

JUL 21 1997 06:06PM PE

0000:000

Fed. B. 1993 10:11AM

LAW OFF VICTOR CACCIATORE

NS 3002 P. 5/7

Any such notice shall be deemed given as of the date of its delivery if delivered by personal service, or, if sent by certified or registered mail with postage prepaid and return receipt requested, as of the second business day following the date of its mailing. Refusal of a notice, or the inability to deliver same because of an address change of which no notice was given, shall be deemed to constitute receipt thereof as of the date of the first attempted delivery. Personal service upon the Lakeside shall be valid only if made upon one of its officers.

LAKESIDE BANK, as Lender as aforesaid.

LAKESIDE BANK, not personally but as Trustee as aforesaid.

By: _____
Its: _____

By: _____
Its: _____

W&A BUILDING TRUST

1158 ARMITAGE LLC.

By: _____
Its: _____

By: _____
Its: _____

NINE-NINE BEDDING & BATH, INC.

By: _____
Its: _____

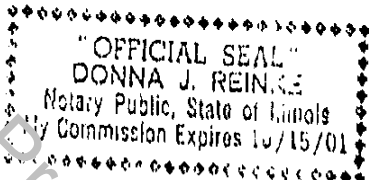
Property of Cook County Clerk's Office

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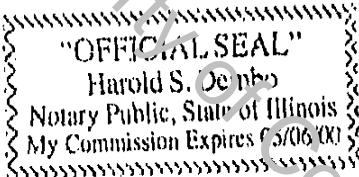
STATE OF ILLINOIS
COUNTY OF COOK

The foregoing instrument was acknowledged before me on May 4, 1998,
by SUZANNE NEUSON, the Asst Vice President
of **LAKESIDE BANK**, an Illinois banking corporation, on behalf of the corporation as
Trustee.



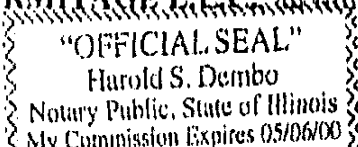
Donna J. Reinke
NOTARY PUBLIC

The foregoing instrument was acknowledged before me on February 13, 1998,
by Warren Baker, the Partner
of **W&A BAKER BUILDING TRUST**, an Illinois general partnership, on behalf of the
partnership.



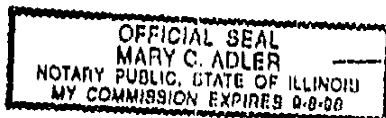
Harold S. Dembo
NOTARY PUBLIC

The foregoing instrument was acknowledged before me on February 13, 1998,
by Warren Baker, the MANAGER
of **1158 ARMITAGE LLC**, an Illinois limited liability company, on behalf of the company.



Harold S. Dembo
NOTARY PUBLIC

The foregoing instrument was acknowledged before me on May 15, 1998,
by David J. Pulerton, the S.V.P. - Asst. Trust Officer
of **LAKESIDE BANK**, an Illinois banking corporation, on behalf of the corporation as
Trustee.



Mary C. Adler
NOTARY PUBLIC

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me on _____, 1998,
by _____, the _____
of **NU-D-ZINE BEDDING & BATH, INC.**, a Florida corporation, on behalf of the corporation.

NOTARY PUBLIC

98595276

STATE OF ILLINOIS
COUNTY OF COOK

The foregoing instrument was acknowledged before me on _____, 1998,
by _____, the _____
of LAKESIDE BANK, an Illinois banking corporation, on behalf of the corporation as
Trustee.

NOTARY PUBLIC

The foregoing instrument was acknowledged before me on _____, 1998,
by _____, the _____ of
P&A MAKER BUILDING TRUST, an Illinois general partnership, on behalf of the
partnership.

NOTARY PUBLIC

The foregoing instrument was acknowledged before me on _____, 1998,
by _____, the _____ of
1158 ARMITAGE L.L.C., an Illinois limited liability company, on behalf of the company.

NOTARY PUBLIC

The foregoing instrument was acknowledged before me on _____, 1998,
by _____, the _____
of LAKESIDE BANK, an Illinois banking corporation, on behalf of the corporation as
Trustee.

NOTARY PUBLIC

STATE OF FLORIDA
COUNTY OF Dade

The foregoing instrument was acknowledged before me on March 10, 1998,
by James J. Hutchalls, the President of
NU-D-ZINE BEDDING & BATH, INC., a Florida corporation, on behalf of the corporation.

James J. Hutchalls

NOTARY PUBLIC



James J. Hutchalls
My Commission CC702357
Expires December 22, 2001

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GENERAL RIDER

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, covenants, undertakings and agreements herein made on the part of LAKESIDE BANK, Trustee, while in form purporting to be the representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal representations, covenants, undertakings and agreements by the LAKESIDE BANK, Trustee, or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said LAKESIDE BANK, Trustee, not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against the LAKESIDE BANK, either individually or in its capacity as Trustee or any of the beneficiaries under said Trust Agreement, on account of this instrument or on account of any representation, covenant, undertaking or agreement of the said LAKESIDE BANK, Trustee, in this instrument contained either expressed or implied, all such personal liability, if any, being expressly waived and released.

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County Clerk's Office

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EXHIBIT A

Legal Description:

PARCEL 1:

THAT PART OF LOTS 23, 24, 25, 26, AND THE EAST 4 FEET OF LOT 27 IN SUB-BLOCK 7 IN JAMES MORGAN SUBDIVISION OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF BLOCK 10 IN SHEFFIELD ADDITION TO CHICAGO (EXCEPT FROM SAID PREMISES THAT PART THEREOF TAKEN FOR ALLEY), ALL TAKEN AS A TRACT, IN SECTION 32, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

FIRST: THAT PART OF SAID TRACT LYING ABOVE AN ELEVATION OF +14.35 FEET AND BELOW AN ELEVATION OF +26.58 FEET, CITY OF CHICAGO DATUM, DESCRIBED AS COMMENCING AT THE SOUTHEAST CORNER OF SAID TRACT, THENCE WEST ALONG THE SOUTH LINE OF SAID TRACT, HAVING AN ASSUMED BEARING OF NORTH 90 DEGREES WEST, 1.0 FEET; THENCE NORTH 00 DEGREES, 14 MINUTES, 50 SECONDS WEST, 1.0 FEET TO THE POINT OF BEGINNING; THENCE NORTH 00 DEGREES, 14 MINUTES, 50 SECONDS WEST 41.16 FEET; THENCE NORTH 69 DEGREES, 40 MINUTES, 21 SECONDS WEST, 4.90 FEET; THENCE SOUTH 00 DEGREES, 11 MINUTES, 39 SECONDS WEST, 0.30 FEET; THENCE NORTH 89 DEGREES, 48 MINUTES, 21 SECONDS WEST, 10.45 FEET; THENCE SOUTH 00 DEGREES, 15 MINUTES, 10 SECONDS EAST; 0.22 FEET; THENCE NORTH 09 DEGREES, 48 MINUTES, 21 SECONDS WEST, 61.52 FEET; THENCE SOUTH 00 DEGREES, 16 MINUTES, 00 SECONDS EAST, 40.88 FEET; THENCE SOUTH 19 DEGREES, 59 MINUTES, 19 SECONDS EAST, 80.85 FEET TO THE POINT OF BEGINNING;

SECOND: THAT PART OF SAID TRACT LYING ABOVE AN ELEVATION OF +4.12 FEET AND BELOW AN ELEVATION OF +13.36 FEET, CITY OF CHICAGO DATUM, DESCRIBED AS COMMENCING AT THE SOUTHEAST CORNER OF SAID TRACT, THENCE WEST ALONG THE SOUTH LINE OF SAID TRACT, HAVING AN ASSUMED BEARING OF NORTH 90 DEGREES WEST, 16.51 FEET; THENCE NORTH 00 DEGREES, 41 MINUTES, 10 SECONDS WEST, 103.54 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89 DEGREES, 56 MINUTES, 37 SECONDS WEST, 29.80 FEET; THENCE NORTH 00 DEGREES, 41 MINUTES, 10 SECONDS WEST, 10.20 FEET; THENCE NORTH 19 DEGREES, 58 MINUTES, 37 SECONDS EAST, 29.80 FEET; THENCE SOUTH 00 DEGREES, 41 MINUTES, 37 SECONDS EAST, 10.20 FEET TO THE POINT OF BEGINNING, THE ABOVE DESCRIPTIONS ARE INTENDED TO FOLLOW THE INTERIOR MAIN FACE OF THE WALLS.

PARCEL 2: EASEMENT FOR INGRESS AND EGRESS FOR THE BENEFIT OF PARCEL 1 AS SET FORTH IN DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS RECORDED MARCH 31, 1997 AS DOCUMENT 97221300.

Permanent Index No.: 14-32-221-032

Common Address: 1st Floor
1158 West Armitage Avenue
Chicago, Illinois

98595276