

UNOFFICIAL COPY**SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE AGREEMENT**8
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Reference is made to that certain Lease (the "Lease") dated May 11, 1998 executed by and between TJM MANAGEMENT LLC, an Illinois limited liability company as beneficiary of American National Bank and Trust Company of Chicago Trust No. 6129-PR "Landlord"), and DWYER INSTRUMENTS, INC. ("Tenant") pertaining to the rental of a certain portion of that industrial building located on the property which is legally described in Exhibit "A" attached hereto (the "Premises").

BANK ONE, ILLINOIS, NA ("Mortgagee") holds a first mortgage encumbering the Premises (the "Mortgage"), which was granted to secure certain loans made to Landlord as well as other Liabilities as described in the Mortgage and notwithstanding anything in the Lease to the contrary, Mortgagee and Tenant hereby agree:

1. The Lease and the rights of Tenant thereunder shall be and are hereby made expressly subject and subordinate at all times to the lien of the Mortgage and to all renewals, modifications and extensions thereof, and to all advances made or hereafter to be made upon the security thereof. Tenant acknowledges that its title is and always shall be subordinate to the interest of Landlord and Mortgagee in the Premises and nothing herein contained shall empower Tenant to do any act which can, shall or may encumber the title of the Landlord or Mortgagee in the Premises. Nothing contained herein shall be construed as limiting whatever rights Tenant may have to pursue Landlord for the return of any security deposit. Notwithstanding anything to the contrary herein contained, Mortgagee may, by written notice to Tenant, subordinate its Mortgage to the Lease.

2. Upon the foreclosure of the Mortgage by voluntary agreements or otherwise, or the commencement of any judicial action seeking such foreclosure, Tenant shall, if requested by Mortgagee, attorn to and recognize Mortgagee or the purchaser of the Premises at any foreclosure sale or the grantee of a deed in lieu of foreclosure with respect to the Premises (such purchaser or grantee hereinafter referred to as a "Foreclosure Purchaser") as Tenant's landlord under the Lease.

THIS INSTRUMENT PREPARED BY
AND UPON RECORDING SHALL BE
RETURNED TO:

John T. Duax
Schwartz & Freeman
401 North Michigan Avenue
Suite 1900
Chicago, Illinois 60611

PERMANENT TAX INDEX NUMBERS:
03-14-303-012-0000
03-14-303-010-0000
03-14-303-011-0000
03-14-303-013-0000

98391359

BOX 333-011

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3. Neither Mortgagee, its successors or assigns, nor any Foreclosure Purchaser shall in any way or to any extent be obligated or liable to Tenant (i) for any prior act, or default on the part of the original or any prior landlord under the Lease, (ii) for any security deposit or any other sums deposited with the original or any prior landlord under the Lease, and not physically delivered to Mortgagee, its successors or assigns, (iii) under any provision in the Lease relating to a duty or obligation of the landlord first accruing prior to the foreclosure or transaction in lieu of foreclosure; (iv) for any obligation under the Lease to use insurance or condemnation proceeds to rebuild any portion of the Premises leased to Tenant; (v) for any rent or additional rent which the Tenant might have paid for more than the current month to any landlord; (vi) for any modification or amendment to the Lease made without Mortgagee's consent; or (vii) for any right of first refusal contained in the Lease and same shall not be binding on Mortgagee or any Foreclosure Purchaser, and Tenant shall have no right to set off or assert any of the foregoing or any damages arising therefrom as an offset, defense or counterclaim against Mortgagee, its successors or assigns or any Foreclosure Purchaser.

In no event shall Mortgagee have any personal liability to Tenant for the breach of any of the terms, covenants or conditions contained in the Lease occurring prior to the time that Mortgagee exercises its rights as landlord under the Lease, said personal liability being expressly waived by Tenant by its execution hereof.

4. Tenant's right to possession of the Premises shall not be disturbed by Mortgagee, its successors or assigns, provided Tenant is not in default under the Lease and shall continue to observe and perform its obligations under the Lease including the payment of rents and other expenses for a portion of the Premises when due under the Lease and Tenant shall pay rent and other expenses as provided in the Lease when due to whomever may be lawfully entitled to the same from time to time.

5. Tenant agrees that it (i) will not make prepayment of any rent or other amount due under the Lease in excess of one month thereunder, and (ii) will not modify, alter or amend or extend the term of the Lease without the consent of Mortgagee, provided Tenant may terminate the Lease at any time.

6. Tenant agrees to give Mortgagee or any Foreclosure Purchaser, by registered or certified mail, notice of any default by Landlord under the Lease. Tenant further agrees that if Landlord shall have failed to cure such default within the time, if any, provided for in the Lease, Mortgagee or any Foreclosure Purchaser shall have an additional thirty (30) days after receipt of notice thereof from Tenant to cure such default.

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7. Except as otherwise provided for in the Lease, Tenant will not assign its interest in the Lease.

8. This Agreement shall inure to the benefit of Mortgagee and its successors and assigns and to any successor or assign of Tenant as permitted under the Lease; provided, that upon Mortgagee's assignment of its interest, all obligations and liabilities of Mortgagee shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of Mortgagee's assignee, except for such obligations and liabilities of Mortgagee which may have arose in favor of Tenant prior to such assignment.

9. This Agreement shall not affect either the superior lien of the Mortgage or the superior right of Mortgagee to condemnation and insurance proceeds which Tenant hereby acknowledges.

10. All notices hereunder shall be given in writing by United States registered or certified mail, postage prepaid at the addresses of the parties set forth below or to such other address as the parties may from time to time designate by such a written notice.

11. Tenant agrees that this Agreement satisfies any condition or requirement relating to the granting of a non-disturbance agreement.

This Agreement may be executed in any number of counterparts, or in any number of counterpart signature pages, all of which together shall be deemed the original and constitute one and the same instrument.

Dated as of May 11, 1998.

ADDRESS: 200 S. Wacker Drive
Chicago, IL

BANK ONE, ILLINOIS NA,
Mortgagee

By: *Joseph L. Dwyer*
Name: *Joseph L. Dwyer*
Title: *Vice President*

ADDRESS: P.O. Box 373
102 Highway 212
Michigan City, IN 46361

DWYER INSTRUMENTS, INC.

By: *Cliff Clark*
Name: *Cliff Clark*
Title: *Pres*

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UNOFFICIAL COPY 98391359AGREEMENT BY LANDLORD

Landlord, as the Mortgagor under the Mortgage, agrees for itself and for its successors and assigns that (i) the foregoing Subordination, Attornment and Non-Disturbance Agreement (the "Agreement") does not constitute a waiver or partial waiver by Mortgagee of any of its rights under the Mortgage and (ii) the Agreement does not in any way release the Mortgagor from its obligations to comply with every term, provision, condition, covenant, agreement, representation, warranty and obligation of the Mortgage, and that each of same remain in full force and effect and must be complied with by the Mortgagor thereunder and (iii) Mortgagor will not take any action contrary to or inconsistent with the provisions of the Agreement. This Agreement is executed and delivered by AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally, but as Trustee as aforesaid in the exercise of the power and authority conferred upon and invested in it as such Trustee and said Trustee hereby personally warrants that it possesses full power and authority to execute and deliver the same. No personal liability shall be asserted or be enforceable against AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, because or in respect of this Agreement or the making, issuance or transfer hereof (except for a breach of the warranty contained in this paragraph), all such liability, if any, being expressly waived by each maker and holder hereof but nothing herein contained in this paragraph shall modify or discharge the personal liability of any beneficiary, any guarantor, or any other party personally liable.

LANDLORD:

TJM MANAGEMENT LLC, an Illinois limited liability company as Beneficiary of American National Bank and Trust Company of Chicago Land Trust Number 6129-25

By: 
Title: Theodore J. Mau, as Trustee of the Theodore J. Mau Revocable Trust, as Member

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

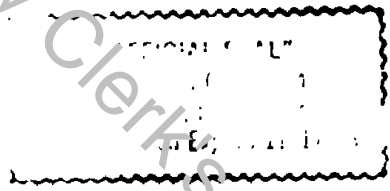
I, Th. W. [Signature], a Notary Public in and for said County, in the State aforesaid, do hereby certify that Regina Butler, of BANK ONE, ILLINOIS NA, who is personally known to me to be the same person whose name is subscribed to the foregoing attached Subordination, Attornment and Non-Disturbance Agreement as such Officer, of the Bank, appeared before me this day in person and acknowledged that he signed and delivered the attached Subordination, Attornment and Non-Disturbance Agreement pursuant to authority, as his free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

Given under my hand and seal this 11th day of May, 1998.

[Signature]

Notary Public

My Commission Expires: _____, 19____



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INDIANA)
STATE OF ~~INDIANA~~)
LAPORTE) SS.
COUNTY OF ~~COOK~~)

The undersigned, Sherry S. Miller, a Notary Public in and for said County, in the State aforesaid, do hereby certify that S. S. Clark, personally known to me to be the President of DWYER INSTRUMENTS, INC., and personally known to me to be the same person whose name is subscribed to the attached Subordination, Attornment and Non-Disturbance Agreement, appeared before me this day in person and acknowledged that he signed and delivered the said instrument pursuant to authority, as his free and voluntary act and as the free and voluntary act and deed of said Corporation, for the uses and purposes therein set forth.

Given under my hand and seal this 7th day of May, 1998.

Sherry S. Miller
Notary Public

My Commission Expires:

January 29, 19 2001

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UNOFFICIAL COPY**EXHIBIT "A"****LEGAL DESCRIPTION**

LOTS 26, 27, 28 AND 29 IN FIRST ADDITION TO PALATINE EXPRESSWAY INDUSTRIAL PARK, BEING A SUBDIVISION IN THE SOUTHWEST $\frac{1}{4}$ OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 14, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF REGISTERED IN THE OFFICE OF REGISTRAR OF TITLES OF COOK COUNTY, ILLINOIS ON FEBRUARY 27, 1970 AS DOCUMENT 2493375 IN COOK COUNTY, ILLINOIS.

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