

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

WELLS FARGO BANK, NATIONAL
ASSOCIATION
Attn: Michael P. Lane
120 South Central Avenue
St. Louis, MO 63105

Loan No.

**SUBORDINATION AGREEMENT; ACKNOWLEDGMENT OF LEASE ASSIGNMENT,
ESTOPPEL,
ATTORNMEN AND NON-DISTURBANCE AGREEMENT**

THIS SUBORDINATION AGREEMENT; ACKNOWLEDGMENT OF LEASE ASSIGNMENT, ESTOPPEL, ATTORNMEN AND NON-DISTURBANCE AGREEMENT ("Agreement"), dated as of June 23, 2004, is made and entered into by and among **THIRD CREEK, LLC, MATTHIAS D. RENNER FAMILY, LLC and KENNETH J. WEBER FAMILY, LLC** (collectively "Borrower" or "Owner"), ZT of LOUISVILLE LLC, ("Lessee") and WELLS FARGO BANK, NATIONAL ASSOCIATION ("Lender"). The following recitals form the basis for this Agreement and are made a material part hereof:

RECITALS

- Cirhaba title, Inc.*
- A. Pursuant to the terms and provisions of that certain lease by and between ZT of LOUISVILLE LLC, and Kimco Birmingham, L.P., dated June 9, 2003 (as the same may be amended from time to time, the "Lease"), Kimco Birmingham, L.P, as landlord, granted to Lessee a leasehold estate in and to a portion of the property described on Exhibit A attached hereto and incorporated herein by this reference (which property, together with all improvements now or hereafter located on the property, is defined as the "Property").
 - B. Owner has executed, or proposes to execute, a Mortgage and Security Agreement (as the same may be amended or restated from time to time, the "Mortgage") securing the payment and performance of certain obligations of Borrower to Lender identified therein including, without limitation, one or more promissory notes which evidence Borrower's obligation to repay certain loans or extensions of credit (the "Loan") from Lender. The Mortgage is to be recorded in connection herewith.
 - C. As a condition to making the Loan secured by the Mortgage, Lender requires that the Mortgage be unconditionally and at all times remain a lien on the Property, prior and superior to all the rights of Lessee under the Lease and that the Lessee specifically and unconditionally subordinate the Lease to the lien of the Mortgage.
 - D. Owner and Lessee have agreed to the subordination, attornment and other agreements herein in favor of Lender.

NOW THEREFORE, for valuable consideration and to induce Lender to make the Loan, Owner and Lessee hereby agree for the benefit of Lender as follows:

1. **SUBORDINATION.** Owner and Lessee hereby agree that:

- 1.1 **Prior Lien.** The Mortgage, and any modifications, renewals or restatements thereof, shall unconditionally be and at all times remain a lien on the Property prior and superior to the Lease;
- 1.2 **Subordination.** Lender would not make the Loan without this agreement to subordinate; and
- 1.3 **Whole Agreement.** This Agreement shall be the whole agreement and only agreement with regard to the subordination of the Lease to the lien of the Mortgage and shall supersede and cancel, but only insofar as would affect the priority between the Mortgage and the Lease, any prior agreements as to such subordination, including, without limitation, those provisions, if any, contained in the Lease which provide for the subordination of the Lease to a deed or deeds of trust or to a mortgage or mortgages.

AND FURTHER, Lessee individually declares, agrees and acknowledges for the benefit of Lender, that:

- 1.4 **Use of Proceeds.** Lender, in making loan advances secured by the Mortgage, is under no obligation or duty to, nor has Lender represented that it will, see to the application of such proceeds by the person or persons to whom Lender disburses such proceeds, and any application or use of such proceeds for purposes other than those provided for in such agreement or agreements shall not defeat this agreement to subordinate in whole or in part;
- 1.5 **Waiver, Relinquishment and Subordination.** Lessee intentionally and unconditionally waives, relinquishes and subordinates all of Lessee's right, title and interest in and to the Property to the lien of the Mortgage and understands that in reliance upon, and in consideration of, this waiver, relinquishment and subordination, specific loans and advances are being and will be made by Lender and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination; and
- 1.6 **Options to Purchase.** If the Lease grants Lessee the right or option to purchase the Property or any portion thereof (whether pursuant to a right of first refusal, option to purchase, or otherwise), then Lessee hereby agrees that (a) any such right or option is subordinate the lien of the Mortgage, (b) any such purchase right shall not apply with respect to the sale of the Property pursuant to a foreclosure of the Mortgage or the conveyance of title thereto in lieu of such foreclosure, and (c) such right or option shall be deemed to have been fully extinguished or of no further force or effect upon any such foreclosure or conveyance in lieu thereof.

2. **ASSIGNMENT.** Lessee hereby consents to the assignment of the Lease by Lessor in favor of Lender.

3. **ADDITIONAL AGREEMENTS.** Lessee covenants and agrees that, during all such times as Lender is the Beneficiary under the Mortgage:

- 3.1 **Modification, Termination and Cancellation.** Lessee will not consent to any modification, amendment, termination or cancellation of the Lease (in whole or in part) without Lender's prior written consent and will not make any payment to Lessor in consideration of any modification, termination or cancellation of the Lease (in whole or in part) without Lender's prior written consent;
- 3.2 **Notice of Default.** Lessee will notify Lender in writing concurrently with any notice given to Lessor of any default by Lessor under the Lease, and Lessee agrees that Lender has the right (but not the obligation) to cure any breach or default specified in such notice within the time periods set forth below and Lessee will not declare a default of the Lease, as to Lender, if Lender cures such default within thirty (30) days from and after the expiration of the time period provided in the Lease for the cure thereof by Lessor; provided, however, that if such default cannot with diligence be cured by Lender within such thirty (30) day period, the commencement of action by Lender within such thirty (30) day period to remedy the same shall be deemed sufficient so long as Lender pursues such cure with diligence;
- 3.3 **No Advance Rents.** Lessee will make no payments or prepayments of rent more than one (1) month in advance of the time when the same become due under the Lease; and
- 3.4 **Assignment of Rents.** Upon receipt by Lessee of written notice from Lender that Lender has elected to terminate the license granted to Lessor to collect rents, as provided in the Mortgage, and directing the payment of rents by Lessee to Lender, Lessee shall comply with such direction to pay and shall not be required to determine whether Lessor is in default under the Loan and/or the Mortgage.
4. **ATTORNMEN**T. In the event of a foreclosure under the Mortgage, Lessee agrees for the benefit of Lender (including for this purpose any transferee of Lender or any transferee of Lessor's title in and to the Property by pursuant to a foreclosure sale under the Mortgage or a conveyance in lieu of such foreclosure) as follows:
- 4.1 **Payment of Rent.** Lessee shall pay to Lender all rental payments required to be made by Lessee pursuant to the terms of the Lease for the duration of the term of the Lease;
- 4.2 **Continuation of Performance.** Lessee shall be bound to Lender in accordance with all of the provisions of the Lease for the balance of the term thereof, and Lessee hereby attorns to Lender as its landlord, such attornment to be effective and self-operative without the execution of any further instrument immediately upon Lender succeeding to Lessor's interest in the Lease and giving written notice thereof to Lessee;
- 4.3 **No Offset.** Lender shall not be liable for, nor subject to, any offsets or defenses which Lessee may have by reason of any act or omission of Lessor under the Lease, nor for the return of any sums which Lessee may have paid to Lessor under the Lease as and for security deposits, advance rentals or otherwise, except to the extent that such sums are actually delivered by Lessor to Lender; and
- 4.4 **Subsequent Transfer.** If Lender, by succeeding to the interest of Lessor under the Lease, should become obligated to perform the covenants of Lessor thereunder, then, upon any further transfer of Lessor's interest by Lender, all of such obligations shall terminate as to Lender.

5. **NON-DISTURBANCE.** In the event of a foreclosure under the Mortgage, so long as there shall then exist no breach, default, or event of default on the part of Lessee under the Lease, Lender agrees for itself and its successors and assigns that the leasehold interest of Lessee under the Lease shall not be extinguished or terminated by reason of such foreclosure, but rather the Lease shall continue in full force and effect and Lender shall recognize and accept Lessee as tenant under the Lease subject to the terms and provisions of the Lease except as modified by this Agreement; provided, however, that Lessee and Lender agree that the following provisions of the Lease (if any) shall not be binding on Lender: any option to purchase with respect to the Property; any right of first refusal with respect to the Property; any provision regarding the use of insurance proceeds or condemnation proceeds with respect to the Property which is inconsistent with the terms of the Mortgage.

6. **MISCELLANEOUS.**

6.1 **Heirs, Successors, Assigns and Transferees.** The covenants herein shall be binding upon, and inure to the benefit of, the heirs, successors and assigns of the parties hereto. The agreements of Lessee herein shall remain in full force and effect and unmodified notwithstanding (a) any transfer of the Mortgage or any of the documents which the Mortgage secures, or (b) any modification or restatement of the Mortgage or any of the documents which the Mortgage secures.

6.2 **Notices.** All notices or other communications required or permitted to be given pursuant to the provisions hereof shall be deemed served upon delivery or, if mailed, upon the first to occur of receipt or the expiration of three (3) days after deposit in United States Postal Service, certified mail, postage prepaid and addressed to the address of Lessee or Lender appearing below:

If to Borrower:

Third Creek, LLC et al
Attn.: M. Renner
1830 Craig Park Court, Suite 101
St. Louis, MO 63146

If to Lender:

WELLS FARGO BANK, NATIONAL ASSOCIATION
Attn: Michael P. Lane
120 South Central Avenue
St. Louis, MO 63105
Loan No. LOAN NO

If to Lessee:

ZT of LOUISVILLE, LLC
9300 Shelbyville, Road, Suite 508
Louisville, KY 40222

provided, however, any party shall have the right to change its address for notice hereunder by the giving of written notice thereof to the other party in the manner set forth in this Agreement.

- 6.3 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute and be construed as one and the same instrument. Lender is authorized to record a counterpart of this Agreement in the official real estate records for the County in which the Property is located.
- 6.4 **Remedies Cumulative.** All rights of Lender herein to collect rents on behalf of Lessor under the Lease are cumulative and shall be in addition to any and all other rights and remedies provided by law and by other agreements between Lender and Lessor or others.
- 6.5 **Paragraph Headings.** Paragraph headings in this Agreement are for convenience only and are not to be construed as part of this Agreement or in any way limiting or applying the provisions hereof.
- 6.6 **Lender Right to Subordinate.** At any time, and from time to time, Lender may elect, by recording an appropriate instrument in the official real estate records for the County in which the Property is located to subordinate the lien and priority of the Mortgage to the Lease, in which event, neither a foreclosure of the lien of the Mortgage, entry by Lender, nor any other action by Lender with respect to the Mortgage will affect the continued existence of the Lease or the rights and obligations of the Tenant thereunder. Until such time as such election is made, if at all, the Lease will be subject and subordinate to the Mortgage, subject to the terms of this Agreement.

INCORPORATION. Exhibit A is attached hereto and incorporated herein by this reference.

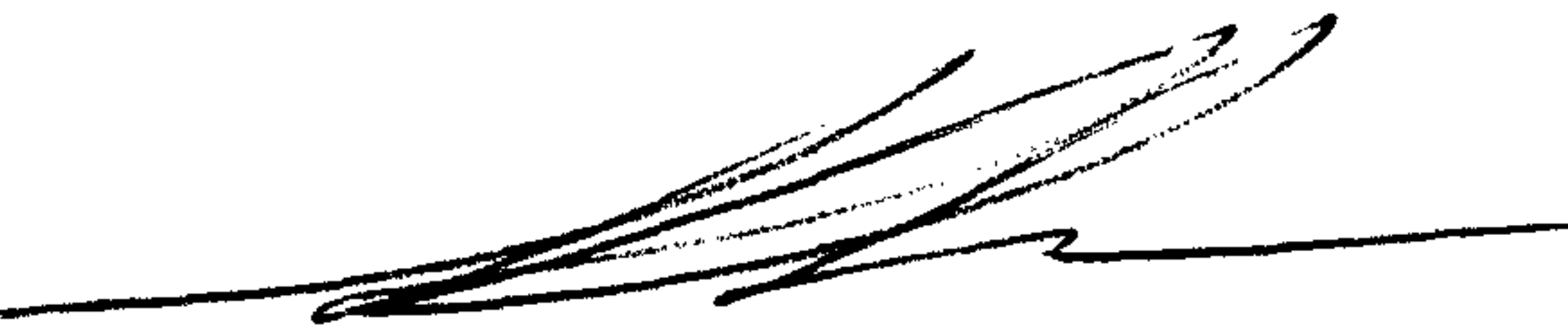
[SEE NEXT PAGES FOR SIGNATURES]

SIGNATURE PAGE FOR
SUBORDINATION AGREEMENT; ACKNOWLEDGMENT OF LEASE ASSIGNMENT, ESTOPPEL,
ATTORNMMENT AND NON-DISTURBANCE AGREEMENT


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

“BORROWER”


THIRD CREEK, LLC

By: 
Matthias D. Renner, Manager

MATTHIAS D. RENNER FAMILY, LLC

By: 
Matthias D. Renner, Manager

KENNETH J. WEBER FAMILY, LLC

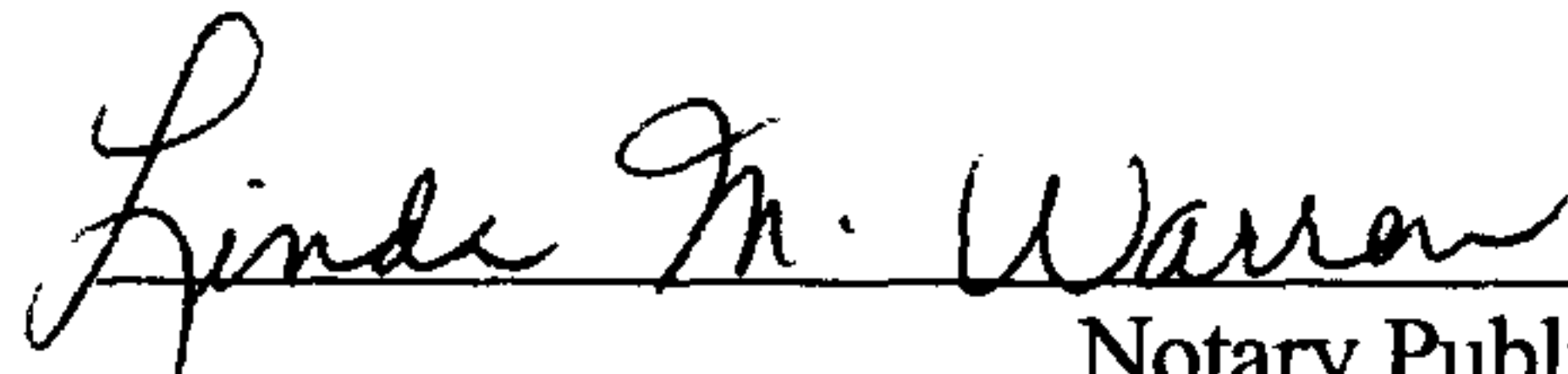
By: 
Matthias D. Renner, Manager

STATE OF MISSOURI)
) SS
COUNTY OF ST. LOUIS)

I, the undersigned, a Notary Public, in and for said county in said state, hereby certify that Matthias D. Renner, whose name as Manager of **THIRD CREEK, LLC, MATTHIAS D. RENNER FAMILY, LLC** and **KENNETH J. WEBER FAMILY, LLC**, all Missouri limited liability corporations, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such officer and with full authority, executed the same voluntarily on the day the same bears date for and as the act of said limited liability corporations.

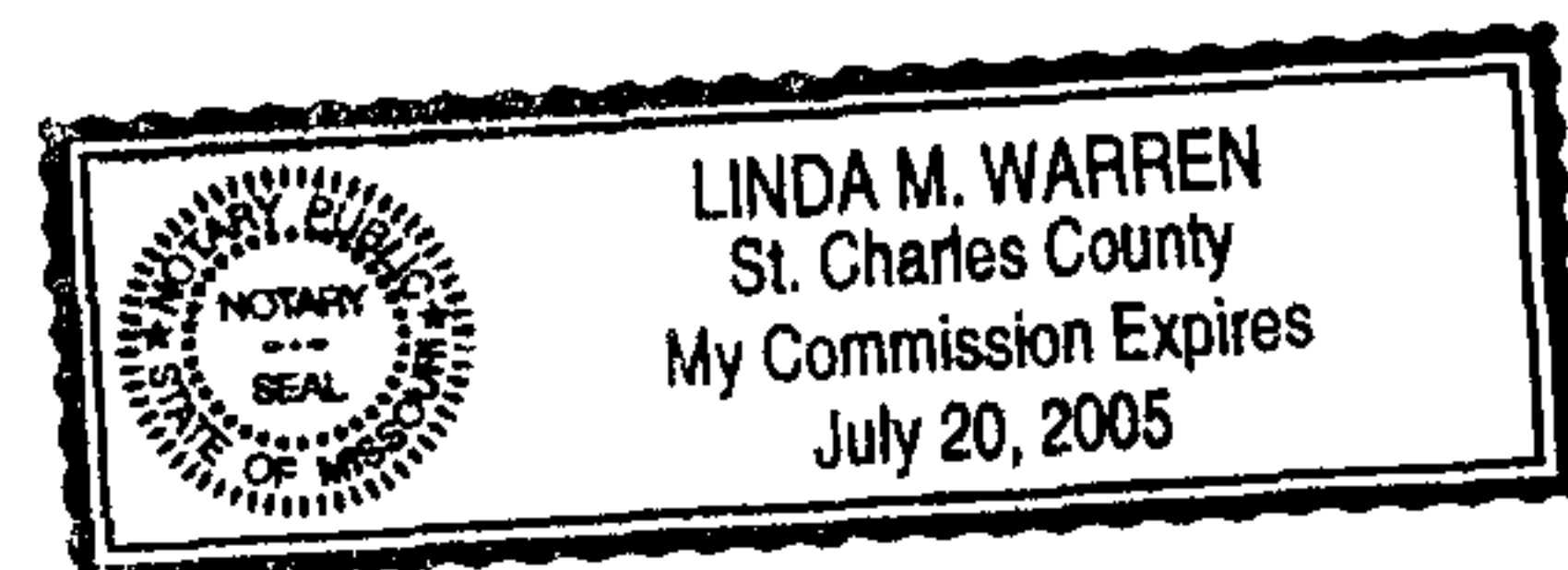
Given under my hand and official seal this 15 day of June 2004.

[NOTARIAL SEAL]


Notary Public

My Commission Expires: 7-20-2005

THIS INSTRUMENT PREPARED BY:
Paul M. Macon
Thompson Coburn LLP
One US Bank Plaza
Suite 2600
St. Louis, Missouri 63101



SIGNATURE PAGE FOR
SUBORDINATION AGREEMENT; ACKNOWLEDGMENT OF LEASE ASSIGNMENT, ESTOPPEL,
ATTORNMMENT AND NON-DISTURBANCE AGREEMENT

“LENDER”

WELLS FARGO BANK,
NATIONAL ASSOCIATION

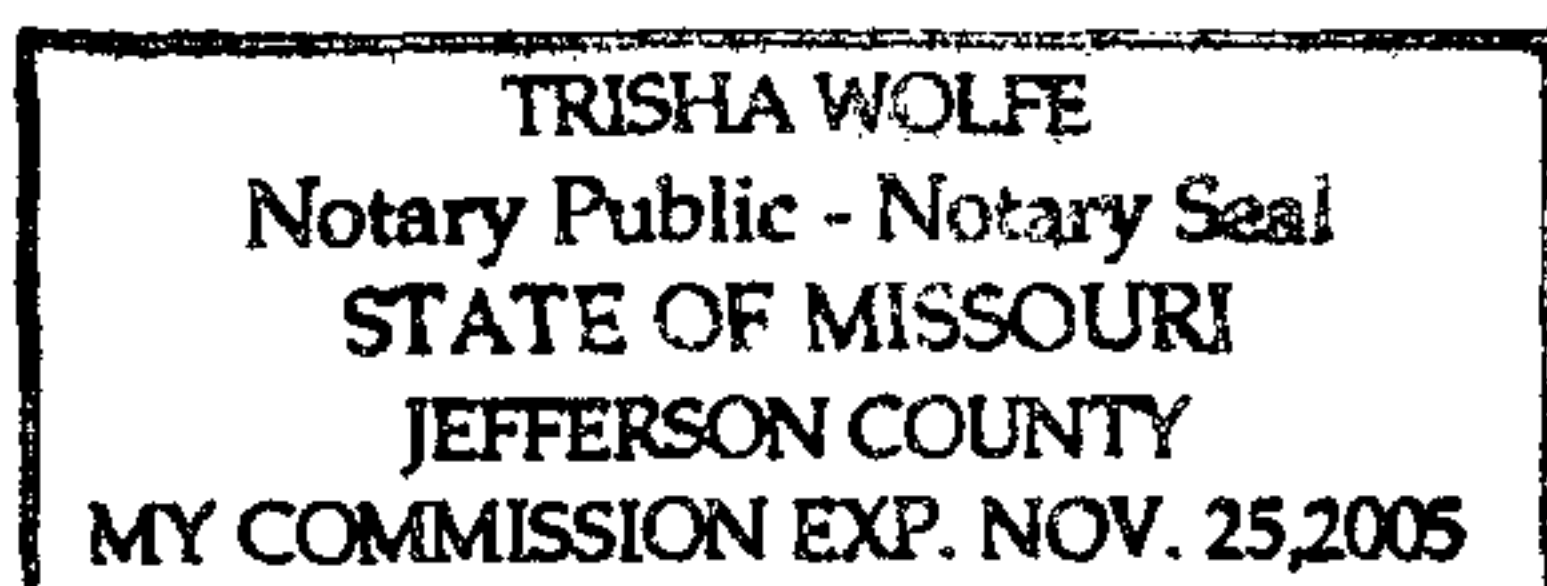
By: Michael P. Lane
Printed Name: Michael P. Lane
Title: Vice President

STATE OF Missouri)
COUNTY OF St. Louis) SS

I, the undersigned, a Notary Public, in and for said county in said state, hereby certify that Michael P. Lane, whose name as **INSERT TITLE** of WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such officer and with full authority, executed the same voluntarily on the day the same bears date for and as the act of said association.

Given under my hand and official seal this 24th day of June 2004.

[NOTARIAL SEAL]



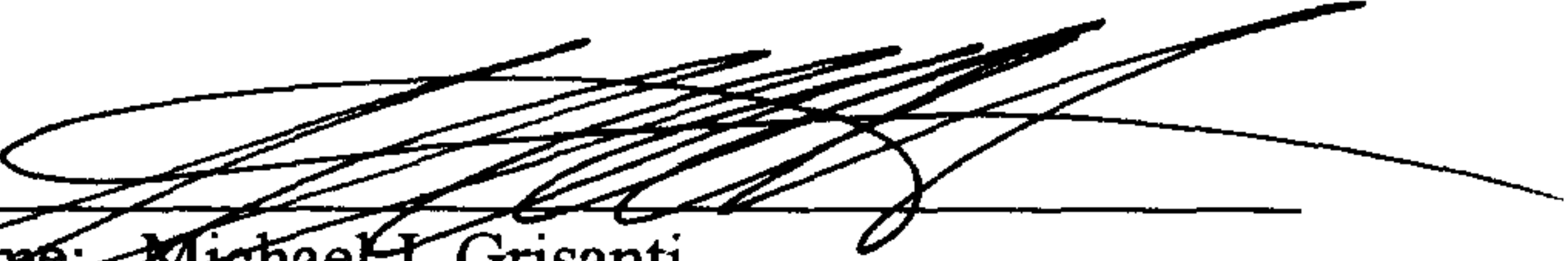
Trisha Wolfe
Notary Public

My Commission Expires: 11-25-05

SIGNATURE PAGE FOR
SUBORDINATION AGREEMENT; ACKNOWLEDGMENT OF LEASE ASSIGNMENT, ESTOPPEL,
ATTORNMENMENT AND NON-DISTURBANCE AGREEMENT

“LESSEE”

ZT of LOUISVILLE LLC

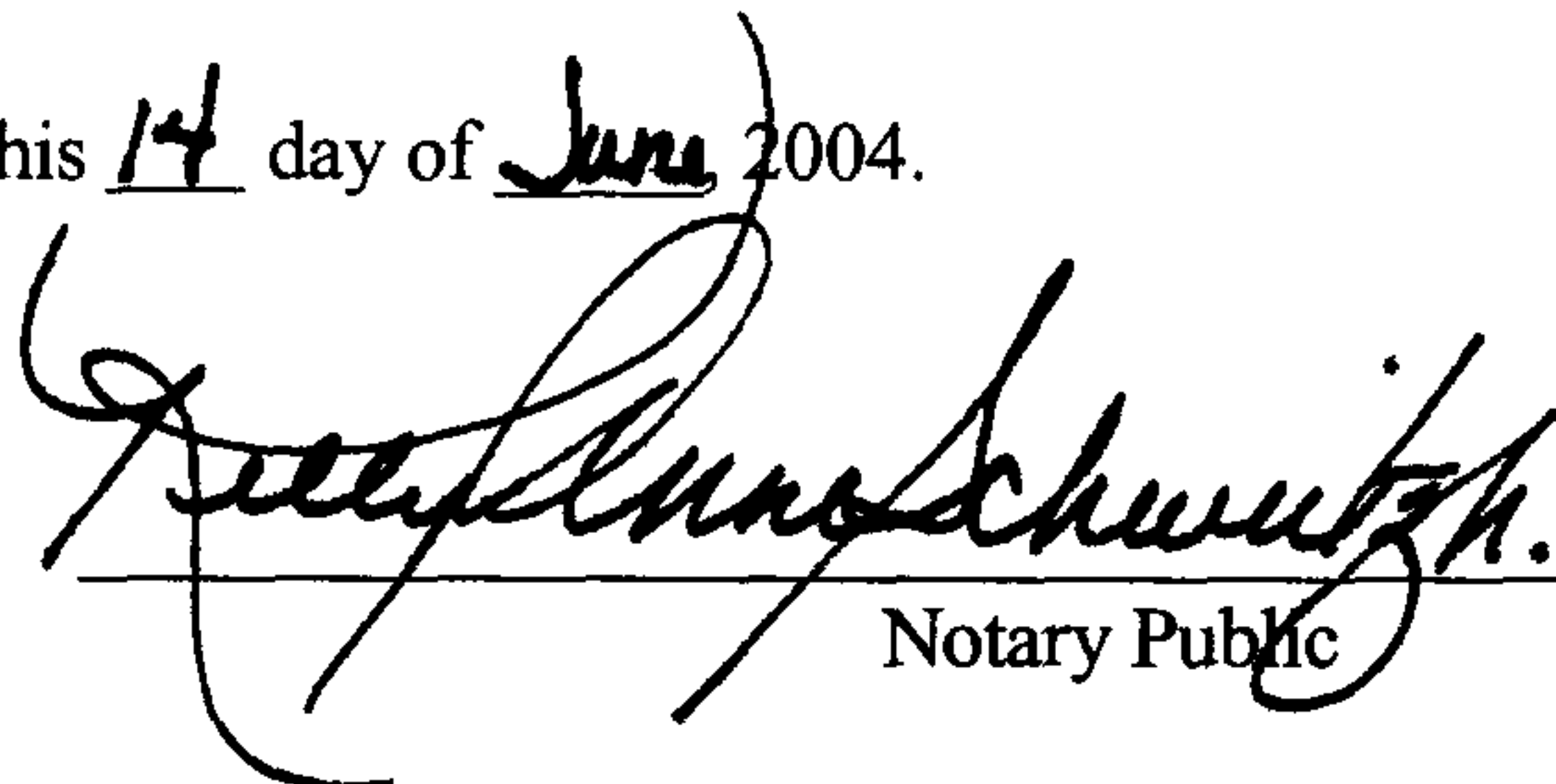
By: 
Printed Name: Michael J. Grisanti
Title: Treasurer

STATE OF Kentucky)
) SS
COUNTY OF Jefferson)

I, the undersigned, a Notary Public, in and for said county in said state, hereby certify that **Michael J. Grisanti**, whose name as **Treasurer** of **ZT of Louisville, LLC**, a **Kentucky Limited Liability Company**, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such officer and with full authority, executed the same voluntarily on the day the same bears date for and as the act of said **Limited Liability Company**.

Given under my hand and official seal this 14 day of June 2004.

[NOTARIAL SEAL]



Notary Public

My Commission Expires: _____ Notary Public, State at Large, KY
My commission expires May 21, 2005

DESCRIPTION OF PROPERTY

All that certain real property located in the County of Shelby, Alabama, described as follows:

Lots 1, 2 and 3, according to the Survey of Cypress Equities Addition to Hoover, as recorded in Map Book 31 page 79, in the Office of the Judge of Probate of Shelby County, Alabama; being situated in Shelby County, Alabama.