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2000-09-28 10:58:31
Cook County Recorder 33.50

Prepared By:

James B. Carroll, Esq.
2400 W. 95th Street, Suite
501
Evergreen Park, Illinois
60805
(708) 422-3766



Mail To:

David J. Spedale,
Vice-President
Founders Bank
6825 W. 111th St.
Worth, IL 60482

NON-DISTURBANCE, SUBORDINATION & ATTORNMEN AGREEMENT

THIS NON-DISTURBANCE, SUBORDINATION & ATTORNMEN AGREEMENT ("Agreement"), is made and entered into by between and among NATIONAL JOCKEY CLUB, an Illinois Corporation, 3301 S. Laramie Ave., Cicero, Il 60804, ("Lessee/Sub-Lessor"), CAPTAIN INTERMODAL L.L.C., a Delaware Limited Liability Company, 5030 W PERSHING ROAD STICKNEY, IL 60402 ("Sub-Lessee") and FOUNDERS BANK, 6825 W. 111th St., Worth, IL 60482, ("Lender");

RECITALS:

- A. Lessee/Sub-Lessor is the owner and holder of a leasehold interest (the "Lease") dated June 30, 2000, in and to certain real property (the "Premises") described on Exhibit "A" attached hereto and incorporated by reference and situated in Cook County, Illinois and
- B. Lessee/Sub-Lessor and Sub-Lessee have entered into a certain lease dated June 30, 2000 (the "Sub-Lease") demising part of the Premises (the "Sub-Leased Premises") to Sub-Lessee; and
- C. The Owner of the Premises has made, executed and delivered to Lender one certain Note (the "Note") in the amount of \$1,275,000.00 secured by a Mortgage ("Mortgage") of the Premises dated July 5, 2000, which Mortgage was filed for record in the Office of the Cook County Recorder ("Office") on July 12, 2000 as Document No. 00517429; and
- D. As additional consideration for the Note, the Owner of the Premises has absolutely assigned

to Lender the Lease by an Assignment of Rents ("Assignment") dated July 5, 2000 which Assignment was filed for record in the aforesaid Office on July 12, 2000 as Document No. 00517430; and

- E. Lender required, as a precondition to providing financing for the Premises, that Lessee/Sub-Lessor and Sub-Lessee subordinate to Lender their respective right, title and interest in the Leased Premises and Sub-Leased Premises.

NOW, THEREFORE, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, Lessee/Sub-Lessor, Sub-Lessee and Lender, intending to be legally bound hereby, covenant and agree as follows:

1. The Recitals above are incorporated herein as Paragraph 1 as if fully restated.
2. Provided Sub-Lessee is not in default in the payment of rent, taxes, utility charges or other sums payable by Sub-Lessee under the terms of the Sub-Lease or under any other provision of the Sub-Lease and Sub-Lessee is then in possession of the Sub-Leased Premises:
 - a). The right of possession of Sub-Lessee to the Sub-Leased Premises and all of Sub-Lessee's rights provided for in the Sub-Lease shall not be affected or disturbed by Lender in the exercise of any of its rights and remedies under the Note, the Mortgage or the Assignment; and
 - b). In the event Lender acquires Lessee/Sub-Lessor's leasehold interest through foreclosure under the Mortgage or otherwise, Sub-Lessee agrees to continue occupancy of the Sub-Leased Premises under the same terms and conditions of the Sub-Lease and will attorn to the Lender, its successors or assigns, to the same extent and with the same force as if Lender were the Sub-Lessor under the Sub-Lease.
3. Lender shall be entitled, but not obligated, to exercise the claims, rights, powers, privileges, options and remedies of the Lessee/Sub-Lessor under the Sub-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 Sub-Lessee under the Sub-Lease as though Lender were named therein as the Lessee/Sub-Lessor. Lender shall not, by virtue of the Assignment, a separate Non-Disturbance Subordination and Attornment Agreement entered into by Lender and the Owner of the Premises and Lessee/Sub-Lessor or this Agreement, be or become subject to any liability or obligation to Sub-Lessee under the Sub-Lease or otherwise, until Lender shall have acquired Lessee/Sub-Lessor's leasehold interest through foreclosure under the Mortgage or otherwise, and then only to the extent of liabilities or obligations accruing subsequent to the date that Lender has acquired Lessee/Sub-Lessor's leasehold interest.

4. Without Lender's prior written approval, Sub-Lessee shall not pay an installment of rent or any part thereof more than thirty (30) days prior to the due date of such installment. Unless so approved by Lender, Lender shall not be bound by and shall be entitled to recover from Sub-Lessee, as rent under the Sub-Lease, any payment of the rent or additional rent made by Sub-Lessee to or at the direction of Lessee/Sub-Lessor for more than one month in advance or paid by an amendment or modification of the Sub-Lease.

5. After notice is given to Sub-Lessee by Lender pursuant to the Assignment, which notice will be given only if Lessee/Sub-Lessor is in default under the terms of the Lease and owner is in default under the terms Note and Mortgage aforesaid, that the sums due under the Sub-Lease should be paid to Lender, Sub-Lessee shall pay to Lender, or in accordance with the directions of Lender, all rentals and other monies due and to become due to Lessee/Sub-Lessor under the Sub-Lease. Lessee/Sub-Lessor hereby expressly authorizes Sub-Lessee to make such payments to Lender and hereby releases and discharges Sub-Lessee of, and from liability to Lessee/Sub-Lessor on account of any such payments.

6. Except as otherwise provided in Paragraph 2 herein and above, the Sub-Lease and Sub-Lessee's leasehold estate created thereby, including all rights and options to purchase the Sub-Leased Premises, shall be and are completely and unconditionally subject and subordinate to the lien of the Mortgage and to all the terms, conditions and provisions thereof, to all advances made or to be made thereunder, and to any renewals, extensions, modification or replacements thereof.

7. This Agreement shall inure to the benefit of and shall be binding upon Lessee/Sub-Lessor, Sub-Lessee and Lender, and their respective heirs, personal representatives, successors and assigns. In the event of 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 enforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein. This Agreement shall be governed by and construed according to the laws of the State of Illinois.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly signed and attested by their respective duly authorized officers or managing members as of the 6th day of July, 2000.

SUB-LESSEE:

CAPTAIN INTERMODAL, L.L.C.,

By: BLUE & GRAY HOLDINGS, L.L.C., its Managing Member

By: David L. Carmell
David L. Carmell, Managing Member

By: Ellen B. Carmell
Ellen B. Carmell, Managing Member

STATE OF ILLINOIS)

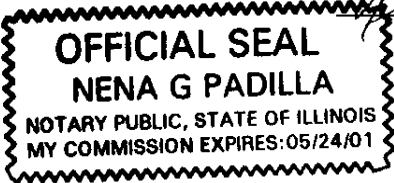
COUNTY OF COOK)

The undersigned, a notary public in and for said County and State, DO HEREBY CERTIFY that David L. Carmell and Ellen B. Carmell, personally known to me to be Managing Members of Blue & Gray Holdings, L.L.C., the Managing Member of Captain Intermodal L.L.C., a Delaware Limited Liability Company and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Managing Members they signed and delivered the said instrument, pursuant to authority, given by the Articles of Organization and Operating Agreement of Blue & Gray Holdings, L.L.C. and Captain Intermodal, L.L.C. as their free and voluntary act, and as the free and voluntary act and deed of Blue & Gray Holdings, L.L.C. and Captain Intermodal, L.L.C., for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 5th day of Sept., 2000.

Nena G. Padilla

NOTARY PUBLIC



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LESSEE/SUB-LESSOR:

NATIONAL JOCKEY CLUB

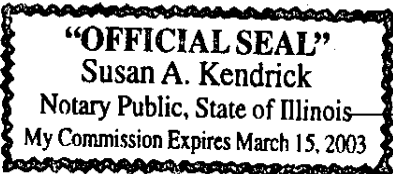
By: Charles W. Bidwill, III
Charles W. Bidwill, III, President

By: Edward T. Duffy
Edward T. Duffy, Asst. Secretary

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned, a notary public in and for said County and State, DO HEREBY CERTIFY that Charles W. Bidwill, III and Edward T. Duffy, personally known to me to be the President and Asst. Secretary of the National Jockey Club, an Illinois Corporation and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as Officers of said Company they signed and delivered the said instrument pursuant to authority given by the Law, the Articles of Incorporation and By-Laws of said Corporation as their 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 official seal this 1st day of Sept., 2000.



Susan G. Kendrick
NOTARY PUBLIC

My Commission Expires: 3/15/03

LENDER:

FOUNDERS BANK

By: David J. Spedale
David J. Spedale, Vice President

Attest: Kathleen M. Arnold

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

The undersigned, a notary public in and for said County and State, DO HEREBY CERTIFY that David J. Spedale and Kathleen M. Arnold, personally known to me to be Officers of FOUNDERS BANK an Illinois Banking Corporation and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Officers of said Corporation, they signed and delivered the said instrument and caused the corporate seal of said Corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said Corporation, as their 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 official seal this ___ day of ___, 2000.

Rita A Carroll
NOTARY PUBLIC

My Commission Expires: 6-29-04



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EXHIBIT "A"

LEGAL DESCRIPTION

THAT PART OF THE SOUTH EAST 1/4 OF SECTION 33, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THE EAST 1267 FEET AND EXCEPT THE WEST 1038 FEET THEREOF, AS MEASURED ON THE SOUTH LINE THEREOF) LYING SOUTHERLY OF THE FOLLOWING DESCRIBED LINE: BEGINNING AT A POINT ON THE EAST LINE OF SOUTHEAST 1/4 OF SAID SECTION 33, 1213.18 FEET NORTH OF THE SOUTHEAST CORNER THEREOF; THENCE WEST AT RIGHT ANGLE TO THE EAST LINE OF SAID SOUTH EAST 1/4 OF SAID SECTION 33, 40 FEET, THENCE SOUTHWESTERLY ON A LINE WITH AN ANGLE OF 164 DEGREES 24 MINUTES MEASURED FROM EAST TO SOUTHWEST FROM LAST DESCRIBED LINE, A DISTANCE OF 259.98 FEET; THENCE SOUTHWESTERLY ON A LINE WITH A DEFLECTION OF 00 DEGREES 36 MINUTES TO THE LEFT, FROM THE LAST DESCRIBED LINE, A DISTANCE OF 849.63 FEET; THENCE SOUTHWESTERLY ON A LINE WITH A DEFLECTION OF 00 DEGREES 17 MINUTES TO THE LEFT FROM THE LAST DESCRIBED LINE, A DISTANCE OF 234.76 FEET; THENCE SOUTHWESTERLY ON A LINE WITH A DEFLECTION OF 4 DEGREES 23 MINUTES 15 SECONDS TO THE RIGHT FROM LAST DESCRIBED LINE, A DISTANCE OF 210.14 FEET; THENCE SOUTHWESTERLY ON A LINE WITH A DEFLECTION OF 2 DEGREES 54 MINUTES 30 SECONDS TO THE RIGHT, FROM LAST DESCRIBED LINE, A DISTANCE OF 482.83 FEET; THENCE SOUTHWESTERLY ON A LINE WITH A DEFLECTION OF 00 DEGREES 6 MINUTES 52 SECONDS TO THE LEFT, FROM LAST DESCRIBED LINE, A DISTANCE OF 411.74 FEET; THENCE SOUTHWESTERLY ON A LINE WITH A DEFLECTION OF 3 DEGREES 13 MINUTES 30 SECONDS TO THE LEFT FROM LAST DESCRIBED LINE, A DISTANCE OF 259.35 FEET TO A POINT IN THE WEST LINE OF THE SOUTH EAST 1/4 OF SAID SECTION 33, SAID POINT IS 606.82 FEET NORTH OF THE SOUTHWEST CORNER OF SAID SOUTH EAST 1/4, IN COOK COUNTY, ILLINOIS. (EXCEPT IN THE SOUTH 34 FEET OF THE AFORESAID TRACT TAKEN FOR ROAD BY DEED RECORDED FEBRUARY 2, 1974 AS DOCUMENT NUMBER 22208762)

COMMONLY KNOWN AS: 5030 W. Pershing Road
Stickney, IL 60402

P.I.N. NO: 16-33-400-035-0000