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2001-10-12 13:02:02  
Cook County Recorder 37.50

SUBORDINATION, NON-DISTURBANCE AND  
ATTORNMENT AGREEMENT



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THIS AGREEMENT is made and entered into as of , by and between Vapor Power International, LLC, a Delaware limited liability company, 6420 West Howard, Niles, Illinois ("Tenant"), County Line Road Investors, L.L.C., an Illinois limited liability company, 2550 Arthur Avenue, Elk Grove Village, Illinois 60007 ("Landlord"), and Manufacturers Bank, an Illinois banking corporation, 1200 North Ashland Avenue, Chicago, Illinois 60622 ("Mortgagee").

1. Recitals.

01-0835

- a. Mortgagee is the holder of a certain *a(This Space For Use of Recorder's Office Only)* Mortgage relating to the premises located at 551 County Line Road, Franklin Park, Illinois 60131 (the "Mortgage") encumbering the Real Estate (hereinafter defined) and securing a principal indebtedness in an amount equal to One Million Five Hundred Twenty Thousand and 00/100 Dollars (\$1,520,000.00).
- b. Tenant has entered into a lease agreement (such lease agreement hereinafter being referred to as the "Lease Agreement," and the Lease Agreement, together with all amendments and modifications thereof, hereinafter being referred to as "Lease") with Landlord (or Landlord's predecessor-in-interest), pursuant to which Tenant leased certain premises ("Leased Premises") consisting of approximately 51,800 rentable square feet of space in the building ("Building") on the parcel of land ("Land") legally described in Exhibit A attached hereto (the Land and Building herein being collectively referred to as "Real Estate").
- c. In consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as set forth in this Agreement.

2. Representations and Warranties of Tenant.

- a. Tenant represents and warrants to Mortgagee that the Lease constitutes the entire agreement between Tenant and Landlord with respect to the Leased Premises and there are no other agreements, written or verbal, governing the tenancy of Tenant with respect to the Leased Premises.
- b. Tenant has executed and delivered to Mortgagee a certain Tenant Estoppel Certificate (the "Estoppel Certificate") dated on or about the date hereof. The provisions of the Estoppel Certificate are hereby incorporated into this Agreement as if fully set forth in this Agreement in their entirety, and Tenant acknowledges that Mortgagee will be relying on the statements made in the Estoppel Certificate in determining whether to disburse the proceeds of the loan secured by the Mortgage and whether to enter into this Agreement.

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3. **Tenant's Remedies.** Prior to pursuing any remedy available to Tenant under the Lease, at law or in equity as a result of any failure of Landlord to perform or observe any covenant, condition, provision or obligation to be performed or observed by Landlord under the Lease (any such failure hereinafter referred to as a "Landlord's Default"), Tenant shall: (a) provide Mortgagee with a notice of Landlord's Default specifying the nature thereof, the section of the Lease under which same arose and the remedy which Tenant will elect under the terms of the Lease or otherwise, and (b) allow Mortgagee not less than thirty (30) days following receipt of such notice of Landlord's Default to cure the same; provided, however, that, if such Landlord's Default is not readily curable within such thirty (30) day period, Tenant shall give Mortgagee such additional time as Mortgagee may reasonably need to cure such Landlord's Default so long as Mortgagee is diligently pursuing a cure. Tenant shall not pursue any remedy available to it as a result of any Landlord's Default unless Mortgagee fails to cure same within the time period specified above. For purposes of this Paragraph 3, a Landlord's Default shall not be deemed to have occurred until all grace and/or cure periods applicable thereto under the Lease have lapsed without Landlord having effectuated a cure thereof.
4. **Subordination to Mortgage.** Tenant covenants with Mortgagee that the Lease shall be subject and subordinate to the lien and all other provisions of the Mortgage and to all modifications and extensions thereof, to the full extent of all principal, interest and all other amounts now or hereafter secured thereby (including, without limitation, insurance and condemnation proceeds) and with the same force and effect as if the Mortgage had been executed and delivered prior to the execution and delivery of the Lease.
5. **Notice of Default.** Tenant acknowledges that Landlord has collaterally assigned to Mortgagee all leases affecting the Real Estate, including the Lease, and the rents and other amounts, including, without limitation, lease termination fees, if any, due and payable under such leases. In connection therewith, Tenant agrees that, upon receipt of a written notice of a default by Landlord under such assignment and a demand in writing by Mortgagee for direct payment to Mortgagee of the rents due under the Lease, Tenant will honor such demand and make all subsequent rent payments directly to Mortgagee.
6. **Agreements of Mortgagee.** Mortgagee agrees that so long as Tenant is not in default under the Lease:
  - a. Tenant shall not be named or joined as a party in any suit, action or proceeding for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage; and
  - b. The possession by Tenant of the Leased Premises and Tenant's rights thereto shall not be disturbed, affected or impaired by, nor will the Lease or the term thereof be terminated or otherwise materially adversely affected by (i) any suit, action or proceeding for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage, or by any judicial sale or execution or other sale of the

Leased Premises, or any deed given in lieu of foreclosure, or (ii) any default under the Mortgage;

- c. If Mortgagee or any future holder of the Mortgage shall become the owner of the Real Estate by reason of foreclosure of the Mortgage or otherwise, or if the Real Estate shall be sold as a result of any action or proceeding to foreclose the Mortgage or transfer of ownership by deed given in lieu of foreclosure, the Lease shall continue in full force and effect, without necessity for executing any new lease, as a direct lease between Tenant and the new owner of the Real Estate as "client" upon all the same terms, covenants and provisions contained in the Lease (subject to the exclusions set forth in subparagraph 6.c.ii below), and in such event:

Tenant shall be bound to such new owner under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the extension periods, if Tenant elects or has elected to exercise its options to extend the term), and Tenant hereby agrees to attorn to such new owner and to recognize such new owner as "client" under the Lease without any additional documentation to effect such attornment (provided, however, if applicable law shall require additional documentation at the time Mortgagee exercises its remedies then Tenant shall execute such additional documents evidencing such attornment as may be required by applicable law).

- ii. Such new owner shall be bound to Tenant under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the extension periods, if Tenant elects or has elected to exercise its options to extend the term); provided, however, that such new owner shall not be:

- (1) liable for any act or omission of any prior landlord (including Landlord) of which it did not have actual prior notice;
- (2) subject to any offsets or defenses which Tenant has against any prior landlord (including Landlord) unless Tenant shall have provided Mortgagee with (A) notice of the Landlord's Default that gave rise to such offset or defense and (B) the opportunity to cure the same, all in accordance with the terms of Section 4 above;
- (3) bound by any base rent, percentage rent, additional rent or any other amounts payable under the Lease which Tenant might have paid in advance for more than the current month to any prior landlord (including Landlord);
- (4) liable to refund or otherwise account to Tenant for any security deposit not actually paid over to such new owner by Landlord;

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- (5) bound by any amendment or modification of the Lease made without Mortgagee's consent entered into following the entry of a judgment of foreclosure;
  - (6) bound by, or liable for any breach of, any representation or warranty or indemnity agreement contained in the Lease or otherwise made by any prior landlord (including Landlord); or
  - (7) personally liable or obligated to perform any such term, covenant or provision, such new owner's liability being limited in all cases to its interest in the Real Estate.
7. **Notices.** Any notices, communications and waivers under this Agreement shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) by overnight express carrier, addressed to the party to be notified at the address for such party set forth above, or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this Paragraph shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.
8. **Reliance by Mortgagee.** Tenant acknowledges and agrees that Mortgagee will be relying on the representations, warranties, covenants and agreements of Tenant contained herein and that any default by Tenant hereunder shall permit Mortgagee, at its option, to exercise any and all of its rights and remedies at law and in equity against Tenant and to join Tenant in a foreclosure action thereby terminating Tenant's right, title and interest in and to the Leased Premises.
9. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors and assigns and any nominees of Mortgagee, all of whom are entitled to rely upon the provisions hereof. This Agreement shall be governed by the laws of the State of Illinois.
10. **Counterparts.** This Agreement may be executed in multiple counterparts and all of such counterparts together shall constitute one and the same Agreement.
11. **Captions.** The captions preceding the text of the paragraphs or subparagraphs of this Agreement are inserted only for convenience of reference and shall not constitute a part of this Agreement, nor shall they in any way affect its meaning, construction or effect.

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Tenant  
Vapor Power International, LLC

by: Robert Faul

Landlord:  
County Line Road Investors, L.L.C.

by: [Signature]

Mortgagee:  
Manufacturers Bank

by: Bernard T. Bartsch  
VICE president

Property of Cook County Clerk's Office

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## ACKNOWLEDGMENT

STATE OF ILLINOIS

SS

COUNTY OF Cook

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO  
HEREBY CERTIFY that Robert Forslund of Vapor  
Power International, LLC, known to me to be the same persons whose names are subscribed to  
the foregoing instrument, appeared before me this day in person and acknowledged that:

1. The execution and implementation of this Agreement was duly authorized by the  
Managers of said Company.
2. They signed and delivered this Agreement as their own free and voluntary act for the uses  
and purposes therein set forth and for the uses and purposes of said Company.

Given under my hand and Notarial Seal this 28<sup>th</sup> day of September, 2001.

Dorothy L. Rathje  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_, 20\_\_\_\_.



Clerk's Office

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ACKNOWLEDGMENT

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STATE OF ILLINOIS

SS .

COUNTY OF Cook

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO  
HEREBY CERTIFY that PATRICK ANHUS of  
County Line Road Investors, L.L.C., known to me to be the same persons whose names are  
subscribed to the foregoing instrument, appeared before me this day in person and acknowledged  
that:

1. The execution and implementation of this Agreement was duly authorized by the  
Managers of said Company.
2. They signed and delivered this Agreement as their own free and voluntary act for the uses  
and purposes therein set forth and for the uses and purposes of said Company.

Given under my hand and Notarial Seal this 28<sup>th</sup> day of September, 2001.

Dorothy L. Rathje  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_, 20\_\_\_\_.



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ACKNOWLEDGMENT

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STATE OF ILLINOIS

SS

COUNTY OF DUPAGE

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO  
HEREBY CERTIFY that BERNARD T. BARTILAD of  
Manufacturers Bank known to me to be the same persons whose names are subscribed to the  
foregoing instrument, appeared before me this day in person and acknowledged that:

1. The execution and implementation of this Agreement was duly authorized by the Board  
of Directors of said Corporation.
2. They signed and delivered this Agreement as their own free and voluntary act for the uses  
and purposes therein set forth and for the uses and purposes of said Corporation.

Given under my hand and Notarial Seal this 27 day of September, 2001.

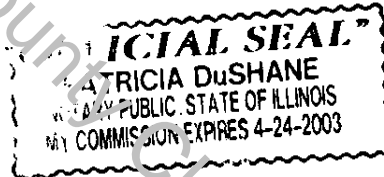


NOTARY PUBLIC

My Commission Expires: 4 24, 2001.

This Instrument was prepared by  
and after recording mail to :

Martin, Craig, Chester & Sonnenschein  
2215 York Road, Suite 550  
Oak Brook, Illinois 60523  
Attn: John D. Purdy, Jr.





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EXHIBIT A

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## Legal Description of Real Estate

The West 2 acres (the East line being drawn parallel to the West line thereof) of the North 200.0 feet measured along the West line of Section of the tract of land lying South of and adjoining the North 18 acres of the following described parcel of land: That part of the Northwest fractional quarter of Section 19, Township 40 North, Range 12, East of the Third Principal Meridian, lying South of the center line of Franklin Avenue and West of a line 500.0 feet East of and parallel with the West line of said Section (said 500.0 feet being measured at right angles to the West line of said Section) in Cook County, Illinois.

Street Address: 551 County Line Road, Franklin Park, Illinois 60131

Real Estate Tax Index No.: 12-19-100-085

Draft Number: 4  
Draft Date: September 24, 2001