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SUBORDINATION, NONDISTURBANCE AND ATTORMENT AGREEMENT

Doc#: 0414533205
Eugene "Gene" Moore Fee: \$74.00
Cook County Recorder of Deeds
Date: 05/24/2004 11:34 AM Pg: 1 of 9

Bank
82092510274

THIS AGREEMENT, made this May 4, 2004, by and between **CHARTER ONE BANK, N.A.**, a savings bank organized under the laws of the United States of America ("**Bank**"), and **TRI-POWDERCOATING, INC.**, an Illinois corporation ("**Tenant**").

WITNESSETH:

WHEREAS, Tenant is now the lessee under a certain lease dated April 1, 2004, (the "**Lease**") covering all or a portion of certain real property located at 8585 South 77th Avenue and situated in the City of Bridgeview, County of Cook and State of Illinois, as said premises are described in **Exhibit A** attached hereto ("**Premises**"), which Premises are owned by BCL – Bridgeview LLC ("**Landlord**"), under the terms of the Lease; and

WHEREAS, Landlord granted to Bank an Open-Ended Mortgage and Security Agreement (the "**Mortgage**") and an Assignment of Leases and Rents (the "**Assignment**") each covering the Premises in order to secure certain sums to be loaned ("**Loan**") by the Bank which Mortgage is dated May 5th, 2004 and filed for record on 24 May, 2004, with the Recorder of Cook County, Illinois as Document No. 0414533202 and

WHEREAS, it is a condition precedent to obtaining advances under the Loan that the Mortgage shall be, and remain, a lien or charge upon the Premises hereinbefore described, prior and superior to the Lease, and the leasehold estate created thereby; and

WHEREAS, Tenant desires to facilitate the making of the Loan by the Bank.

NOW, THEREFORE, in consideration of the foregoing, the mutual promises and covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Bank and Tenant agree as follows:

1. **Subordination.** The Mortgage and Assignment and any renewals or extensions thereof, shall be and remain at all times a lien or charge on the Premises prior and superior to the Lease, the leasehold estate created thereby and to any options to lease or to purchase the Premises contained therein, and to all rights, privileges, and conditions therein contained. Tenant declares and acknowledges that it hereby intentionally waives, relinquishes, and subordinates the priority and superiority of the leasehold estate created by the Lease to the Mortgage and Assignment, except as otherwise provided herein and subject to the terms hereof. All amendments, modifications, substitutions, renewals, extensions and replacements of the Lease shall be and remain so subordinated as provided in this paragraph without the necessity of any further act of the parties. Tenant also declares and acknowledges that it understands that in reliance upon and in consideration of this waiver, relinquishment, and subordination, specific loans and

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advances secured by the Mortgage and Assignment will be made, and monetary and other obligations will be entered into by third parties which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination.

2. **Non-Disturbance.** Bank shall not, in the exercise of any right, remedy or privilege granted by the Mortgage or the Assignment, or otherwise available to Bank at law or in equity, disturb Tenant's possession under the Lease or interfere with any of the rights of Tenant under the Lease so long as Tenant is not in default under any provision of the Lease beyond any applicable grace or cure period after required notice, if any. Nothing contained in this Paragraph 2, however, shall be construed to limit or prevent Bank in or from exercising any of its rights hereunder, at law, or in equity in connection with any breach by Tenant of its or his obligations under the provisions of this Agreement.

3. **Attornment.**

(a) Tenant shall, upon written notice from Bank or Landlord, attorn (i) to Bank, (ii) to any receiver or similar official for the Premises appointed at the instance, upon the request or with the consent of Bank, (iii) to Bank upon any acquisition by Bank of the Premises and Landlord's interest in the Lease, and (iv) to any person or entity who acquires the Premises and the Landlord's interest in the Lease pursuant to Bank's exercise of any right, remedy, or privilege granted by the Mortgage or the Assignment, or otherwise available at law or in equity. Without limiting the generality of the foregoing, Tenant shall attorn to any person or entity that acquires the Premises pursuant to foreclosure under the Mortgage, or by any proceeding or voluntary conveyance in lieu of such foreclosure, or from Bank, whether by sale, exchange, or otherwise.

(b) Upon any attornment under this Paragraph 3, the Lease shall continue in full force and effect as a direct lease between Tenant and the person or entity to whom Tenant attorns, in accordance with the foregoing subparagraph and any such person or entity to whom Tenant attorns shall not be: (i) liable for any breach, act or omission of any prior; (ii) subject to any claims or to any defenses which Tenant might have against any prior; (iii) bound by any rent, additional rent or other payment in lieu of rent which Tenant might have paid to any prior landlord more than one (1) month in advance of its due date under the Lease; (iv) bound by any amendment or modification of the Lease, made without Bank's prior written consent; (v) bound by any election or exercise of any option to purchase by Tenant unless (A) Tenant delivers to Bank written notice thereof and (B) the sales proceeds of such purchase would be sufficient to pay in full all sums then due and outstanding on the Loan; (vi) bound by any notice of default given by Tenant to Landlord, whether or not such notice is given pursuant to the terms of the Lease, unless a copy thereof was then also given to Bank; or (vii) be liable for the return of any security deposit or other sums held by any prior landlord, unless actually received.

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(c) Bank and any other person or entity to whom Tenant attorns shall be liable to Tenant under the Lease only to the extent provided therein and only for liabilities which occur during such person's or entity's period of ownership of the Premises.

4. **Rents.** The Assignment provides for the direct payment to Bank of all rents and other monies due and to become due to Landlord under the Lease (collectively, "Rents"), but grants a license to Landlord to receive the Rents unless such license is revoked upon the occurrence of certain conditions as set forth in the Assignment, without Lender's taking possession of the Premises or otherwise assuming Landlord's obligations under the Lease. Upon receipt from Bank of written notice to pay Rents to or at the direction of Bank, Tenant shall make all such payments to or at the direction of Bank. Upon receipt of such notice, Tenant thereafter shall pay all Rents then due and becoming due from Tenant under the Lease, to or at the direction of Bank. Tenant agrees that Bank's demanding and/or receiving any such payments shall not operate to impose any liability upon Bank for performance of any obligation of Landlord under the Lease. Such payment of Rents to Bank shall continue until Bank directs Tenant otherwise in writing, or until Tenant receives (i) a court order directing Tenant to pay Rents to another person or entity, or (ii) notice that the Premises have been sold to a person or entity other than Bank. The provisions of this Paragraph 4 will terminate upon the earliest to occur of (a) termination of the Lease, (b) the recording of a release of the Assignment, duly executed by Bank, or (c) Tenant's receipt of written notice to such effect from Bank.

5. **Waste; Damage to Premises.** Tenant agrees that anything to the contrary appearing in said Lease notwithstanding, the Bank shall in no event be liable for any waste permitted on the Premises by the Landlord or any tenant or be liable by reason of any damage to or defective condition of the Premises resulting in loss or injury to Tenant nor be liable for any other default, act or omission of the Landlord arising or accruing prior to the date when the Bank acquires title to the Premises, nor shall the Bank be subjected to any claim, or cause of action, or to any set off or credit or defense against rentals accruing after the Bank acquires such title, for any default, act or omission by the Landlord which arose or accrued prior to the date when the Bank acquired title, except for the gross negligence or willful misconduct of the Bank.

6. **Intentionally Deleted.**

7. **Integrated Agreement.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties or their successors and permitted assigns.

8. **Notices.** Any and all notices required or permitted to be given or served by the terms and provisions of this Agreement shall be in writing and signed by the duly authorized representative of the party giving the notice and shall be deemed duly given when (1) sent certified or registered mail, postage prepaid, return receipt requested, (2) delivered in person, or (3) delivered by express overnight delivery. If to the Bank, notice

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shall be addressed as follows: Charter One Bank, N.A., Attention: Commercial Loan Servicing Department, 1215 Superior Ave., Cleveland, Ohio 44114; if to Tenant, notice shall be addressed as follows: 8585 South 77th Avenue, Bridgeview, Illinois 60455, Attention: Andrew Chura, with copies to Richard N. Golding, Esq., Weinberg Richmond LLP, 333 West Wacker Drive, Suite 1800, Chicago, Illinois 60606. All notices shall be deemed received upon receipt, if delivered by personal or courier delivery, or if delivered by certified mail, then upon the earlier of (i) actual receipt, or (ii) the date of the first attempted delivery thereof. Either party hereto may change its address and designate such other parties to receive additional copies of any notice for the above purposes by giving notice as aforesaid stating the change and setting forth the new address.

9. **Assignability.** The Bank shall have the right to assign this Agreement to the purchaser upon any foreclosure sale of the Premises or to any purchaser of its rights under the Mortgage Note and the Mortgage securing the same.

10. **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

11. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same instrument.

12. **Severability.** A determination that any provision of this Agreement is unenforceable or invalid shall not affect this enforceability or validity of any other provision, except to the extent such provisions are expressly inter-dependent. The parties agree that Paragraphs 1 and 2 above are interdependent. Any determination that the application of any provision of this Agreement to any person or to particular circumstances is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances.

TENANT HEREBY, AND BANK BY ITS ACCEPTANCE HEREOF, EACH WAIVES THE RIGHT OF A JURY TRIAL IN EACH AND EVERY ACTION ON THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS, IT BEING ACKNOWLEDGED AND AGREED THAT ANY ISSUES OF FACT IN ANY SUCH ACTION ARE MORE APPROPRIATELY DETERMINED BY A JUDGE SITTING WITHOUT A JURY; FURTHER TENANT HEREBY CONSENTS AND SUBJECTS ITSELF TO THE JURISDICTION OF COURTS OF THE STATE OF ILLINOIS AND, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, TO THE VENUE OF SUCH COURTS IN THE COUNTY IN WHICH THE PREMISES IS LOCATED.

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IN WITNESS WHEREOF, the parties have executed this Agreement on the dates shown hereinbelow.

"BANK"

CHARTER ONE BANK, N.A.

By: _____
Its: _____

"TENANT"

TRI-POWDERCOATING, INC., an Illinois corporation

By: Andrew Clava
Its: SECRETARY TREASURER

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STATE OF ILLINOIS)
) SS:
COUNTY OF)

Before me, a Notary Public in and for said county and state, personally appeared Charter One Bank, N.A. a savings bank duly organized under the laws of the United States of America, by _____, its _____, who acknowledged that he/she is duly authorized and who acknowledged that he/she did sign the foregoing instrument and that the same is his/her free act and deed personally and as such officer and is the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at _____, Illinois, this _____ day of May, 2004.

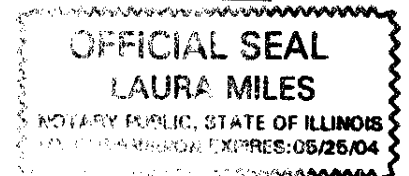
Notary Public

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

Before me, a Notary Public in and for said county and state, personally appeared **TRI-POWDERCOATING, INC.**, an Illinois corporation, by Andrew Chura, its Secretary/Treasurer, who acknowledged that he/she is duly authorized in the premises, and who acknowledged that he/she did sign the foregoing instrument and that the same is his/her free act and deed personally and as such officer and is the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Bridgeview, Illinois, this 6th day of May, 2004.

Laura Miles
Notary Public

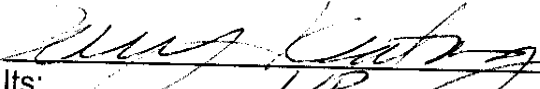


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IN WITNESS WHEREOF, the parties have executed this Agreement on the dates shown hereinbelow.

"BANK"

CHARTER ONE BANK, N.A.

By: 
Its: VP

"TENANT"

TRI-POWDERCOATING, INC., an Illinois corporation

By: _____
Its: _____

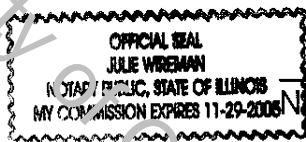
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STATE OF ILLINOIS)
) SS:
COUNTY OF)

Before me, a Notary Public in and for said county and state, personally appeared Charter One Bank, N.A. a savings bank duly organized under the laws of the United States of America, by Terry Keating, its VP, who acknowledged that he/she is duly authorized and who acknowledged that he/she did sign the foregoing instrument and that the same is his/her free act and deed personally and as such officer and is the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Elmhurst, Illinois, this 4th day of May, 2004.



Julie Wieman

Notary Public

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

Before me, a Notary Public in and for said county and state, personally appeared **TRI-POWDERCOATING, INC.**, an Illinois corporation, by _____, its _____, who acknowledged that he/she is duly authorized in the premises, and who acknowledged that he/she did sign the foregoing instrument and that the same is his/her free act and deed personally and as such officer and is the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Bridgeview, Illinois, this _____ day of April, 2004.

Notary Public

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EXHIBIT A

Legal Description

THAT PART OF THE EAST 1/2 OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 36, TOWNSHIP 38 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE WEST LINE OF SAID EAST 1/2 OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 36, 179.0 FEET (AS MEASURED ALONG THE WEST LINE) NORTH OF THE SOUTH LINE OF SAID SECTION 36; THENCE EAST ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE, 33.0 FEET TO THE POINT OF BEGINNING; THENCE NORTH ALONG A LINE 33.0 FEET EAST OF AND PARALLEL TO THE WEST LINE OF THE EAST 1/2 OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SAID SECTION 36, 1212.0 FEET; THENCE EAST ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE TO THE WEST LINE OF THE BALTIMORE AND OHIO CHICAGO TERMINAL RAILROAD RIGHT OF WAY (BEING THE EAST 33.0 FEET EAST 1/2 OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 36;) THENCE SOUTHERLY ALONG SAID LOT 1122.0 FEET; THENCE SOUTHWESTERLY ALONG A STRAIGHT LINE TO THE POINT OF BEGINNING (EXCEPT THAT PART DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SAID TRACT; THENCE NORTH ALONG THE WEST LINE OF SAID TRACT 429.0 FEET; THENCE EAST ALONG A LINE PARALLEL TO THE NORTH LINE OF SAID TRACT, 510.0 FEET; THENCE NORTHEASTERLY ALONG A STRAIGHT LINE 240.0 FEET MORE OR LESS TO A POINT ON THE EAST LINE OF SAID TRACT, SAID POINT BEING 559.89 FEET SOUTH OF THE NORTHEAST CORNER OF SAID TRACT; THENCE SOUTH ALONG THE EAST LINE OF SAID TRACT, 562.11 FEET TO THE SOUTHEAST CORNER OF SAID TRACT; THENCE WESTERLY ALONG THE SOUTH LINE OF SAID TRACT TO THE POINT OF BEGINNING, ALSO EXCEPT THE NORTH 543.00 FEET OF SAID TRACT), ALL IN COOK COUNTY, ILLINOIS.

Address: 8585 South 77th Avenue
Bridgeview, Illinois 60455

PIN: 18-36-306-009-0000