

UNOFFICIAL COPY



Doc#: 1521622067 Fee: \$54.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 08/04/2015 01:10 PM Pg: 1 of 8

This Document Prepared By
and After Recording Return To:

Matthew Manning
6111 West Dempster Street
Morton Grove, Illinois 60053

Property of Cook County Clerk's Office
SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE ONLY

8978199 CT 3.13 NWC

**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

Address: 1832 S. Normal, Chicago, IL

This SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT, made as of this 20th day of July, 2015 between INLAND BANK AND TRUST, an Illinois banking association and its successors and assigns, as the Lender (the "Bank"), C & R EQUIPMENT SERVICE, INC., an Illinois corporation, C&R EQUIPMENT SUPPLY, INC., an Illinois corporation and WELLWAY MANAGEMENT, LLC, an Illinois limited liability company (any one or more of these three said entities collectively referred to as "Tenants"), and CANALPORT, LLC an Illinois limited liability company ("Landlord").

WHEREAS, Bank is making a loan to Landlord to be evidenced by a Promissory Note (the "Note") payable to Lender and secured by a mortgage, deed of trust or deed to secure debt (the "Mortgage") encumbering the property described in Exhibit A and attached hereto and the buildings and improvements thereon (collectively the "Property");

WHEREAS, the Property is leased to one or more of the Tenants by that certain lease dated July, 20, 2015 between Landlord and one or more of the Tenants (the "Lease"); and

WHEREAS, the Bank will not make the loan to Landlord to be secured by the Mortgage unless Landlord and Tenant enter into this Agreement with the Bank;

NOW, THEREFORE, in consideration of the foregoing and the agreements set forth below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Bank, Landlord and Tenants agree as follows:

1. **Lease.** The Lease is in good standing, and is in full force and effect without any modification or amendment as of the date hereof. The Lease shall not be amended without the written approval of the Bank and shall not be terminated or canceled except as expressly provided in the Lease.

Box 400

fm

UNOFFICIAL COPY

2. **Subordination.** The Lease is and shall be subject and subordinate to the lien and all of the terms, covenants and conditions of the Mortgage, to all advances made or to be made thereunder, to the full extent of the principal sum and interest thereon from time to time to be secured thereby, and subject to the terms and conditions set forth in this Agreement.
3. **Non-disturbance.** So long a Tenants are not in default (beyond any periods given under the Lease to Tenant to cure such default) in (i) payment of any monetary obligation under the Lease, or (ii) the performance of any of the other terms, covenants or conditions with which Tenants are obligated to comply pursuant to the Lease, then the Bank agrees that:
- (a) The right of possession of Tenants to the Property shall not be affected or disturbed by the Bank in the exercise of any of its rights under the Mortgage or the Note, nor shall Tenants be named as a party defendant to any foreclosure of the lien of the Mortgage, nor in any way be deprived of its rights under the Lease except in accordance with the terms of the Lease and this Agreement; and
- (b) In the event that the Bank succeeds to the interest of Landlord under the Lease, the Lease shall not be terminated or affected thereby, and any sale of the Property by the Bank or pursuant to the judgment of any court in an action to enforce the remedies provided for in the Mortgage shall be made subject to the Lease and the rights of the Tenants thereunder.
- Tenants agree that this Agreement satisfies any condition or requirement in the Lease relating to the grant of non-disturbance in favor of Tenants.
4. **Recognition and Attornment.** If the Bank succeeds to the interest of Landlord under the Lease and all terms therein and the rights of Landlord thereunder, the Bank agrees that the Lease shall continue in effect, shall not be altered, terminated or disturbed, and Tenants shall be bound to the Bank under all the terms, covenants and conditions of the Lease for the balance of the term of the Lease as specified in the Lease (the "Term") with the same force and effect as if the Bank were the landlord under the Lease. In such event, Tenants shall be attorn to the Bank as its landlord under the Lease, such attornment to be effective and self-operative without the execution of any instruments on the part of the Bank or Tenants, immediately upon the Bank succeeding to the interest of Landlord under the Lease. Upon receipt by Tenants of such notice from the Bank, Tenants shall make all payments due by Tenant under the Lease to the Bank or as the Bank may in writing direct. The respective rights and obligations of Tenants and the Bank upon such attornment, to the extent of the then remaining balance of the Term, shall be and are the same as are then in existence, as set forth in the Lease.
- (a) **Rights under the Lease.** If the Bank shall succeed to the interest of Landlord in and to the Property or under the Lease, the Bank's responsibility under the Terms of the Lease will be effective only if the Bank takes ownership of the collateral Property.
5. **Collection of Rents and/or Possession of the Property.** Upon receipt of written notice from the Bank, Landlord and Tenants agree that the Tenants shall pay all rent and other amounts owing under the Lease to a bank account or accounts designated by the Bank. Any such payment by Tenants made in the manner directed by the Bank shall be credited against the rental obligations of Tenants made in the manner directed by the Bank. Any such payment by Tenants made in the manner directed by the Bank shall be credited against the rental obligations of Tenants under the Lease in the direct order of maturity of the rental and other installments due thereunder, and Landlord hereby releases Tenants from all claims and liabilities as to the payment of

UNOFFICIAL COPY

rent or any other amount due under the Lease if such payment is made pursuant to the written direction of the Bank.

6. Notice and Opportunity to Cure Landlord's Default.

(a) Tenants shall furnish to Bank copies of all notices which Landlord is entitled to receive under the Lease.

(b) Tenants shall notify the Bank in writing of the occurrence of any default by Landlord and shall permit the Bank the period afforded Landlord under the Lease (the "Cure Period") in which to cure such default prior to proceeding to exercise any of the rights or remedies of Tenants under the Lease, including termination of the Lease, abatement of rental payments due thereunder or performance of Landlord's covenants or obligations which Tenants assert to be in default.

7. Limitation of Bank's Liability. Notwithstanding anything to the contrary contained in this Agreement or the Lease, in the event of any default or breach by the Bank with respect to any of the terms, covenants and conditions of the Lease to be observed, honored or performed by the Bank as landlord, Tenants shall look solely to the estate and property of the Bank in the Property and the rents, issues or profits, for the recovery of any judgment (or any judicial procedures requiring the payment of money by the Bank) from the Bank, it being agreed that the Bank shall never be personally liable for any such judgment and that no property or assets of the Bank other than the Bank's interest in the Property shall be subject to levy, execution or other procedures for satisfaction of Tenants' remedies. The Bank shall not be required to respond in monetary damages from any of its properties or assets other than the Bank's interests in the Property.

8. Succession in Interest. For purposes of this Agreement, the Bank will be deemed to have succeeded to the interest of Landlord under the Lease upon (i) the transfer of title to the property to the Bank, whether by virtue of foreclosure, sale or transfer in lieu of foreclosure, or pursuant to the exercise of any rights or remedies under the Mortgage or otherwise; (ii) the occurrence of any other event as a result of which the Bank may acquire the right, title and interest of Landlord in and to the Property. If a purchaser other than the Bank acquires the Property upon foreclosure of the Mortgage, and if such purchaser provides written notice to Tenants that such purchaser shall be bound by this Agreement, then such purchaser shall have the same rights as the Bank would have if the Bank had purchased at the foreclosure sale.

9. Notices. All notices, requests and communications ("Notice") hereunder shall be given in writing and shall be delivered or mailed (i) personally, (ii) by certified or registered mail, postage prepaid, return receipt requested or (iii) by depositing same with a reputable overnight courier service, postage prepaid, for next business day delivery, to the parties at their addresses listed below. Notice shall be deemed given when delivered personally, or four (4) business days after being placed in in the United States mail, if sent by certified or registered mail, or one (1) business day after deposit with such overnight courier service. Any party may, by proper written notice hereunder to the other party, change the individual address to which such Notice shall thereafter be sent to such party.

(i) If to Landlord:

Canalport, LLC.
1882 S. Normal
Chicago, IL 60616
Tel: (312) 209-2429

UNOFFICIAL COPY

With a copy to:

Phyllis Franklin
 Chuhak & Tecson
 30 South Wacker Drive, Suite 2600
 Chicago, IL 60606
 Tel: (312) 855-4606
 Email: pfranklin@chuhak.com

(i) If to Tenants:

C&R Equipment Service, Inc.
 C & R Equipment Supply, Inc.
 Wellway Management, LLC
 1882 S. Normal
 Chicago, IL 60616
 Tel: (312) 209-2429

With a copy to:

Phyllis Franklin
 Chuhak & Tecson
 30 South Wacker Drive, Suite 2600
 Chicago, IL 60606
 Tel: (312) 855-4606
 Email: pfranklin@chuhak.com

(iii) If to the Bank:

INLAND BANK AND TRUST.
 Attn: Matthew Manning
 6111 West Dempster Street
 Morton Grove, Illinois 60053
 Tel: (847) 540-5272
 Fax: (847) 583-8650

With a copy to:

Lynn Lucchese-Soto
 Berger, Newmark & Fenchel PC
 1753 N. Tripp Ave.
 Chicago, IL 60639
 Tel: 312-782-5050
 Fax: 312-782-6491

- 10. Binding Agreement.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representative, successors and assigns where permitted by the Agreement. For purposes of this Agreement, all references to the "Bank" shall be deemed to include also any subsequent holder of the Mortgage who has given notice to Tenants of its ownership of the Mortgage and who has furnished to Tenants its mailing address and/or any other person succeeding to title to the Property and/or Lease encumbered by the Mortgage or any part thereof and who claim by, through or under the Bank, whether by virtue of foreclosure or sale or transfer in lieu of foreclosure, or pursuant to the exercise of any rights and remedies under the Mortgage or otherwise.
- 11. Attorney's Fees.** In the event any legal action or proceeding is commenced to interpret or enforce, the terms of, or obligations arising out of this Agreement, or to

UNOFFICIAL COPY

recover damages for the breach thereof, the party prevailing in any such action or proceeding shall be entitled to recover from the non-prevailing party all reasonable attorney's fees, costs and expenses incurred by the prevailing party as shall be plead and proven by such party and awarded by a court of competent jurisdiction.

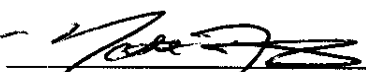
- 12. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- 13. **Headings.** The headings of this Agreement are for convenience of reference only.
- 14. **Modification.** This Agreement may not be modified other than by an agreement in writing signed by the parties hereto or their respective successors.
- 15. **Counterparts.** This Agreement may be signed in counterparts.
- 16. **Termination.** From and after payment in full of the loan secured by the Mortgage and the recording of a release or satisfaction thereof without the transfer of the Property to the Bank as a purchaser, this Agreement shall become void and of no further force or effect.
- 17. **Non-Merger.** Landlord, Tenants and the Bank agree that the fee (or ground leasehold title to the Property and the leasehold estate created by the Lease shall not merge but shall remain separate and distinct, notwithstanding the unification of said estates in Landlord, Tenants and the Bank or any third party by purchase, assignment or otherwise.
- 18. **Reliance by the Bank.** Tenants and Landlord acknowledge that the Bank shall rely on this Agreement in connection with the making of a mortgage loan to landlord.
- 19. **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Illinois wherein the Property is located.
- 20. **Recordation.** This Agreement may not be enforced against Tenants until it is recorded in the County in which the Property is located.

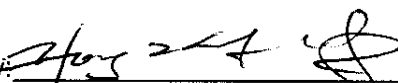
IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed effective as of the date and year first written above, although actually executed on the date(s) set forth in the acknowledgments below:

Dated as of this 20th day of July, 2015.

BANK
INLAND BANK and TRUST

LANDLORD:
CANAPORT, LLC:

By: 
Matthew Manning, Vice President

By: 
Its: manager

[Signatures continued next page]

UNOFFICIAL COPY

TENANTS:

C & R EQUIPMENT SERVICE, INC.,

C&R EQUIPMENT SUPPLY, INC.,

By: *Jack Krueger*
Its: president

By: *Hong Zhang Ng*
Its: president

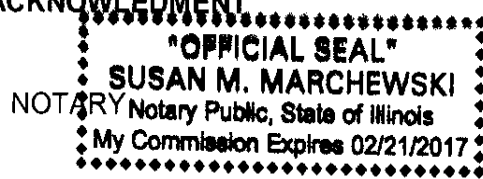
WELLWAY MANAGEMENT, LLC

By: *Hong Zhang Ng*
Its: manager

BANK NOTARY ACKNOWLEDGMENT

STATE OF ILLINOIS

COUNTY OF COOK



I SUSAN M. MARCHEWSKI, a Notary Public in and for the aforesaid State and County, hereby certify that MATTHEW MANNING, the Vice President of INLAND BANK AND TRUST, personally appeared before me this day and that by the authority duly given and on behalf of INLAND BANK AND TRUST, the foregoing instrument was signed and executed by him for the purposes therein expressed.

WITNESS my hand and notarial seal this 20 day of JULY, 2015

My commission expires:

02/21/2017

Susan M. Marchewski
Notary Public

LANDLORD NOTARY ACKNOWLEDGMENT

STATE OF ILLINOIS

COUNTY OF COOK



I SUSAN M. MARCHEWSKI, a Notary Public in and for the aforesaid State and County, hereby certify that HONG ZHANG NG, the Manager of CANAPORT, LLC, an Illinois limited liability company, personally appeared before me this day and that by the authority duly given and on behalf of CANALPORT, LLC, the foregoing instrument was signed and executed by him for the purposes therein expressed.

WITNESS my hand and notarial seal this 20 day of JULY, 2015

My commission expires:

02/21/2017

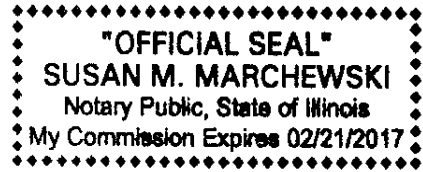
Susan M. Marchewski
Notary Public

UNOFFICIAL COPY

TENANTS NOTARY ACKNOWLEDGMENT

STATE OF ILLINOIS

NOTARY



COUNTY OF COOK

I SUSAN M. MARCHEWSKI, a Notary Public in and for the aforesaid State and County, hereby certify that TAK KWOK NG, the PRESIDENT of C & R EQUIPMENT SERVICE, INC, an Illinois corporation, personally appeared before me this day and that by the authority duly given and on behalf of C & R EQUIPMENT SERVICE, INC, the foregoing instrument was signed and executed by him for the purposes therein expressed.

WITNESS my hand and notarial seal this 20 day of JULY, 2015

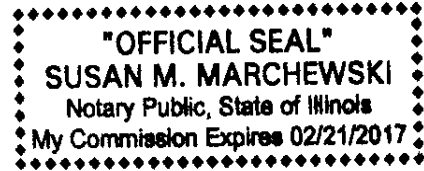
My commission expires:

Susan M. Marchewski
Notary Public

02/21/2017

STATE OF ILLINOIS

NOTARY



COUNTY OF COOK

I SUSAN M. MARCHEWSKI, a Notary Public in and for the aforesaid State and County, hereby certify that HONG ZHANG NG, the PRESIDENT of C&R EQUIPMENT SUPPLY, INC, an Illinois corporation, personally appeared before me this day and that by the authority duly given and on behalf of C&R EQUIPMENT SUPPLY, INC, the foregoing instrument was signed and executed by him for the purposes therein expressed.

WITNESS my hand and notarial seal this 20 day of JULY, 2015

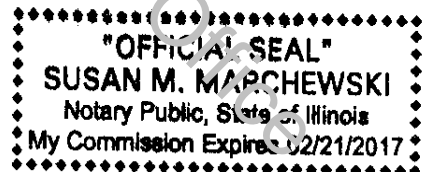
My commission expires:

Susan M. Marchewski
Notary Public

02/21/2017

STATE OF ILLINOIS

NOTARY



COUNTY OF COOK

I SUSAN M. MARCHEWSKI, a Notary Public in and for the aforesaid State and County, hereby certify that HONG ZHANG NG, the MANAGER of WELLWAY MANAGEMENT, LLC, an Illinois limited liability company, personally appeared before me this day and that by the authority duly given and on behalf of WELLWAY MANAGEMENT, LLC, the foregoing instrument was signed and executed by him for the purposes therein expressed.

WITNESS my hand and notarial seal this 20 day of JULY, 2015

My commission expires:

Susan M. Marchewski
Notary Public

2/21/2017

UNOFFICIAL COPYExhibit A

STREET ADDRESS: 1882 S NORMAL AVE
 CITY: CHICAGO COUNTY: COOK
 TAX NUMBER: 17-21-325-015-0000

LEGAL DESCRIPTION:**PARCEL 1:**

LOTS 14 TO 17, BOTH INCLUSIVE; LOTS 32 TO 41, BOTH INCLUSIVE, IN O. M. DORMAN'S SUBDIVISION OF THAT PART SOUTH OF THE NORTH 3 ACRES OF LOT 2 IN BLOCK 37 IN THE CANAL TRUSTEES' SUBDIVISION OF THE WEST 1/2 AND SO MUCH OF THE SOUTHEAST 1/4, AS LIES WEST OF SOUTH BRANCH OF THE CHICAGO RIVER, OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOTS 87 TO 96, BOTH INCLUSIVE, (EXCEPT THOSE PARTS OF SAID LOTS 95 AND 96 CONDEMNED OR TAKEN FOR STREET PURPOSE) IN JAMES H. REES' SUBDIVISION OF LOT 1 IN OUTLOT OR BLOCK 37 IN CANAL TRUSTEES' SUBDIVISION OF THE WEST 1/2 AND SO MUCH OF THE SOUTHEAST 1/4, AS LIES WEST OF SOUTH BRANCH OF THE CHICAGO RIVER, OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL:**TAX IDENTIFICATION NUMBER(S) :**

1	17-21-325-015-0000
1	17-21-325-016-0000
1	17-21-325-017-0000
1	17-21-325-018-0000
1	17-21-325-019-0000
1	17-21-325-020-0000
1	17-21-325-021-0000
1	17-21-325-022-0000
1	17-21-325-023-0000
1	17-21-325-024-0000
1	17-21-325-025-0000
1	17-21-325-026-0000
1	17-21-325-027-0000
1	17-21-325-028-0000
2	17-21-325-055-0000
2	17-21-325-054-0000