

UNOFFICIAL COPY

91643992

19⁰⁰m

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT, made and entered into this 25 day of NOVEMBER, 1991, by and among FOURSOME PARTNERS, a Kentucky General Partnership, whose address is 10101 Linn Station Road, STM Plaza West, Suite 200, Louisville, Kentucky 40223-3819, hereinafter referred to as "Landlord", THORNTON OIL CORPORATION, a Delaware corporation, whose address is 10101 Linn Station Road, STM Plaza West, Suite 200, Louisville, Kentucky 40223-3819, hereinafter referred to as "Tenant", and INB BANKING COMPANY, an Indiana corporation, whose address is 460 Spring Street, Jeffersonville, Indiana 47130, hereinafter referred to as "Lender";

W I T N E S S E T H:

A. Landlord has obtained from Lender a loan in the principal sum of FOUR MILLION DOLLARS (\$4,000,000.00), said loan (hereinafter "the Loan") having been made by Lender for the purpose of enabling Landlord to purchase parcels of real estate.

B. Payment of the Loan is evidenced and secured by various documents, including without limitation the following: a promissory note (hereinafter the "Note") executed and delivered by Landlord to Lender, a first mortgage (hereinafter the "Mortgage") executed and delivered by Landlord to Lender, and an assignment of rents and leases (hereinafter the "Assignment") executed and delivered by Landlord to Lender. All the aforesaid instruments and related documents are sometimes hereinafter collectively referred to as the "Loan Documents". Said Mortgage constitutes a lien on the real estate located in the County of Cook, State of Illinois, which real estate is more particularly described on

73-14-797 DI.

91643992

UNOFFICIAL COPY

01643992

"Exhibit A" attached hereto and made a part hereof by reference, and which real estate is hereinafter referred to as the "Land".

C. The Land is and shall be subject to a Lease (hereinafter the "Lease") between the Landlord and Tenant dated the 15th day of November, 1991.

D. Lender has agreed to consent to the Lease and has required, as a condition precedent to consenting to the Lease, that the Tenant shall subordinate said Lease to the lien created by the Mortgage and the Loan Documents.

NOW, THEREFORE, for and in consideration of the premises, and for a valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Landlord and Tenant agree that the right, title and interest and claim of Tenant under the Lease, and Tenant's leasehold estate thereunder are and shall be subject, inferior and subordinate in all respects to the Mortgage and other Loan Documents and the lien thereof securing the principal sum of \$4,000,000.00 and interest thereon as set forth in the Note, and any renewal, modification, consolidation, replacement, increase or extension of such Note, Mortgage and Loan Documents and all advances made or hereafter to be made by Lender upon the security thereof. Provided, that Lender agrees not to disturb the Tenant's rights and possession for so long as Tenant is not in default under the Lease. And provided further, that in the event of foreclosure or other suit or proceeding under or pursuant to the Mortgage, such proceeding shall not affect the rights of Tenant under the Lease if the Tenant is not in default under the Lease, and the purchaser

UNOFFICIAL COPY

0 1 6 4 3 9 9 2
shall take the Land subject to the Lease and shall be bound by all of the covenants of the Lease as though such purchaser were the original landlord under the Lease.

2. In the event of foreclosure of the Mortgage and a sale of the Land pursuant to the terms therein contained, Tenant agrees to attorn to and accept the purchaser at any such sale as Landlord under the Lease for the balance then remaining on the term of the Lease, subject to all of the terms and conditions of the Lease. This attornment shall be effective and self-operative without the execution of any other instrument on the part of any party hereto.

3. Tenant agrees to give prompt written notice to Lender of any default by Landlord under the Lease. Tenant further agrees to give such notices to any successor-in-interest of Lender, if such successor-in-interest has given written notice to Tenant of its acquisition of Lender's interest in the Mortgage and has provided an address to which such notices are to be sent. Tenant further agrees that Lender or any such successor-in-interest of Lender shall have a reasonable time (not less than sixty [60] days) to cure any such default in the event Landlord fails to cure such default within the grace period, if any, allowed under the Lease. Nothing herein contained shall be deemed or construed to impose any obligation on the part of Lender or such successor-in-interest of Lender to correct or cure any such default.

4. Tenant acknowledges notice of the execution and delivery by Landlord of the Assignment, conveying the rentals under the Lease as additional security for the Loan in the event of

UNOFFICIAL COPY

0 1 5 4 7 9 9 2

Landlord's default under the Loan Documents, and Tenant hereby expressly consents to the Assignment.

5. Landlord and Tenant agree that they will not, without the prior written consent of Lender: (a) modify the Lease or any extensions or renewals thereof; (b) terminate the Lease except as provided by its terms; (c) tender or accept a surrender of the Lease or make or accept a prepayment in excess of thirty (30) days of any rent thereunder; (d) subordinate or permit subordination of the Lease to any lien subordinate to the Mortgage and Loan Documents and agree that any such purported action without Lender's written consent shall be void as against Lender; or (e) mortgage or encumber the Lease or the leasehold estate created thereunder.

6. Tenant acknowledges that: (a) the Lease provided to the Lender is a true and correct copy of the Lease and the Lease sets forth the entire agreement between Landlord and Tenant; (b) the Lease is in full force and effect in accordance with its terms and has not been amended, modified, terminated, assigned or sublet; (c) that the rentals in the Lease have not been modified; (d) that there are no outside agreements that would affect Lender or any of its rights to the Lease or premises; (e) that there are no disputes existing as to the Lease; (f) there exists no default by either party to the Lease, nor any state of facts which with the giving of notice, passage of time or both would constitute a default under the Lease; (g) Landlord has complied with the terms of the Lease to the date of this Agreement; (h) no charges, set-offs or other credits exist against rentals payable under the Lease nor have any rentals been prepaid more than thirty (30) days in advance.

UNOFFICIAL COPY

9 1 6 4 3 9 9 2

7. The agreements herein contained shall be binding upon and shall inure to the benefit of the parties hereto, their respective heirs, personal representatives, successors, and assigns.

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

FOURSOME PARTNERS,
a Kentucky General Partnership

By: *Paul J. Perconti*
Paul J. Perconti,
Managing Partner

"Landlord"

THORNTON OIL CORPORATION,
a Delaware corporation

By: *David M. Brauckmann*
David M. Brauckmann,
Vice President of Finance

ATTEST:

By: *David A. Bridgers*
David A. Bridgers,
General Counsel

"Tenant"

INB BANKING COMPANY

By: *Thomas G. Fangman*
Thomas G. Fangman,
Assistant Vice President

"Lender"

STATE OF KENTUCKY)
) SS.
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged before me this 26th
day of November, 1991 by Paul J. Perconti, Managing

UNOFFICIAL COPY

9 1 6 4 3 9 9 2

Partner, on behalf of Foursome Partners, a Kentucky General Partnership.

My commission expires: 1-20-95

J. Raven Mattindley
Notary Public, Jefferson County,
Kentucky

(SEAL)

STATE OF KENTUCKY)
) SS.
COUNTY OF JEFFERSON

The foregoing instrument was acknowledged before me this 20th day of November, 1991 by David M. Brauckmann and by David A. Bridgers, Vice President of Finance and General Counsel respectively of Thornton Oil Corporation, a Delaware corporation, on behalf of the corporation.

My commission expires: 1-20-95

J. Raven Mattindley
Notary Public, Jefferson County,
Kentucky

(SEAL)

STATE OF INDIANA)
) SS.
COUNTY OF CLARK

The foregoing instrument was acknowledged before me this 25th day of November, 1991 by Thomas G. Fangman, Assistant

91643992

UNOFFICIAL COPY

9 1 6 4 3 9 9 2

Vice President of INB Banking Company, an Indiana corporation, on behalf of the corporation.

My commission expires: 2-15-92

Cynthia Mickey Smith
Notary Public, Clark County,
Indiana

CYNTHIA MICKAY SMITH
Typed or Printed Name of Notary

County of Residence
of Notary: CLARK

(SEAL)

This instrument prepared by:

Taustine, Post, Sotsky, Berman, Fineman & Kohn
Attorneys at Law
812 Marion E. Taylor Building
Louisville, Kentucky 40202-3083
(502) 589-5760

Handwritten note

By: Joseph E. Fineman
Joseph E. Fineman

Property of Cook County Clerk's Office

C:\JEF\INB\FOUR.SB2-112291

UNOFFICIAL COPY

91643992

EXHIBIT A

Located in the State of Illinois, County of Cook, and described as follows:

The South 266.90 feet of the North 333.45 feet of Block 14 (except that part of Block 14 taken for the widening of Cicero Avenue) in Arthur T. McIntosh's Addition to Midlothian Farms, being a subdivision of the Southwest 1/4 of the South East 1/4 and the East 1/2 of the South East 1/4 of Section 9, the West 1/2 of the Southwest 1/4 and the West 33/80 of the East 1/2 of said Southwest 1/4 of Section 10, Township North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois, excepting therefrom all aboveground and underground buildings and improvements now located on the land.

28-10-300-095-0000

17855 Cicero Ave,
Oak Forest, Ill

C:\JEPINB\FOUR-EX2.A 112291

91643992