

# UNOFFICIAL COPY

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

MAY THIS AGREEMENT, made as of this 12 day of MAY, 1992, by and between K & P PROPERTIES, an Indiana General Partnership ("Owner"), CAST NORTH AMERICA '83 (TRUCKING), LTD., a Canadian corporation ("Lessee"), and FORT WAYNE NATIONAL BANK, a national banking association ("Lender");

W I T N E S S E T H :

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WHEREAS, Owner is the owner and holder of the lessor's interest, and Lessee is the owner and holder of the lessee's interest, under that certain Lease Agreement (the "Lease") dated January 14, 1992 (Lessee's interest under the Lease being hereinafter referred to as the "Lease Rights"), covering that certain real property (the "Property") located in Cook County, Illinois, and more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, a portion of the Property is encumbered by a Mortgage dated March 31, 1977, given by Owner's predecessor in title to Continental Illinois National Bank and Trust Company of Chicago, recorded April 15, 1977, as Document Number LR 2931930 in the Office of the Recorder of Cook County, Illinois, which Mortgage, and the note secured thereby, in the original principal sum of \$450,000.00, were assigned and endorsed to Lender on or about March 31, 1977; and

WHEREAS, Owner has executed or is about to execute a Mortgage Modification Agreement (the "Agreement"), modifying the Mortgage, and a separate Assignment of Rents and Leases (the "Assignment"), for the purpose of further securing a certain Mortgage Note in the principal sum of TWO HUNDRED TWO THOUSAND SEVEN HUNDRED NINETY-SEVEN AND NO/100 DOLLARS (\$202,797.00) in favor of Lender, representing a renewal and modification of the balance of indebtedness due under the original \$450,000 note for an additional term of five (5) years, payable with variable interest and upon the terms and conditions described therein, which Agreement and Assignment are to be recorded concurrently herewith; and

WHEREAS, Lender is willing to renew and extend said loan provided the Mortgage, as modified (as to that portion of the Property covered thereby) and the Assignment constitute liens upon the Property prior and superior to the Lease Rights, and provided that Lessee will specifically and unconditionally subordinate and subject the Lease Rights created by the Lease, together with all rights and privileges of Lessee thereunder, to the lien of the Mortgage and Assignment in favor of Lender; and

WHEREAS, it is to the mutual benefit of the parties herein that Lender renew and extend such loan to Owner, and Lessee is willing that the Mortgage, as modified (as to that portion of the Property covered thereby), and the Assignment, shall constitute a lien upon the Property which is unconditionally prior and superior to the Lease Rights;

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties herein and other valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, and in order to induce Lender to renew and extend the loan above referred to, it is hereby declared, understood and agreed as follows:

1. Lessee consents to the Agreement and agrees that the Mortgage, as modified and extended by the Agreement, and any renewals, extensions, modifications, substitutions and replacements thereof, shall unconditionally be and remain at all times a lien on that portion of the Property covered thereby, prior and superior to the Lease Rights, and said Lease Rights, together with all rights and privileges of Lessee arising therefrom, are hereby

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subjected and made subordinate to the lien of the Mortgage, as modified and extended by the Agreement.

2. Lessee consents to the Assignment and agrees that such Assignment shall unconditionally be and remain at all times a lien on the Property, prior and superior to the Lease Rights, and said Lease Rights, together with all rights and privileges arising therefrom, are hereby subjected and made subordinate to the lien of the Assignment.

3. From and after the date hereof, Lessee will not terminate or seek to terminate the Lease by reason of any act or omission of Owner thereunder until Lessee shall have given written notice, by registered or certified mail, return receipt requested, of said act or omission to Fort Wayne National Bank, Commercial Loan Department, 110 West Berry Street, P.O. Box 110, Fort Wayne, Indiana 46801, Attention: Greg M. Riker, Vice President, or to such other person or address as Lender may specify by written notice to Lessee. Lender shall have the right, but shall not be obligated, to cure such act or omission on behalf of Owner within the same period of time after Lender's receipt of such notice as is provided to Owner under the terms of the Lease.

4. Notwithstanding the subordination referred to herein, so long as the Lease shall be in full force and effect and Lessee is not in default in the performance of any of the Lessee's obligations thereunder, Lender will not, by foreclosure or otherwise, deprive Lessee of possession or the right to possession of the Property and, in the event of a default under the Mortgage, Lessee shall not be made a party in any action or proceeding to obtain possession of all or any part of the Property, or be affected by any foreclosure of the Mortgage, and, notwithstanding such foreclosure, action or proceeding, the Lease shall continue in full force and effect as a direct lease between Lender or the person (a "Purchaser") acquiring the interests of Lender or Owner in the Property as a result of any such foreclosure, action or proceeding, as lessor, and Lessee, as lessee, upon all of the same terms, covenants and conditions contained in the Lease.

5. Lessee agrees that, should Lender or a Purchaser acquire title to the Property, or any portion thereof, or acquire or succeed to the Lease Rights, neither Lender nor such Purchaser shall be (a) liable for any act or omission of Owner or any other prior owner or lessor of the Property, or any agents or contractors thereof, including but not limited to any act or omission related to the removal, indemnification or other obligations of Owner with respect to certain Abandoned Underground Fuel Storage Tanks, as provided in paragraph 6.1 of the Lease; or (b) subject to any offsets or defenses which Lessee might have against any such prior lessor, including, without limitation, the payment of any rent or additional rent which Lessee might have paid to any such prior lessor; or (c) bound by any amendment to or modification of the Lease made without Lender's prior written consent thereto, which consent Lender agrees not to unreasonably withhold.

6. If the interest of the lessor under the Lease shall be transferred by reason of foreclosure or any proceedings for enforcement of the Mortgage, in such event:

(a) Lessee shall be bound to Lender, Purchaser or their successors (as the case may be) under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals thereof which may be effected in accordance with any options therefor contained in the Lease, with the same force and effect as if Lender or such Purchaser were the lessor under the Lease. Lessee does hereby agree to attorn to such Purchaser (including Lender if it be the Purchaser), as its lessor, said attornment to be effective and self-operative without the execution of any further instruments upon Purchaser's succeeding to the interest of the lessor under the

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not therefore asserted against Lessor

provided, however, that paragraph 6.1 shall remain in full force and effect

ADVANCE

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\*502 \*E \*-92-457435  
COOK COUNTY RECORDER

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Lease, except Lessee hereby agrees that it will promptly execute and deliver any instruments which Purchaser may reasonably request to evidence such attornment; and

(b) Lender or Purchaser shall be bound to Lessee under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals thereof which may be effected in accordance with any provision therefor in the Lease.

7. Lessee covenants for the benefit of Lender as follows: (a) that it will not, without the express written consent of Lender, do the following: (i) cancel, terminate or surrender the Lease, except as provided therein and then only after giving Lender written notice of the default giving rise to such cancellation or termination and an opportunity for Lender to cure such default as herein provided; or (ii) enter into any agreement with Owner, its successors or assigns, to reduce the rent called for thereunder; or (iii) prepay any rent for more than one month.

8. ~~The voluntary or other surrender of the Lease by Lessee, or a mutual cancellation thereof, or a termination by Owner, or the foreclosure of the Mortgage, or acquisition of title by Lessee or any subtenant shall not work a merger of either the Lease or any sublease thereunder, nor affect the liability of Lessee or any guarantor of the Lessee's obligations under the Lease.~~

9. Lender would not make its loan above described without this subordination agreement.

10. This agreement shall be the whole and only agreement with regard to the subjection and subordination of the Lease Rights created by and in the Lease together with all rights and privileges of Lessee arising therefrom to the lien of the Mortgage and Assignment, and shall supersede and cancel, but only insofar as would affect the priority between the Lease Rights and the Mortgage and Assignment, any prior agreement as to such subjection or subordination, including, but not limited to, those provisions, if any, contained in the Lease which provide for the subjection or subordination of said Lease Rights created in said Lease to a mortgage or mortgages.

11. This Agreement shall continue in full force and effect after any refinancing, renewal, extension or modification by Lender of the loan secured by the Mortgage and Assignment, or after the execution of any new mortgage and assignment executed in connection with such refinancing, renewal, extension or modification, to the same extent as the Mortgage and Assignment herein described.

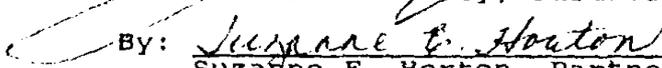
12. Neither this Agreement nor any act or omission of any party hereunder shall affect the liability of any guarantor to Lender for the payment of the loan secured by said Mortgage and Assignment.

IN WITNESS WHEREOF, the parties hereto have executed this Subordination, Non-Disturbance and Attornment Agreement the day and year first above written.

OWNER:

K & P PROPERTIES, an Indiana  
General Partnership

By:   
Thomas W. Kelley, Partner

By:   
Suzanne E. Horton, Partner

No action described in Para. 7 above, if taken  
Without written authorization of Lender, shall

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By: FORT WAYNE NATIONAL BANK, as  
Trustee of the James K. Posther  
Trust, Partner

By: Doris H. Albertson  
DORIS H. ALBERTSON  
TRUST OFFICER

LESSEE:

CAST NORTH AMERICA '83 (TRUCKING),  
LTD., a Canadian corporation

By: John M. Majchrowicz  
John M. MAJCHROWICZ

Its: Vice President

LENDER:

FORT WAYNE NATIONAL BANK,  
a national banking association

By: Greg M. Riker  
Greg M. Riker

Its: Vice President

STATE OF INDIANA )  
                          ) SS.  
COUNTY OF ALLEN )

Personally appeared before me, the undersigned, a Notary Public in and for said County and State, Thomas W. Kelley, Suzanne E. Horton, and Fort Wayne National Bank, as Trustee of the James K. Posther Trust, by Doris H. Albertson, being all of the Partners of K & P PROPERTIES, an Indiana General Partnership, the Owner above, and acknowledged the execution of the above and foregoing Subordination, Non-Disturbance and Attornment Agreement on behalf of said Partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal, this 10th day of May, 1992.

My commission expires: June 3, 1994

Thomas W. Kelley  
(Notary Public)  
Thomas W. Kelley  
(Printed Signature)  
County of Residence: Allen

Personally appeared before me, the undersigned, a Notary Public in and for said County and State, JOHN M. MAJCHROWICZ, the Vice President of CAST NORTH AMERICA '83 (TRUCKING), LTD., a Canadian corporation, the Lessee above, and acknowledged the execution of the above and foregoing Subordination, Non-Disturbance and Attornment Agreement on behalf of said Corporation.

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The North 600 feet (as measured on the East line thereof) of the West 240 feet of the East 1072 feet (as measured on the North line thereof) of that part of the Southeast 1/4 of the Northeast 1/4 of Section 25, Township 41 North, Range 11 East of the Third Principal Meridian, lying Northerly of a line 82.5 feet Northeasterly of and parallel with the following described line: Beginning at a point in the West line of said Southeast 1/4 of the Northeast 1/4, 345.5 feet North of the Southwest corner thereof, and running thence 69 degrees 59 minutes East 989.95 feet to a point in the South line of the Northeast 1/4 of said Section 25, said point being 929.16 feet East of the Southwest corner of said Southeast 1/4 of the Northeast 1/4 of Section 25 aforesaid, in Cook County, Illinois.

PTN# 08-25-203-013

Address: Write # 111 Prospect Rd.  
Oak Grove, IL

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Return To: Fort Wayne National Bank  
ATTN: Sally Skinner  
P. O. Box 110  
Fort Wayne, IN 46801