

UNOFFICIAL COPY

RECORDING REQUESTED BY AND)
 WHEN RECORDED MAIL TO:)
)
 Bank of America National)
 Trust and Savings Association)
 California Real Estate)
 Services Group No. 9372)
 50 California Street,)
 12th Floor)
 San Francisco, CA 94111)
 Attn: Bonnie Pomerantz)
 Loan No. 3015559)

96339103 : DEPT-01 RECORDING \$37.50
 : T#0001 TRAN 3728 05/03/96 12:21:00
 : #2854 # RC *-96-339103
 : COOK COUNTY RECORDER

SPACE ABOVE FOR RECORDER'S USE.

SUBORDINATION AGREEMENT AND TENANT ESTOPPEL

(Subordination of Lease to Trust Deed)

3720

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF A SECURITY INSTRUMENT.

THIS SUBORDINATION AGREEMENT is made April 5, 1996 by ~~Heritage~~ Pullman Bank as Trustee under Trust #71-82166, owner of the land and lessor under the Lease referenced below ("Mortgagor"), and The Camp Company, Inc., an Illinois Corporation, lessee under the Lease referenced below ("Tenant").

1. Preliminary Statement

CIT

(a) Mortgagor (as lessor) and Tenant have executed a lease dated December 1, 1994 ("Lease"), covering real property ("Property") in the County of Cook, State of Illinois, a legal description of which is attached hereto as Exhibit "A" and incorporated by reference, for the term and upon the terms and conditions therein set forth; and

4/19/96 git

(b) Mortgagor has executed, or is about to execute, a mortgage with assignment of rents and leases, fixture and personalty security agreement and fixture financing statement ("Mortgage") and beneficiary of Mortgagor has executed, or is about to execute, a promissory note ("Note") dated April 5, 1996 evidencing a loan ("Loan") in the amount of \$1,500,000.00, in favor of Bank of America National Trust and Savings Association ("Bank") payable with interest and upon the terms and conditions described therein, which Mortgage is or will be recorded; (the Note, Mortgage, the loan agreement ("Loan Agreement") and other documents and instruments for the Loan are the "Loan Documents"); and

(c) It is to the mutual benefit of the parties hereto that Bank make the Loan to beneficiary of Mortgagor; and Tenant agrees that the Mortgage securing the same shall, when recorded, constitute a lien or charge upon the Property which is unconditionally prior and superior to the Lease and to the leasehold estate created thereby.

23-12-302-014
915
014

MAY 03 1996

96339102

96339103

UNOFFICIAL COPY

EXHIBIT

Property of Cook County Clerk's Office

0000000000

0000000000

UNOFFICIAL COPY

2. Subordination

For valuable consideration and in order to induce Bank to make the Loan, it is hereby agreed that:

(a) The Mortgage securing the Loan Documents and any other obligations now or hereafter secured by the Mortgage and any renewals, extensions, modifications and supplements thereto including any obligatory, optional or additional advances shall unconditionally be and remain at all times a lien or charge on the Property prior and superior to the Lease, to the leasehold estate created thereby and to all rights and privileges of Tenant thereunder; and said Lease, the leasehold estate created thereby together with all rights and privileges of Tenant thereunder are hereby subjected and made subordinate to the lien or charge of the Mortgage in favor of Bank and any renewals, extensions, modifications and supplements thereto, which Tenant agrees can be made without notice to or consent of Tenant.

(b) Bank would not make its Loan without this subordination agreement.

(c) Tenant warrants and represents to Bank that the obligations of Tenant and Mortgagor hereunder are not subject to any conditions precedent or subsequent, other than conditions which have been fully satisfied as of the date of this Agreement.

(d) This subordination agreement shall be the whole and only agreement with regard to the subordination of the Lease and the leasehold estate created together with all rights and privileges of Tenant thereunder to the lien or charge of the Mortgage and shall supersede and cancel (but only insofar as would affect the priority between the Lease and the Mortgage) any prior agreements as to such subordination, including any provisions contained in the Lease which provide for the subordination of the Lease and the leasehold estate created thereby to a Mortgage or to a mortgagor. This Agreement may only be modified or amended by a writing signed by the parties hereto and approved in writing by Bank.

(e) Tenant declares, agrees and acknowledges that:

(1) Tenant consents to and approves (i) the Note and Mortgage and (ii) the agreements between beneficiary of mortgagor and Bank for the disbursement of the proceeds of the Loan, including but not limited to the Loan Agreement and any escrow agreement

(2) Bank in making disbursements pursuant to its Loan is under no obligation or duty to, nor has Bank represented that it will, see to the application of such proceeds by the person or persons to whom Bank disburses such proceeds; any application or use of such proceeds for purposes other than those provided for in any Loan Document shall not defeat the subordination herein made, in whole or in part; and

(3) Tenant intentionally and unconditionally waives, relinquishes, subjects and subordinates the Lease and leasehold estate created thereby together with all rights and privileges of Tenant thereunder in favor of the lien or charge upon the Property of the Mortgage, and any renewals, extensions, modifications and supplements thereto, and understands that in reliance upon and in consideration of this waiver, relinquishment, subjection and subordination, specific

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

loans and advances are being and will be made and, as part thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment, subjection, and subordination.

3. Tenant Estoppel

Tenant certifies to Bank that as of the date of this Agreement:

(a) The attached Exhibit B accurately identifies the Lease and all modifications, amendments, supplements, side letters, addenda and riders of and to it. The Lease constitutes the entire agreement between Tenant and Mortgagor with respect to the Property, is in full force and effect and has not been modified, changed, altered or amended except as indicated in Exhibit B. There are no other agreements, written or oral, which affect Tenant's occupancy of the Property.

(b) The term of the Lease commenced on December 1, 1994, and will expire on November 30, 1999, including any presently exercised option or renewal term. Tenant has no option or right to renew, extend or cancel the Lease, or to lease additional space in or near the Property, or to use any parking, except as may be specified in the Lease.

(c) Tenant has no option or preferential right to purchase all or any part of the Property and has no right or interest with respect to the Property other than as Tenant under the Lease.

(d) The annual minimum rent currently payable under the Lease is \$126,960.00 and such rent has been paid through _____, 19__.

(e) Additional rent is payable under the Lease for (i) operating, maintenance or repair expenses, (ii) property taxes, (iii) consumer price index cost of living adjustments, or (iv) percentage of gross sales adjustments (i.e., adjustments made based on underpayments of percentage rent). Such additional rent has been paid in accordance with Borrower's rendered bills through _____, 19__. The base year amounts for additional rental items are as follows: (1) operating, maintenance or repair expenses \$ _____, (2) property taxes \$ _____, and (3) consumer price index _____ (indicate base year CPI level).

(f) Tenant has made no agreement with Mortgagor or any agent, representative or employee of Mortgagor concerning free rent, partial rent, rebate of rental payments or any other similar rent concession except as expressly set forth in the Lease. Tenant is not entitled to any credit against any rent or other charge or rent concession under the Lease except as set forth in the Lease. No rental payments have been made more than one month in advance.

(g) Mortgagor currently holds a security deposit in the amount of \$ _____ which is to be applied by Mortgagor or returned to Tenant in accordance with the Lease. Tenant acknowledges and agrees that Bank shall have no responsibility or liability for any security deposit, except to the extent that any security deposit shall have been actually received by Bank.

(h) All insurance required of Tenant under the Lease has been provided by Tenant and all premiums have been paid.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(i) To the best knowledge of Tenant, no party is in default under the Lease and no event has occurred which, with the giving of notice or passage of time or both, would constitute such a default.

(j) The interest of Tenant in the Lease has not been assigned or encumbered.

(k) All contributions required by the Lease to be paid by Mortgagor to date for improvements to the Property have been paid in full and all of Mortgagor's obligations with respect to tenant improvements have been fully performed. Tenant has accepted the Property, subject to no conditions other than those set forth in the Lease.

(l) Neither Tenant nor any guarantor of Tenant's obligations under the Lease is the subject of any bankruptcy or other voluntary or involuntary proceeding, in or out of court, for the adjustment of debtor-creditor relationships.

(m) Tenant represents and warrants that it has not used, generated, released, discharged, stored or disposed of any Hazardous Substances on, under, in or about the Property, other than in the ordinary and commercially reasonable course of Tenant's business in compliance with all applicable laws. Except for any such legal and commercially reasonable use by Tenant, Tenant has no actual knowledge that any Hazardous Substance is present, or has been used, generated, released, discharged, stored or disposed of by any party, on, under, in or about such Property. As used herein, "Hazardous Substance" means any substance, material or waste (including petroleum and petroleum products) which is designated, classified or regulated as being "toxic" or "hazardous" or a "pollutant" or which is similarly designated, classified or regulated, under any federal, state or local law, regulation or ordinance.

(n) Tenant hereby acknowledges that Mortgagor intends to or has encumbered the Property with a Mortgage in favor of Bank. Tenant acknowledges the right of Mortgagor, Bank and any and all of Mortgagor's present and future lenders to rely upon the statements and representations of Tenant contained in this document. Tenant hereby agrees to furnish Bank with such other and further estoppel certificates as Bank may reasonably request.

NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR LEASE TO OBTAIN A LOAN A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE PROPERTY.

Tenant:

The Camp Company, Inc.
an Illinois Corporation

By: Richard Campagna
Richard Campagna
President

Mortgagor:

~~Heritage~~ Pullman Bank as
Trustee under Trust #71-82166
and ~~not individually~~
By: Katharine Otteson
Name: Katharine Otteson
Title: Trust Officer

(***ALL SIGNATURES MUST BE ACKNOWLEDGED***)

THE EXCULPATORY CLAUSE ON THE REVERSE
SIDE HEREOF IS HEREBY INCORPORATED AS
PART OF THIS DOCUMENT

96339103

UNOFFICIAL COPY

Property of Cook County Clerk's Office

96339103

This Agreement is signed by Pullman Bank and Trust Company not individually but solely as Trustee under a certain Trust Agreement known as Trust No. 71-82166

Said Trust Agreement is hereby made a part hereof and any claims against said Trustee or any person interested beneficially or otherwise in said property which may result herefrom, shall be payable only out of any trust property which may be held thereunder. Any and all personal liability of the Pullman Bank and Trust Company, or any person interested beneficially or otherwise in said property is hereby expressly waived by the parties hereto and their respective successors and assigns.

UNOFFICIAL COPY

EXHIBIT A LEGAL DESCRIPTION

LOTS 9, 10 AND 11 IN K AND K INDUSTRIAL PARK SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4 AND THE SOUTHWEST 1/4 OF SECTION 12, TOWNSHIP 37 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT NUMBER 25045447, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

96339103

UNOFFICIAL COPY

Property of Cook County Clerk's Office

96009103

UNOFFICIAL COPY

EXHIBIT B
LEASE AND ANY MODIFICATIONS, AMENDMENTS,
SUPPLEMENTS, AND SIDE LETTERS

Property of Cook County Clerk's Office

96339103

UNOFFICIAL COPY

Property of Cook County Clerk's Office

96339103

UNOFFICIAL COPY

ACKNOWLEDGMENT

STATE OF ~~California~~ Illinois)
COUNTY OF Cook)

On April 25, 1996 before me, (**INSERT NAME OF NOTARY PUBLIC OR NAME AND TITLE OF OTHER NOTARIZING OFFICER**) Barbara A. Arvia [, a Notary Public in and for the State of California,] personally appeared (**INSERT NAME(S) OF PERSONS(S) SIGNING THE DOCUMENT**) Katharine Otteson, Trust Officer ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person~~s~~ whose name~~s~~ [is/~~are~~] subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ signature[s] on the instrument the person[s], or the entity upon behalf of which the person[s] acted, executed the instrument.

WITNESS my hand and official seal.

Barbara A. Arvia

Signature



(Space above for Official notarial seal)

96339103

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

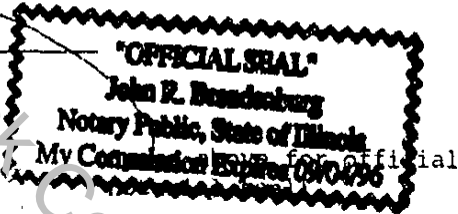
ACKNOWLEDGMENT

STATE OF CALIFORNIA)
COUNTY OF)

On April 30, 1996 before me, (**INSERT NAME OF NOTARY PUBLIC OR NAME AND TITLE OF OTHER NOTARIZING OFFICER**) John R. Brandenburg [a Notary Public in and for the State of California] personally appeared (**INSERT NAME(S) OF PERSON(S) SIGNING THE DOCUMENT**) J. Richard Campagna (and Robert C. Camp), personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) [is/are] subscribed to the within instrument and acknowledged to me that [he/she/they] executed the same in [his/her/their] signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

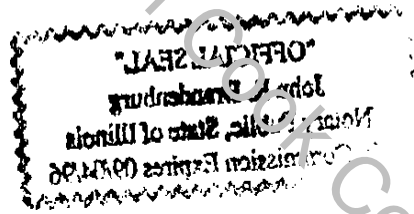
John R. Brandenburg
(Signature)



96339103

UNOFFICIAL COPY

Property of
County Clerk's Office



96339103