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Cook County Recorder

47.00



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**Prepared by and
after Recording
Return to:**

Cynthia Jared, Esq.
Sachnoff & Weaver, Ltd.
30 S. Wacker Drive
Suite 2900
Chicago, Illinois 60606

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

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "**Agreement**") made by and between Tenneco Packaging Specialty and Consumer Products, Inc., a Delaware corporation (formerly known as Packaging Corporation of America) (hereinafter referred to as "**Tenant**"), CORUS BANK, N.A. ("**Lender**") and 43 West Hintz Road, L.L.C., a Delaware limited liability company ("**Landlord**").

RECITALS:

- DI 7831496
JB
- A. By a certain Industrial Space Lease dated as of September 1st, 1989, (said lease as heretofore amended, the "**Lease**"), Tenant, as lessee, has leased certain premises commonly known as 43 West Hintz Road, Wheeling, Illinois (the "**Leased Premises**"), which represents part of the improvements located or to be located on the land legally described on Exhibit A attached hereto and by this reference incorporated herein, upon the terms and conditions and for the rental, as more fully set forth in the Lease.
- B. A memorandum of the Lease was recorded as Document Number 26404131.
- C. Landlord has or is about to acquire the Leased Premises and has received or shall receive an assignment of the Lease.
- D. Landlord, by its Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement (the "**Mortgage**"), to be recorded in the Office of the Recorder of Deeds of Cook County, Illinois, has granted and conveyed or shall grant and convey unto Lender, all of its right, title and interest in and to the Leased

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Premises to secure the payment of its Note in the principal amount of \$6,000,000 payable to Lender, with principal and interest payable as therein provided.

E. Lender, as a condition to making advances on the loan has required the execution of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and to induce Lender to make said loan, the parties do hereby covenant and agree as follows:

1. The Lease and all rights and titles of Tenant thereunder are and shall be subject and subordinate to the lien of the Mortgage and to all renewals, modifications, consolidations, replacements, and extensions thereof, to the full extent of the principal sum secured thereby, interest thereon, and all other amounts and sums secured thereby. Tenant further waives all rights and claims to assert that the Lease or any provision thereof is superior to the lien of or to any other provision of the Mortgage or any renewal, increase, replacement, consolidation, modification or extension thereof.

2. Notwithstanding such subordination, Tenant agrees that any action by Lender to enforce the Mortgage by reason of default thereunder will not terminate the Lease (unless Lender elects to terminate the Lease in the event of a default by Tenant which is not cured within any applicable cure period), or invalidate or constitute a breach of any of the terms thereof, nor give rise to any right of Tenant to terminate the Lease nor constitute a breach or invalidation of the Lease. If the Mortgage shall be foreclosed, or a voluntary conveyance in lieu of foreclosure shall be delivered, or a sale of the Leased Premises pursuant to the rights granted to Lender in the Mortgage, Tenant does, upon receipt of documentation thereof, hereby attorn to the successors and assigns of Landlord (successors and assigns being herein defined to include Lender, Lender's nominee, assignee and/or purchaser at any sale of the Leased Premises). Tenant's attornment by these presents is effective and self-operative without the execution of any other instruments on the part of the parties hereto.

3. If Lender (or any other party) shall acquire title to the Property or shall succeed to Landlord's interest in the Lease, whether through foreclosure of the Mortgage, conveyance in lieu of foreclosure, or otherwise, Lender (or such other party) shall not disturb Tenant's possession of the Leased Premises and all rights and titles of Tenant under the Lease shall continue, provided Tenant is not in default in the payment of any sums due from Tenant under the Lease or performance of any other obligation of Tenant under the Lease (beyond any period expressly given Tenant to cure such default). If Tenant's possession is not disturbed, Lender (or such other party) shall thereupon, and without the necessity of further attornment or other act or agreement, be substituted as Tenant's landlord under the Lease, and shall be entitled to the rights and benefits and subject to the obligations thereof; provided that neither Lender nor any other party shall be:

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(a) liable for any act or omission of any prior landlord under the Lease (including Landlord) or damages (actual, punitive or consequential) arising therefrom; or

(b) subject to any offsets or defenses which Tenant might have against any prior landlord under the Lease (including Landlord); or

(c) bound by any amendments or modification of the Lease made without Lender's prior written consent; or

(d) bound by or required to credit Tenant with any prepayment of rent (in excess of the current month) or any deposit, rental security or any other sums deposited with any prior landlord under the Lease (including Landlord) unless said sum is actually received by Lender; or

(e) liable for the completion of any construction of the Leased Premises or tenant improvements to the Leased Premises commenced or agreed to by any prior landlord (including Landlord); or

(f) liable for the payment of any fees or penalties payable by any landlord (including Landlord) to Tenant, including but not limited to fees or penalties for failure to deliver the Leased Premises in a timely fashion.

4. Tenant hereby waives, to the extent permitted by law, the provisions of any statute or rule of law now or hereafter in effect which may give or purport to give Tenant any right or election to terminate or otherwise adversely affect its Lease and the obligations of Tenant hereunder or thereunder by reason of any foreclosure proceeding.

5. Tenant will give prompt written notice to Lender of any default on the part of Landlord of any of Landlord's obligations under the Lease as required by the Lease.

6. Tenant agrees that from and after the date hereof in the event of any act or omission by Landlord under the Lease which would give Tenant the right, either immediately or after the lapse of a period of time, to terminate the Lease, to claim a partial or total eviction, or claim for abatement of rent, offset or other remedy, notwithstanding any provision of the Lease to the contrary, Tenant will not exercise any such right (a) until it has given written notice of such act or omission to Lender in accordance with the Lease.

7. Notwithstanding anything to the contrary contained in the Lease, Landlord hereby irrevocably directs Tenant to make all payments of rent to Landlord to the account at Lender set forth on Exhibit B.

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8. Tenant hereby acknowledges that Landlord has executed and delivered or will execute and deliver the Mortgage to Lender to secure the loan made by Lender to Landlord, and Tenant covenants and agrees as follows for the benefit and reliance of Lender:

(a) That it will not, without the express written consent of Lender: (i) prematurely cancel, terminate or surrender the Lease, except as expressly provided therein, and then only after Lender has failed to or unsuccessfully attempted to pursue its rights and remedies as provided herein; (ii) alter, amend or modify any term of the Lease; (iii) enter into any agreement with Landlord, its successors or assigns, which grants any material concession with respect to the Lease or which reduces the rent called for thereunder; (iv) prepay rent for more than the current monthly installment; or (v) consent to the release of any party having liability under the Lease.

(b) That Tenant shall, except to the extent prohibited by law or legal proceedings, make rental payments under the Lease to Lender pursuant to and upon written demand by Lender, if such demand states that a default has occurred under the Mortgage, and Landlord agrees that any payments so made to Lender shall be deemed to have been made in accordance with and in satisfaction of Tenant's obligation to pay rent under the Lease.

9. Landlord and Tenant, hereby jointly and severally, agree for the benefit and reliance of Lender, that in the event Lender gains title to the Leased Premises and becomes substitute lessor, it is agreed that Lender may assign its interest as substitute lessor without notice to, the consent of, or assumption of any liability by any other party hereto.

10. Nothing contained in this Agreement or the Lease shall affect the prior rights of Lender with respect to the proceeds of any award in condemnation or of any insurance policies affecting the Leased Premises which shall be governed by the terms of the Mortgage and the Lease.

11. Nothing contained in this Agreement shall in any way impair or affect the lien created by the Mortgage or any modifications, amendments, extensions or renewals thereof.

12. Tenant agrees that this Agreement satisfies any condition or requirement in the Lease relating to the granting of a non-disturbance agreement.

13. Tenant covenants and acknowledges that it has no right or option of any nature whatsoever, whether pursuant to the Lease or otherwise, to purchase the Leased

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Premises or the Property or any portion thereof or any interest therein and to the extent that Tenant has had or hereafter requires any such right or option, the same is hereby acknowledged to be subject to and subordinate to the Mortgage and is waived and released as against Lender in the event of default under the Mortgage.

14. The foregoing provisions shall be self-operative. However, Tenant agrees to execute and deliver to Lender, or any person to whom Tenant herein agrees to attorn, such other instrument as either shall request in order to effectuate such provisions.

15. Tenant hereby represents and warrants to Lender that it has not subordinated the Lease or any of its rights under the Lease to any lien, mortgage, Mortgage or deed to secure debt prior to the date hereof and that it will not subordinate the Lease or the rights of the Lessee thereunder to any lien, mortgage, Mortgage or deed to secure debt other than the Mortgage without the prior written consent of Lender.

16. This Agreement shall supersede, as between the parties hereto, all of the terms and provisions of the Lease which are inconsistent herewith.

17. The Agreement may not be modified orally or in any other manner than by an agreement in writing signed by the parties hereto, or their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto, and their successors and assigns.

18. This Agreement may be signed in one or more counterparts, each of which shall be an original, but all of which together shall constitute one agreement, binding on all of the parties hereto notwithstanding that all of the parties hereto are not signatories to the same counterpart. Each of the undersigned parties authorizes the assembly of one or more original copies of this Agreement through the combination of the several executed counterpart signature pages with one or more bodies of this Agreement, including the Exhibits, if any, to this Agreement. Each such compilation of this Agreement shall constitute one original of this Agreement.

19. For purposes of negotiating and finalizing this Agreement (including any subsequent amendments thereto), any signed document transmitted by facsimile machine ("FAX") shall be treated in all manner and respects as an original document. The signature of any party by FAX shall be considered for these purposes as an original signature. Any such FAX document shall be considered to have the same binding legal effect as an original document, provided that an original of the faxed document was mailed by first class U.S. Mail or personally delivered to the recipient, on the date of its transmission with proof of the fax transmission. Any FAX document subject to this Agreement shall be re-executed and notarized by both parties in an original form. The undersigned parties hereby agree that neither shall raise the use of the FAX or the fact that any signature or document was

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transmitted or communicated through the use of a FAX as a defense to the formation of this Agreement.

20. Tenant agrees that the Mortgage and the note evidencing the indebtedness secured thereby may be increased, replaced, renewed, extended and/or modified from time to time by agreement between Landlord and Lender and Lender may exercise any one or more of its rights under the Mortgage from time to time at Lender's discretion, all without notice to or consent of Tenant, and this Agreement shall continue in full force and effect as to all such renewals, extensions and/or modifications and all such exercise of rights.

21. Any and all notices given in connection with this Agreement shall be deemed adequately given only if in writing and addressed to the party for whom such notices are intended at the address set forth below. All notices shall be sent by personal delivery, Federal Express or other overnight messenger service, first class registered or certified mail, postage prepaid, return receipt requested or by other means at least as fast and reliable as first class mail. A written notice shall be deemed to have been given to the recipient party on the earlier of (a) the date it shall be delivered to the address required by this Agreement; (b) the date delivery shall have been refused at the address required by this Agreement; or (c) with respect to notices sent by mail, the date as of which the postal service shall have indicated such notice to be undeliverable at the address required by this Agreement. Any and all notices referred to in this Agreement, or which either party desires to give to the other, shall be addressed as follows:

If to Landlord::
43 West Hintz Road, L..C.
c/o Prime Group Realty Trust
77 West Wacker Drive
Suite 3900
Chicago, IL 60601
Attn: Louis G. Conforti, Senior Vice President
and
Jeffrey A. Patterson, Executive Vice President

with a copy to:
Prime Group Realty, L.P.
77 West Wacker Drive
Suite 3900
Chicago, IL 60601
Attn: General Counsel

If to Lender:
CORUS Bank, N.A.
3959 N. Lincoln Avenue
Chicago, Illinois 60613

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Attn: John Markowicz, Vice President

with a copy to:

CORUS Bank, N.A.
3959 N. Lincoln Avenue
Chicago, Illinois 60613
Attn: Joel C. Solomon, General Counsel

If to Tenant:

Tenneco Packaging Specialty
and Consumer Products, Inc.
43 W. Hintz Road
Wheeling, Illinois 60090

Any party hereto may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

22. The provisions of this Agreement shall bind, and inure to the benefit of, the parties hereto and their respective heirs, successors and assigns.

The remainder of this page is left intentionally blank.

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IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

TENANT:

By: Mark S. Berg
Its: MARK S. Berg
Vice President

LENDER:

CORUS Bank, N.A.

By: _____
John R. Markowicz,
Vice President

LANDLORD:

43 West Hintz Road, L.L.C.

BY: Prime Group Realty, L.P., a Delaware limited partnership, its sole member

By: Prime Group Realty Trust, a Maryland Real Estate Investment Trust, its administrative member

By: _____
Louis G. Conforti, Senior
Vice President

By: _____

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IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

TENANT:

By: _____
Its: _____

LENDER:

CORUS Bank, N.A.

By: John R. Markowicz
John R. Markowicz,
Vice President

LANDLORD:

43 West Hirtz Road, L.L.C.

BY: Prime Group Realty, L.P., a Delaware limited partnership, its sole member

By: Prime Group Realty Trust, a Maryland Real Estate Investment Trust, its administrative member


By: _____
Title: _____

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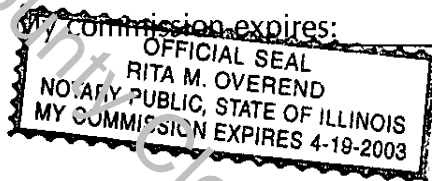
STATE OF ILLINOIS)
)
COUNTY OF COOK) SS:

I, RITA M. OVEREND, a Notary Public within and for said County, in the State aforesaid, duly commissioned and acting, do hereby certify that on this 29 day of SEPT, 1999, personally appeared before me ^{LOUIS G.} CONFORTI, the SR. VP President of Prime Group Realty Trust, to me personally well known and known to be the person who signed the foregoing instrument, and who, being by me duly sworn, stated and acknowledged that he is the SR. VP President of said trust, and that he signed and delivered the same in behalf of said trust, with authority, as his and its free and voluntary act and deed for the uses and purposes therein mentioned and set forth.

WITNESS my hand and seal as such Notary Public the day and year in this certificate above written.



Notary Public



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STATE OF Illinois)
)
COUNTY OF Lake) SS:

I, Harriett Ann Bemis, a Notary Public within and for said County, in the State aforesaid, duly commissioned and acting, do hereby certify that on this 29th day of Sept., 1999, personally appeared before me Mark S. Berg, the V. P. of Tenneco Packaging Specialty and Consumer Products, Inc., to me personally well known and known to be the person who signed the foregoing instrument, and who, being by me duly sworn, stated and acknowledged that he/she is the V. P. of said corporation and that he/she signed and delivered the same in behalf of said corporation, with authority, as his and its free and voluntary act and deed for the uses and purposes therein mentioned and set forth.

WITNESS my hand and seal as such Notary Public the day and year in this certificate above written.

Harriett Ann Bemis

Notary Public

My commission expires: 02/27/2003



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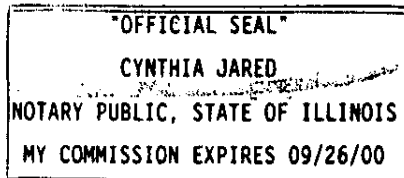
STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

I, Cynthia Jared, a Notary Public within and for said County, in the State aforesaid, duly commissioned and acting, do hereby certify that on this 30th day of September, 1999, personally appeared before me John Markowicz, the asst vice President of CORUS Bank, N.A., to me personally well known and known to be the person who signed the foregoing instrument, and who, being by me duly sworn, stated and acknowledged that he is the asst vice President of said CORUS Bank, N.A., and that he signed and delivered the same in behalf of CORUS Bank, N.A., with authority, as his and its free and voluntary act and deed for the uses and purposes therein mentioned and set forth.

WITNESS my hand and seal as such Notary Public the day and year in this certificate above written.

Notary Public

My commission expires: _____



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EXHIBIT A Legal Description

PARCEL 1:

Lot 1 in First American Resubdivision of Lots 1, 2 and 4 in South Wheeling Industrial Park, a Subdivision of the West 1/2 of the Northeast 1/4 of Section 14, and that part of the south East 1/4 of the North West 1/4 of Section 14 lying East of a strip of land 210 feet in width lying between the Easterly right of way line of the Wisconsin Central Railroad and a line 210 feet Easterly of and parallel with, measured at right angles to, the Easterly right of way line of said railroad, all in Section 14, Township 42 North, Range 11 East of the Third Principal Meridian, in Cook County, Illinois.

PARCEL 2:

Easement for the benefit of Parcel 1 as created by reservation in Warranty Deed from Henry Carnehl and Rose Carnehl, his wife to Commonwealth Edison Company dated January 12, 1956 recorded November 23, 1956 as Document 16762408 for switch track over a strip of land 210 feet in width lying between the Easterly right of way of the Wisconsin Central Railroad and a line 210 feet Easterly of and parallel with measured at right angles to the Easterly right of way of said railroad through the North 1/2 of the South East 1/4 of the North West 1/4 of Section 14 aforesaid, in Cook County, Illinois.

PARCEL 3:

Easement for the benefit of Parcel 1 as created by grant of switch track easement dated June 22, 1979 and recorded February 4, 1980 as Document 25348046 and as amended by Document 25736350 made by Commonwealth Edison Company, a corporation of Illinois, to LaSalle National Bank, as Trustee under Trust Agreement dated May 11, 1978 and known as Trust Number 54346, to install, use, operate, maintain, replace and remove one railroad switch track (together with related grading, slope work and drainage) over a strip of land 22 feet wide of the Southeast 1/4 of the Northwest 1/4 of Section 14, Township 42 North, Range 11 East of the Third Principal Meridian, whose center line is described as follows: Commencing at the intersection of the Northeasterly line of Commonwealth Edison Company's 210 feet right of way and the south line of said Southeast 1/4 of the Northwest 1/4 of Section 14; thence Northwesterly, along said Northeasterly line 1202.62 feet to the point of beginning of said center line; thence Northwesterly, along a curve concave Northeasterly, having a radius of 513.90 feet, 324.30 feet, to a point on the Southwesterly line of said right of way, said point being 1373.48 feet Northerly (as measured along said Southwesterly line) of the South line of said Southeast 1/4 of the Northwest 1/4, all in Cook County, Illinois.

PIN: 03-14-102-006-0000

03-14-200-014-0000

Address: 43 West Hintz Road, Wheeling IL

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EXHIBIT B
LEASE

Property of Cook County Clerk's Office

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