



MISC 2003127456

RICHARD H. TAKECHI  
REGISTER OF DEEDS  
COMMISSIONER



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Revised: 4/19/01 (jt)

LEASE SUBORDINATION, NON-DISTURBANCE  
OF POSSESSION AND ATTORNMENT AGREEMENT

This Lease Subordination, Non-Disturbance of Possession and Attornment Agreement (the "Lease Subordination, Non-Disturbance of Possession and Attornment Agreement" or "Agreement") is made as of the 1 day of July, 2003, among Nationwide Life Insurance Company, an Ohio corporation (the "Lender"), having a place of business at One Nationwide Plaza, Columbus, Ohio 43215, Cannonball Express, Inc. (the "Landlord" or "Borrower"), a a Nebraska corporation having a place of business at 10064 South 134th Street, Omaha, NE 68138, and, Oriental Trading Company, Inc., a Delaware Corporation [State/Type of Entity] (the "Tenant") having a place of business at 6377 John J. Pershing Drive, Omaha, Nebraska 68110.

Introductory Provisions

A. Lender is relying on this Agreement as an inducement to Lender in making and maintaining a loan (the "Loan") secured by, among other things, a Mortgage and Security Agreement dated as of July 1, 2003, 2003 (the "Mortgage") given by Borrower covering property commonly known as and numbered 6377 John J. Pershing Drive, Omaha, Nebraska, (the "Property"). Lender is also the "Assignee" under an Assignment of Leases, Rents and Profits (the "Assignment") dated as of July 1, 2003, from Borrower with respect to the Property.

B. Tenant is the tenant under that certain lease (the "Lease") dated April 16, 2002, made with Landlord; covering certain premises (the "Premises") at the Property as more particularly described in the Lease.

C. Lender requires, as a condition to the making and maintaining of the Loan, that the Mortgage be and remain superior to the Lease and that its rights under the Assignment be recognized.

D. Tenant requires as a condition to the Lease being subordinate to the Mortgage that its rights under the Lease be recognized.

E. Lender, Landlord, and Tenant desire to confirm their understanding with respect to the Mortgage and the Lease.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements contained in this Agreement, and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, and with the understanding by Tenant that Lender shall rely hereon in making and maintaining the Loan, Lender, Landlord, and Tenant agree as follows:

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1. Subordination. The Lease and the rights of Tenant thereunder (including purchase options, rights of first refusal or similar rights, if any) are subordinate and inferior to the Mortgage and any amendment, renewal, substitution, extension or replacement thereof and each advance made thereunder as though the Mortgage, and each such amendment, renewal, substitution, extension or replacement were executed and recorded, and the advance made, before the execution of the Lease.
2. Non-Disturbance. So long as Tenant is not in default (beyond any period expressed in the Lease within which Tenant may cure such default) in the payment of rent or in the performance or observance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed or observed: (a) Tenant's occupancy of the Premises shall not be disturbed by Lender in the exercise of any of its rights under the Mortgage during the term of the Lease, or any extensions or renewals thereof made in accordance with the terms of the Lease, and (b) Lender will not join Tenant as a party defendant in any action or proceeding for the purpose of terminating Tenant's interest and estate under the Lease because of any default under the Mortgage.
3. Attornment and Certificates. In the event Lender succeeds to the interest of Borrower as Landlord under the Lease, or if the Property or the Premises are sold pursuant to the power of sale under the Mortgage, Tenant shall attorn to Lender, or a purchaser upon any such foreclosure sale, and shall recognize Lender, or such purchaser, thereafter as the Landlord under the Lease. Such attornment shall be effective and self-operative without the execution of any further instrument. Tenant agrees, however, to execute and deliver at any time and from time to time, upon the request of any holder(s) of any of the indebtedness or other obligations secured by the Mortgage, or upon request of any such purchaser, (a) any instrument or certificate which, in the reasonable judgment of such holder(s), or such purchaser, may be necessary or appropriate in any such foreclosure proceeding or otherwise to evidence such attornment and (b) an instrument or certificate regarding the status of the Lease, consisting of statements, if true (and if not true, specifying in what respect): (i) that the Lease is in full force and effect, (ii) the date through which rentals have been paid, (iii) the duration and date of the commencement of the term of the Lease, (iv) the nature of any amendments or modifications to the Lease, (v) that no default, or state of facts, which with the passage of time or notice, or both, would constitute a default, exists on the part of either party to the Lease, and (vi) the dates on which payments of additional rent, if any, are due under the Lease.
4. Limitations. If Lender exercises any of its rights under the Assignment or the Mortgage, or if Lender shall succeed to the interest of Landlord under the Lease in any manner, or if any purchaser acquires the Property, or the Premises, upon or after any foreclosure of the Mortgage, or any deed in lieu thereof, Lender or such purchaser, as the case may be, shall have the same remedies by entry, action or otherwise in the event of any default by Tenant (beyond any period expressed in

the Lease within which Tenant may cure such default) in the payment of rent or in the performance or observance of any of the terms, covenants and conditions of the Lease on Tenant's part to be paid, performed or observed that Landlord had or would have had if Lender or such purchaser had not succeeded to the interest of the present Landlord. From and after any such attornment, Lender or such purchaser shall be bound to Tenant under all the terms, covenants and conditions of the Lease, and Tenant shall, from and after such attornment to Lender, or to such purchaser, have the same remedies against Lender, or such purchaser, for the breach of an agreement contained in the Lease that Tenant might have had under the Lease against Landlord, if Lender or such purchaser had not succeeded to the interest of Landlord. Provided, however, that Lender or such purchaser shall only be bound during the period of its ownership, and that in the case of the exercise by Lender of its rights under the Mortgage, or the Assignment, or any combination thereof, or a foreclosure, or deed in lieu of foreclosure, all Tenant claims shall be satisfied only out of the interest, if any, of Lender, or such purchaser, in the Property, and Lender and such purchaser shall not be: (a) liable for any act or omission of any prior landlord (including Landlord); or (b) liable for or incur any obligation with respect to the construction of the Property or any improvements of the Premises or the Property; or (c) subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord), or (d) bound by any rent or additional rent which Tenant might have paid for more than the then current rental period to any prior landlord (including Landlord); or (e) bound by any amendment or modification of the Lease, or any consent to any assignment or sublease, made without Lender's prior written consent; or (f) bound by or responsible for any security deposit not actually received by Lender; or (g) liable for any obligation with respect to any breach of warranties or representations of any nature under the Lease or otherwise, including without limitation, any warranties or representations respecting use, compliance with zoning, Landlord's title, Landlord's authority, habitability and/or fitness for any purpose, or possession; or (h) liable for consequential damages.

5. Rights Reserved. Nothing herein contained is intended, nor shall it be construed, to abridge or adversely affect any right or remedy of: (a) Landlord under the Lease, or any subsequent Landlord, against Tenant in the event of any default by Tenant (beyond any period expressed in the Lease within which Tenant may cure such default) in the payment of rent or in the performance or observance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed or observed; or (b) Tenant to pursue claims under the Lease against any prior landlord (including Landlord) in the event of any default by prior landlord whether or not such claim is barred against Lender or a subsequent purchaser.
6. Notice and Right to Cure. Tenant agrees to provide Lender with a copy of each notice of default given to Landlord under the Lease at the same time such notice of default is given to Landlord. In the event of any default by Landlord under the Lease, Tenant will take no action to terminate the Lease: (a) if the default is not curable by Lender (so long as the default does not interfere with Tenant's use and

occupancy of the Premises), or (b) if the default is curable by Lender, unless the default remains uncured for a period of sixty (60) days after written notice thereof shall have been given, postage prepaid, to Landlord at Landlord's address, and to Lender at the address provided in Section 7 below; provided, however, that if any such default is such that it reasonably cannot be cured within such sixty (60) day period, such period shall be extended for such additional period of time as shall be reasonably necessary (including, without limitation, a reasonable period of time to obtain possession of the Property and to foreclose the Mortgage), if Lender gives Tenant written notice within such sixty (60) day period of Lender's election to undertake the cure of the default and if curative action (including, without limitation, action to obtain possession and foreclosure) is instituted within a reasonable period of time and is thereafter diligently pursued. Notwithstanding the foregoing, Lender shall have no obligation to cure any default under the Lease.

7. Notices. Any notice or communication required or permitted hereunder shall be in writing, and shall be given or delivered: (a) by United States mail, registered or certified, postage fully prepaid, return receipt requested, or (b) by recognized courier service or recognized overnight delivery service; and in any event addressed to the party for which it is intended at its address set forth below:

To Lender: Nationwide Life Insurance Company  
One Nationwide Plaza  
Columbus, Ohio 43215  
Attention: Real Estate Investments

To Landlord: Cannonball Express, Inc.  
10064 South 134<sup>th</sup> Street  
Omaha, Nebraska 68138  
Attention: Bruce Meyers  
President

To Tenant: Oriental Trading Co. Inc.  
1112 E Street  
Omaha NE  
Attention: Steve Samek  
(Title) Fac. Mgr.

or such other address as such party may have previously specified by notice given or delivered in accordance with the foregoing. Any such notice shall be deemed to have been given and received on the date delivered or tendered for delivery during normal business hours as herein provided.

8. No Oral Change. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest.

9. Payment of Rent To Lender. Tenant acknowledges that it has notice that the Lease and the rent and all sums due thereunder have been assigned to Lender as part of the security for the obligations secured by the Mortgage. In the event Lender notifies Tenant of a default under the Loan and demands that Tenant pay its rent and all other sums due under the Lease to Lender, Tenant agrees that it will honor such demand and pay its rent and all other sums due under the Lease to Lender, or Lender's designated agent, until otherwise notified in writing by Lender. Landlord unconditionally authorizes and directs Tenant to make rent payments directly to Lender following receipt of such notice without any obligation to further inquire as to whether or not any default exists under the Mortgage or the Assignment and that Landlord shall have no right or claim against Tenant for or by reason of any payments of rent or other charges made by Tenant to Lender following receipt of such notice.
10. No Amendment or Cancellation of Lease. So long as the Mortgage remains undischarged of record, Tenant shall not amend, modify, cancel or terminate the Lease, or consent to an amendment, modification, cancellation or termination of the Lease, or agree to subordinate the Lease to any other mortgage, without Lender's prior written consent in each instance.
11. Options. With respect to any options for additional space provided to Tenant under the Lease, Lender agrees to recognize the same if Tenant is entitled thereto under the Lease after the date on which Lender succeeds as landlord under the Lease by virtue of foreclosure or deed in lieu of foreclosure or Lender takes possession of the Premises; provided, however, Lender shall not be responsible for any acts of any prior landlord (including Landlord) under the Lease, or the act of any tenant, subtenant or other party which prevents Lender from complying with the provisions hereof and Tenant shall have no right to cancel the Lease or to make any claims against Lender on account thereof.
12. Captions. Captions and headings of sections are not parts of this Agreement and shall not be deemed to affect the meaning or construction of any of the provisions of this Agreement.
13. Counterparts. This Agreement may be executed in several counterparts each of which when executed and delivered is an original, but all of which together shall constitute one instrument.
14. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state where the Property is located.
15. Parties Bound. The provisions of this Agreement shall be binding upon and inure to the benefit of Tenant, Lender and Landlord and their respective successors and assigns; provided, however, reference to successors and assigns of

Tenant shall not constitute a consent by Landlord or Lender to an assignment or sublease by Tenant, but has reference only to those instances in which such consent is not required pursuant to the Lease or for which such consent has been given.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

LENDER:

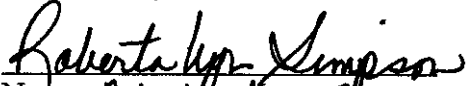
NATIONWIDE LIFE INSURANCE  
COMPANY, an Ohio corporation

KAC

BY: 


Name: TODD A. HARROP  
Title: ASSOCIATE VICE PRESIDENT  
MORTGAGE LOAN ACQUISITIONS

~~ATTEST~~ Witness:

  
Name: Robert Lynn Simpson  
Title:

TENANT:

Oriental Trading Company, Inc.

BY: 

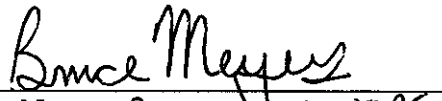
Name: Steve Samek  
Title: Fac. Mgr.

ATTEST:

  
Name: BRUCE MEYERS  
Title:

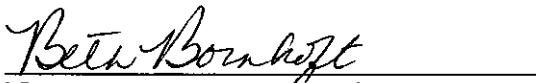
LANDLORD:

Cannonball Express, Inc.

BY: 

Name: BRUCE MEYERS  
Title: PRESIDENT

ATTEST:

  
Name: Beth Bornhott  
Title:

STATE OF OHIO )  
 ) ss:  
COUNTY OF FRANKLIN )

The foregoing instrument was acknowledged before me this 19 day of June, 2003, by Todd A. Harrop, Assoc. VP - Mkt Acquisitions, of Nationwide Life Insurance Company, an Ohio corporation, on behalf of the corporation.

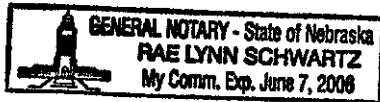


SHERI S. BARGDILL  
Notary Public, State of Ohio  
My Commission Expires  
11/30/07

Sheri S. Bargdill  
Notary Public  
My Commission Expires:

)  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

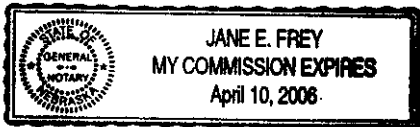
The foregoing instrument was acknowledged before me this 18 day of June, 2003, by STEVEN SAMEK, FAC. MGR, of Oriental Trading Company, Inc., a Delaware corporation, on behalf of the corporation.



Rae Lynn Schwartz  
Notary Public  
My Commission Expires: 6/7/06

STATE OF Nebraska )  
 ) ss:  
COUNTY OF Douglas )

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of June, 2003, by Bruce Meyers, President, of Cannonball Express, Inc., a Nebraska corporation, on behalf of the corporation.



Jane E. Frey  
Notary Public  
My Commission Expires:

THIS INSTRUMENT PREPARED BY:

\_\_\_\_\_  
\_\_\_\_\_



**FILE: TA-46565**

**EXHIBIT "A"**

**Lot 2, in THE UNION LAND COMPANY'S FIRST ADDITION REPLAT 1, an Addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska.**