

STATE OF INDIANA  
LAKE COUNTY  
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RECORDER

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Subordination, Non-disturbance and Attornment Agreement (Hammond, IN)

Dated January 23, 1997

By and Between

SUMITOMO BANK LEASING AND FINANCE, INC. and

INDIANA BELL TELEPHONE COMPANY, and

For the Benefit of THE SUMITOMO BANK LIMITED, Chicago Branch

Key Number: 32-242-1

Tax Unit Number: 26

Send Tax Bills to:

Equis Corporation  
P.O. Box 641338  
Chicago, IL 60664-1338

copy # 97011867

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**FIRST AMERICAN TITLE INSURANCE COMPANY  
OF NEW YORK**

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62

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**RECORDING REQUESTED**  
**BY AND AFTER RECORDING**  
**SHOULD BE RETURNED TO:**

Craig S. Delsack  
Morgan, Lewis & Bockius LLP  
101 Park Avenue  
New York, NY 10178

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

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT, dated as of January 23, 1997 (this "Agreement"), by and between SUMITOMO BANK LEASING AND FINANCE, INC., a Delaware corporation ("Lessor"), having an office at 277 Park Avenue, New York, New York 10172, and INDIANA BELL TELEPHONE COMPANY, an Indiana corporation ("Lessee"), having its primary business address at c/o Ameritech Corporation, 425 West Randolph Street, 9th Floor, Chicago, Illinois 60606, Attention: Director-Real Estate Services, for the benefit of THE SUMITOMO BANK LIMITED, Chicago Branch, having an office at Sears Tower, Suite 4800, 233 South Wacker Drive, Chicago, Illinois 60606 ("Lender"). The term "Lender" shall also include any successor or assign of Lender, including any participant in, or other holder of any interest in any of the Mortgages (as hereinafter defined).

**WITNESSETH:**

WHEREAS, Lessor is the owner of that certain parcel of real property described in Exhibit "A" attached hereto (the "Parcel"), together with any buildings and improvements now or hereafter located thereon (the "Improvements") (the Parcel and the Improvements may from time to time herein be referred to as the "Property");

WHEREAS, the Property is leased by Lessor to Lessee pursuant to that certain Master Lease of even date herewith between Lessor and The Ohio Bell Telephone Company (as amended, supplemented or otherwise modified from time to time, including by Supplement thereto of even date herewith with the Lessee, the "Lease"), it being acknowledged that the Lease may from time to time also cover other properties;

WHEREAS, Lender is or will become a secured party under one or more deeds of trust, mortgages, or other security instruments as applicable to the Property (collectively, the "Mortgage"), from Lessor, encumbering Lessor's fee simple estate in the Property. The Mortgage covering the Property now subject to the Lease is intended to be recorded immediately prior to the recording of this Agreement;

WHEREAS, the parties hereto desire to make certain provisions concerning the Lease and the Mortgage as hereinafter set forth;

NOW, THEREFORE, in consideration of One Dollar (\$1) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby covenant and agree as follows:

1. Lender and Lessor agree with Lessee that, so long as the Lease remains in effect and no Event of Default (as defined in the Lease) has occurred and is continuing:

(a) Neither Lessee, nor any person claiming through or under Lessee, shall be named or joined as a party defendant in any action, suit or proceeding which may be instituted or taken by Lender for the purpose of enforcing or foreclosing the Loan and the liens and security interests securing payment thereof, including the Mortgage, by reason of any default or event of default under the Loan Agreement or other Loan Documents;

(b) Enforcement of any provisions of the Mortgage shall not terminate the Lease or disturb Lessee in the possession and use of the Property;

(c) Except as otherwise provided in this Agreement, Lessee's possession of the Property and Lessee's rights and privileges under the Lease shall not be diminished or interfered with by Lessor or Lender; and

(d) The leasehold estates created by and under the Lease shall not be affected in any manner by any proceeding instituted or action taken under or in connection with the Mortgage or in case Lender takes possession of the Property pursuant to any provision of the Mortgage.

2. Lender and Lessee agree that if at any time the interest of the Lessor shall be terminated by Lender, and/or if the Property or any part thereof is at any time owned by Lender or any other party by reason of a judicial or non-judicial foreclosure, private trustee sale, deed in lieu of foreclosure, or otherwise (other than as referenced in Paragraph 6 hereof), in connection with an exercise of rights or remedies pursuant to the terms of the Mortgage, and so long as no Event of Default (as defined in the Lease) has occurred and is continuing, then (i) the Lease shall continue in effect and shall not terminate, (ii) Lessee shall attorn to and recognize Lender (or such other party) as the successor to the rights of Lessor, upon the then executory terms and conditions of the Lease, and (iii) Lender (or such other party) shall accept such attornment and recognize Lessee as Lender's (or such other party's) lessee under the Lease. The provisions of this Paragraph shall be self-operative and no further instrument of attornment shall be required. In confirmation of such attornment, however, Lessee shall, at the request of Lender (or such other party), promptly execute and deliver an instrument, in recordable form, which confirms such attornment and recognition, provided, however, that the failure to execute any further instrument shall not detract from the effectiveness of the provisions of this Paragraph. Upon such attornment and recognition, the Lease shall continue in full force and effect as, or as if it were, a direct lease between Lender (or such other party) and Lessee upon all of the executory terms, conditions and covenants thereof. In such event, Lessee agrees that Lender (or such other party) shall not be (a) liable for any act or omission of

Lessor; (b) subject to any offsets, claims, defenses or counterclaims which Lessee might have against Lessor; (c) bound by any rent or additional or advance rent paid by Lessee other than payments made directly to Lender as required by the Lease; or (d) bound by any amendment or modification of the Lease made without Lender's consent.

3. (a) Lessor hereby certifies to Lessee and Lender that as of the date hereof:
- i) The Lease is in full force and effect and has not been amended or modified; and
  - ii) Neither Lessor nor, to the best of Lessor's knowledge, the Lessee is in default in observing or performing the terms, covenants, provisions or conditions on their respective parts to be observed or performed under the Lease and no condition exists, and no event has occurred, which, with or without the passage of time or the giving of notice or both, would constitute such a default; and
  - iii) All rent due and owing by Lessee to Lessor under the Lease has been paid in full.
- (b) Lessee hereby certifies to Lessor and Lender that as of the date hereof:
- i) The Lease is in full force and effect and has not been amended or modified; and
  - ii) Neither Lessee nor, to the best of Lessee's knowledge, the Lessor is in default in observing or performing the terms, covenants, provisions or conditions on their respective parts to be observed or performed under the Lease and no condition exists, and no event has occurred, which, with or without the passage of time or the giving of notice or both, would constitute such a default; and
  - iii) All rent due and owing by Lessee to Lessor under the Lease has been paid in full.

It is acknowledged that the provisions of this Paragraph are to be relied upon by Lender in inducing it to make, or to commit to make, certain loans to Lessor. Each of Lessor and Lessee agree that, from time to time, at the request of Lender, it will execute, acknowledge and deliver to Lender a statement confirming that the certifications made by it above are true and correct as of such time (or if not true, specify the respects in which untrue).

4. Lessee hereby consents to the Mortgage and to any consolidations, renewals, modifications, replacements, refinancings, substitutions and extensions thereof which are approved by Lessee.

5. Upon the execution of and pursuant to that certain Absolute Assignment of Rents of even date herewith by and between Lessor and Lender, Lender will become the owner and assignee of the rents and all other amounts to be paid to Lessor under the Lease. Lender, as owner of such rents and other amounts, hereby directs Lessee to pay and Lessee hereby agrees to pay as they

become due all such rents and other amounts directly to Lender as provided in the Lease, or in such other manner and/or at such address as Lender may hereafter otherwise from time to time direct by written notice to Lessee. Payment of any amounts due under the Lease to any party other than Lender or such other party as Lender may designate shall not constitute satisfaction of any portion of Lessee's obligation thereunder. Lessee acknowledges the foregoing direction and hereby confirms to Lender that it shall make all payments of Net Rent and Additional Rent (as such terms are defined in the Lease) directly to Lender, without regard to any defense, set-off or counterclaim that may at any time be asserted by or be available to Lessee under the Lease or applicable law. Lessor and Lessee each acknowledge and agree that any and all amounts payable by Lessee under the Lease as "Offer Purchase Price" and/or "Contingent Rent Payments" shall also be paid directly by Lessee to Lender in the same manner as other elements of Rent and shall be treated as "Rent" for all purposes hereof.

6. Subject to the terms of Paragraphs 1 and 2 of this Agreement, the Lease and any other interest of Lessee in the Property which Lessee may now hold or hereafter acquire or be deemed to hold are hereby made, and shall at all times continue to be, subject and subordinate in each and every respect to the provisions of the Mortgage and to any and all renewals, modifications, extensions, substitutions, replacements and/or consolidations of the Mortgage approved by Lessee.

7. Lender shall have the right, without the joinder or consent of Lessor, to give Lessee notice of any Event of Default (as defined in the Lease) in its obligations to pay the Rent or any other sum which Lessee agrees to pay directly to Lender under this Agreement and to enforce directly against Lessee the obligations to pay the Rent and any other sum which Lessee agrees to pay directly to Lender under this Agreement. For the purpose of enforcing the obligations to pay the Rent, Lender shall be deemed to be a third party beneficiary under the Lease. Lender's rights to enforce the obligations of Lessee to pay the Rent shall not be conditioned upon or subject to Lender's exhausting its remedies against Lessor or against any collateral that Lender may have with respect to the obligations of Lessor secured by the Mortgage.

8. This Agreement and the Lease collectively contain the entire agreement between the parties regarding (i) the non-disturbance of Lessee's possession under the Lease, (ii) attornment and recognition between Lessee and Lender, and (iii) subordination of the Lease to the Mortgage.

9. Lender hereby agrees with Lessor and Lessee that in the event that from time to time more than one entity is a "Lender" for purposes of this Agreement, the Lease, or any other agreements related thereto, the entities constituting "Lender" shall designate a single administrative agent to act on behalf of all such "Lender" entities in dealing with Lessor and Lessee. So long as The Sumitomo Bank, Limited, Chicago Branch owns any portion of the indebtedness secured by the Mortgage it shall be the designated administrative agent of the Lenders for dealings with Lessor and Lessee and Lessor and Lessee shall be fully protected in relying upon any notices or other communications received therefrom. In the event that at any time The Sumitomo Bank, Limited, Chicago Branch does not hold such an interest in the indebtedness, the entities then constituting "Lender" shall notify Lessor and Lessee in writing of the substitute administrative agent with which

Lessor and Lessee may deal. The foregoing provision is for the administrative convenience of the parties, and shall not be deemed to reduce or otherwise affect any indemnification rights or other rights, privileges, or protections afforded to each and every entity that constitutes a "Lender" from time to time.

10. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument.

11. No waiver or modification by any party of any provision or covenant of this Agreement shall be deemed to have been made unless such waiver is expressed in writing and signed by the party against whom such waiver or modification is charged.

12. This Agreement shall inure to the benefit of Lessor, Lessee and Lender, and be binding upon Lessor, Lessee and Lender, and in each case their respective successors and assigns.

13. **THIS AGREEMENT SHALL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF INDIANA, WITHOUT REGARD TO ITS CONFLICT OF LAWS PRINCIPLES.**

14. Any notice, demand, consent, approval, direction, request, agreement or other communication required or permitted hereunder shall be given in the manner specified in the Lease.

15. If additional parcels or improvements are added to the Property, upon request of any of the parties hereto, the parties hereto shall execute and record such supplements to this Agreement or other documents as may reasonably be required to assure that the rights granted herein and the obligations of the parties hereto are applicable to the additional parcels and improvements in question; provided, however, that the execution and/or recordation of any such supplement shall not be necessary for the effectiveness of this Agreement as to the additional parcels and improvements.

IN WITNESS WHEREOF, the parties have duly executed and delivered this Agreement on the attached Signature Pages as of the date first above written.

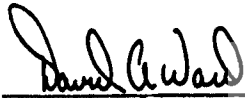
**[SEE ATTACHED SIGNATURE PAGES]**

**SIGNATURE PAGE FOR LESSOR ON  
SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENT  
AGREEMENT (Hammond)**

"LESSOR":

Signed and acknowledged  
in the presence of:

SUMITOMO BANK LEASING AND  
FINANCE, INC., a Delaware corporation



Printed Name DAVID A WARD

By: 

Name: William M. Ginn  
Title: President

**Document is  
NOT OFFICIAL!**

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Printed Name Carl J. Morales

STATE OF NEW YORK §

COUNTY OF NEW YORK §

This instrument was acknowledged before me this 17<sup>th</sup> day of January, 1997 by William M. Ginn, President of SUMITOMO BANK LEASING AND FINANCE, INC., a Delaware corporation, on behalf of said corporation.

  
Notary Public, State of New York

Name: PETER HARVEY

My Commission Expires

FEB 24, 1998

PETER J. HARVEY  
Notary Public, State of New York  
No. 31-4992566  
Qualified in New York County  
Term Expires Dec 31, 1995


FEB 24, 1998

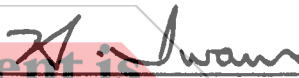
SIGNATURE PAGE FOR LENDER ON  
SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENT  
AGREEMENT (Hammond)


"LENDER":

Signed and acknowledged  
in the presence of:

THE SUMITOMO BANK, LIMITED,  
Chicago Branch,

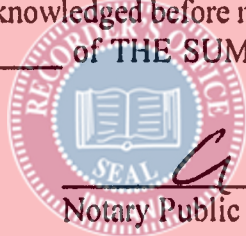
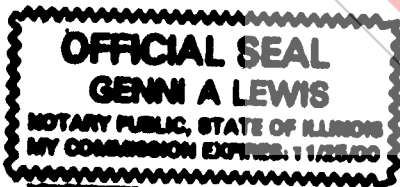
  
Printed Name Patrick M. KENNEDY

By:   
Name: \_\_\_\_\_  
Title: **HIROYUKI IWAMI  
JOINT GENERAL MANAGER**

  
Printed Name Brenda G. Anderson

STATE OF ILLINOIS §  
  §  
COUNTY OF COOK §

The foregoing instrument was acknowledged before me this 21 day of January, 1997,  
by HIROYUKI IWAMI of THE SUMITOMO BANK, LIMITED, Chicago  
Branch, on behalf of said corporation.



  
Notary Public

Name: GENNI A. LEWIS

My Commission Expires

11/25/00



**SIGNATURE PAGE FOR LESSEE ON  
SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENT  
AGREEMENT (Hammond)**

**"LESSEE":**

Signed and acknowledged  
in the presence of:

INDIANA BELL TELEPHONE COMPANY,  
an Indiana corporation

Wanda Hardwick  
Printed Name Wanda Hardwick

By: [Signature]  
Name: David M. Harris  
Title: Director - Real Estate Services

[Signature]

Denise Johnson  
Printed Name Denise Johnson

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the Lake County Recorder!

**STOP**

THE STATE OF ILLINOIS   §  
  §  
COUNTY OF COOK       §

The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of Jan., 1997  
by David M. Harris of INDIANA BELL TELEPHONE COMPANY, an Indiana  
corporation, on behalf of said corporation.

OFFICIAL SEAL  
JULIA VILLA  
NOTARY PUBLIC, STATE OF ILLINOIS  
MY COMMISSION EXPIRES 6-27-99

Julia Villa  
Notary Public

My Commission Expires:  
6/27/99

Name: Julia Villa

**EXHIBIT "A"**

**PROPERTY DESCRIPTION**  
**(Hammond)**

**Key Number: 32-242-1**

**Tax Unit Number: 26**

Lot 1, Briar Ridge East Industrial Park Subdivision, in the City of Hammond, as shown in Plat Book 40,  
Page 88, Lake County, Indiana.

Street address: 3102 169th Place, Hammond, Indiana

Send Tax Bills to:

Equis Corporation

P.O. Box 641338

Chicago, IL 60664-1338

