

10 (3)

Recording Requested By:

2020-024737

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD
MICHAEL B BROWN
RECORDER

And When Recorded Mail To:

2020 May 5 10:16 AM

Tri Counties Bank
63 Constitution Drive
Chico, California 95926



tri counties bank

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

Borrower	<u>Hammond One, LLC</u>	Agreement Date:	<u>January 2, 2020</u>
(Landlord):	<u>an Indiana limited liability company</u>	Lender:	Tri Counties Bank 63 Constitution Drive Chico, CA 95973
Tenant:	<u>BP Products North America Inc.</u>		

Property Address: 6529 Columbia Avenue, Hammond, Indiana 46320

Lease Date:	<u>September 27, 2007, as amended by Lease Amendment and Extension Agreement dated September 30, 2010</u>	Lease Expires:	<u>November 30, 2020</u>
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This SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made and entered into as of the date set forth above, by and among Borrower named above (and hereinafter referred to as "Landlord"), Tenant named above ("Tenant"), and Tri Counties Bank ("Lender") for the purpose of setting forth the parties understanding and agreements with respect to a lease of the property described herein.

RECITALS

WHEREAS, Tenant is the tenant under that certain Lease dated as shown above, (the "Lease") by and between Landlord and Tenant, pertaining to and covering that certain real property which is commonly known as the Property Address shown above, and is legally described on Exhibit "A" attached hereto, and any future additional space located at real property leased by Tenant from Borrower (the "Property"); and

WHEREAS, Lender has extended credit to Landlord which credit is secured by a deed or deeds of trust encumbering the Property (collectively the "Deed of Trust"); and

E-LN-5 (05/18)

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\$ 25.00
CA12502

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WHEREAS, To induce Lender to make the loan referenced above, Lender and Tenant have agreed that subject to Tenant's agreement for subordination, and subject to the conditions and limitations stated below, Lender will recognize Tenant's rights under the Lease in the event that Lender (or any Successor Landlord, as defined below) succeeds to the interest of Landlord under the Lease, and in consideration therefor, Tenant is willing to agree to attorn to Lender (or any Successor Landlord) in the event that Lender (or any Successor Landlord) succeeds to the interest of Landlord under the Lease, and to acknowledge and agree that Tenant's leasehold interest is subordinate in all respects to Lender's interest under the Deed of Trust.

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, and for and in consideration of their respective covenants herein made, the parties agree as follows:

Confirmation of Lease. By their signatures hereto, and by their original signatures on a copy of the Lease delivered herewith to Tri Counties Bank, Landlord and Tenant certify the following to Lender: (a) Tenant is now in possession of the Property; (b) the Lease, a true and correct countersigned copy of which has been delivered herewith to Lender is presently in full force and effect; (c) monthly rent is correctly set forth in the Lease and Tenant has not prepaid any rent or security deposit, except as stated in the Lease; (d) Tenant has accepted the Property and has no claim, defense, set-off or counterclaim against the Landlord under the Lease; (e) any construction requirements respecting the Property to be performed by the Landlord have been performed; (f) the Lease has not been amended or modified in any way, whether orally or in writing; (g) there are presently no defaults by Landlord under the Lease, nor does anything exist which, with the giving of notice or passage of time, would constitute a default by Landlord under the Lease; and (h) Tenant does not have any right of first refusal or option to purchase all or any portion of the Property, or if the Lease contains any option to purchase, Tenant acknowledges and agrees hereby that Lender shall not be bound by such provisions of the Lease notwithstanding the non-disturbance and attornment agreement set forth below.

Subordination. Subject to Lender's Agreements set forth below, Tenant hereby subordinates all its right, title and interest in and to the Lease, to the right title and interest of Lender (or its assigns) in the Deed of Trust to be recorded securing Lender's Loan to Landlord (or as such Deed of Trust may be thereafter modified from time to time) and any subsequent deed of trust which may be hereafter recorded by Lender to secure the indebtedness of Borrower, or Borrower's successors and assigns, including any Successor Landlord (collectively referred to as the "Deed of Trust."). Tenant's interest in the Lease is hereby subject to the terms and conditions set forth in the Deed of Trust and shall be deemed to be junior, and subordinate to the Deed of Trust at all times, notwithstanding the Deed of Trust's later date, later recording date and any subsequent modifications thereto. Notwithstanding anything stated in the Lease, Tenant agrees not to subordinate the Lease to any other lien or encumbrance without Lender's prior written consent. Additionally, before any assignment or sublease under the Lease shall become effective, such assignee or sublessee must be approved by Lender, in writing.

Attornment. Notwithstanding the fact that the Lease is subordinate to the Deed of Trust as stated above, in the event that Lender or any other party (collectively a "Successor Landlord") succeeds to the rights of Landlord under the Lease, whether through foreclosure, the acceptance of a deed in lieu of foreclosure or any repossession, surrender, assignment, voluntary sale, or judicial action, then Tenant agrees that it shall attorn to, be liable to and recognize Successor Landlord as the lessor under the Lease for the balance of the term of the Lease upon and subject to all the terms and conditions of this Agreement and of the Lease (excepting purchase options, if any), with the

same force and effect as if the Successor Landlord was the original lessor under the Lease. Tenant waives provisions of any statute or rule of law giving it the right to elect to terminate the Lease. Such attornment shall be self-operative without the execution of any further documents; however, at the Successor Landlord's request, Tenant agrees to execute any instruments to confirm the foregoing provisions, including a new lease directly with the Successor Landlord.

Payment of Rent to Lender. Landlord agrees that the rent payable under the Lease shall, at Lender's demand, be paid directly by Tenant to Lender upon the occurrence of a default by Landlord under the Deed of Trust. Accordingly, after notice is given by Lender to Tenant that the rent under the Lease shall be paid to Lender, Tenant shall pay to Lender all rent and other monies due and to become due to Landlord under the Lease. Demand shall be made in accordance with Civil Code section 2938 or any successor statute.

Non-Disturbance of Tenant's Possession. So long as Tenant shall pay, when due, the rent, impositions and other amounts owing under the Lease and otherwise perform such other tenant obligations as set forth in the Lease, Tenant shall not be joined as an adverse party defendant in any action or proceeding which may be instituted or commenced by Lender to foreclose or enforce the Deed of Trust (unless Lender is legally required to so join Tenant to protect Lender's ability to foreclose against Landlord), Tenant shall not be evicted from the Property nor shall any of Tenant's rights under the Lease, including but not limited to its rights to use and possession, be affected in any way by reason of being subordinate to the Deed of Trust, and Tenant's leasehold estate under the Lease shall not be terminated or disturbed during the term of the Lease by reason of any default under the Deed of Trust.

Limitation of Liability. Notwithstanding the foregoing, Successor Landlord shall not be: (a) liable for any action or omission, indemnity, representation or warranty of any prior lessor, including Landlord; (b) subject to any offsets or defenses which Tenant may have against any prior lessor, including Landlord prior to such time as Successor Landlord obtains possession of the Property; (c) bound by any payment of rent or any other amounts which Tenant may have paid to any prior lessor, including Landlord; (d) liable for any security deposit or any other such payments; (e) liable for paying (or giving Tenant a credit) for any construction allowance or any other allowance; (f) bound by any modifications or amendment of the Lease made without Lender's prior written consent; (g) bound by any notice of termination given by any lessor, including Landlord, to Tenant without Lender's prior written consent; (h) bound by any options to purchase the Property; nor (i) personally liable under the Lease (provided that Lender's liability shall be limited to its ownership interest as Successor Landlord in the Property).

Condemnation. Notwithstanding anything stated in the Lease to the contrary, Tenant agrees that, if Successor Landlord, including Lender, should succeed to the interest of Landlord under the Lease, then the Lease shall be modified to provide that the entirety of any condemnation award, settlement or compromise, whether for a total or partial condemnation and whether such award shall be made as compensation for diminution in value of the leasehold, or for the taking of the fee, or severance damages, or any other claims, shall belong to and be the property of Successor Landlord; and Tenant shall be entitled only to recover such compensation as may be separately awarded to Tenant for the taking of Tenant's trade fixtures, loss of goodwill and for relocation expenses.

Landlord Default and Lender's Right to Cure. Tenant agrees to give written notice to Lender of any default by Landlord (or other lessor) under the terms of the Lease and Lender shall have the right (but not the obligation) to cure any default of Landlord (or other lessor). Tenant shall not take action with respect to such default under the Lease, including without limitation, any action

in order to terminate, rescind or void the Lease, or to withhold any rental thereunder, for a period of twenty (20) calendar days after receipt of such written notice by Lender with respect to any such default capable of being cured by the payment of money and for a period of thirty (30) calendar days after receipt of such written notice by Lender with respect to any other such default (provided, that in the case of any default which cannot be cured by the payment of money and cannot with due diligence be cured within such thirty (30) calendar day period because of the nature of such default or because Lender requires time to obtain possession of the Premises in order to cure the default, if Lender shall proceed promptly to attempt to obtain possession of the Premises, where possession is required, and to cure the same thereafter, and shall prosecute the curing of such default with diligence and continuity, then the time within which such default may be cured shall be extended for such period as may be necessary to complete the curing of the same with diligence and continuity).

Loan Documents Unmodified. Nothing contained in this Agreement shall be deemed to amend, modify or otherwise limit the provisions of the Deed of Trust, which shall remain in full force and effect. The parties hereto agree that (i) any inconsistency between this Agreement and the Lease shall be governed by this Agreement; (ii) any inconsistency between the Deed of Trust and this Agreement shall be governed by the Deed of Trust; and (iii) any inconsistency between the Deed of Trust and the Lease shall be governed by the Deed of Trust.

General Provisions. This Agreement shall inure to the benefit of, and shall be binding upon, Borrower/Landlord, Tenant and Lender and each of their respective heirs, personal representatives, successors and assigns. In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any of the provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision was not contained herein. Should any party hereto be required to enforce the terms of this Agreement by litigation, the prevailing party to such litigation shall be entitled to its reasonable attorney's fees in addition to any other relief which may be awarded by a court of competent jurisdiction. This Agreement may not be modified orally or in any manner other than by a written agreement signed by the parties hereto or their respective successors or assigns. This Agreement shall be governed by and construed according to the internal laws of the State of ~~California~~ without resort to choice of law principles. This Agreement may be executed in counterparts, all of which when taken together shall constitute one and the same instrument.

INDIANA
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SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

(Continued)


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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed in manner and form sufficient to bind them, as of the day and year first above written.

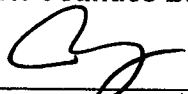
BORROWER (LANDLORD): Hammond One, LLC, an Indiana limited Liability company

By: 
Name: STEVE NAVARRO
Title: gr

TENANT: BP Products North America Inc.

By: 
Name: RICHARD W. POTOCZEK
Title: ATTORNEY-IN-FACT

LENDER: Tri Counties Bank

By: 
Name: Terry Ward
Title: Senior Vice President

[Notarial Acknowledgements Next Page]

LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT "A"

EXHIBIT "A"
Legal Description

For APN/Parcel ID(s): 45-07-07-201-002.000-023

Part of Lot Numbered 2 as shown on the recorded plat of Water Tower Addition to the City of Hammond, recorded in Plat Book 94, Page 77, in the Office of the Recorder of Lake County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of said Lot 2; thence North 00 degrees 29 minutes 23 seconds East along the East right of way line of Columbia Avenue, a distance of 123.77 feet to the point of beginning; thence South 89 degrees 30 minutes 37 seconds East, a distance of 212.37 feet; thence South 00 degrees 29 minutes 23 seconds West, a distance of 120.43 feet to a point on the South line of said Lot 2; thence North 89 degrees 35 minutes 13 seconds East along the South line of said Lot 2, a distance of 413.62 feet to the Southeast corner of said Lot 2; thence North 00 degrees 29 minutes 23 seconds East, a distance of 575.61 feet; thence North 89 degrees 32 minutes 23 seconds East, a distance of 90.01 feet; thence North 00 degrees 29 minutes 23 seconds East, a distance of 110.02 feet to a point on the South right of way line of 165th Street; thence South 89 degrees 32 minutes 23 seconds West along the South right of way line of 165th Street, a distance of 329.21 feet; thence South 00 degrees 29 minutes 23 seconds West, a distance of 50.01 feet; thence South 89 degrees 32 minutes 23 seconds West, a distance of 4.97 feet; thence South 00 degrees 29 minutes 23 seconds West, a distance of 43.91 feet to a point on a curve concave to the Southeast and having a radius of 398.94 feet; thence Southwesterly along said curve an arc length of 275.71 feet (chord bearing 39 degrees 50 minutes 44 seconds, chord distance of 270.26 feet); thence North 89 degrees 32 minutes 23 seconds East, a distance of 25.94 feet; thence South 00 degrees 29 minutes 23 seconds West, a distance of 221.22 feet; thence North 89 degrees 30 minutes 37 seconds West, a distance of 82.50 feet; thence North 80 degrees 41 minutes 35 seconds West, a distance of 104.38 feet; thence North 89 degrees 30 minutes 37 seconds West, a distance of 50.72 feet to a point on the East right of way line of Columbia Avenue; thence South 00 degrees 29 minutes 23 seconds West along the East right of way line of Columbia Avenue, a distance of 60.00 feet to the point of beginning, all in the City of Hammond, Lake County, Indiana, containing 6.20 acres, more or less.

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by Chicago Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I-Requirements; Schedule B, Part II-Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

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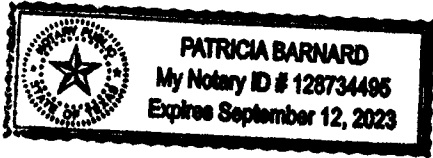


STATE OF TEXAS)
)
COUNTY OF HARRIS)

ss.

I certify that I know or have satisfactory evidence that RICHARD W. POTOCEK is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the ATTORNEY-IN-FACT of BP PRODUCTS NORTH AMERICA INC a Maryland Corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 29 day of January, 2020



Signature: Patricia Barnard

Printed Name: PATRICIA BARNARD

NOTARY PUBLIC, State of TEXAS

My appointment expires September 12, 2023

STATE OF California)
COUNTY OF Alameda)

SS.

I certify that I know or have satisfactory evidence that Steve Navarro is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he she was authorized to execute the instrument and acknowledged it as the _____ of _____, ~~and~~ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 17 day of April, 2020.

Signature: [Handwritten Signature]

Printed Name: M. WONG

NOTARY PUBLIC, State of California

My appointment expires 11/24/2022



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of San Francisco)

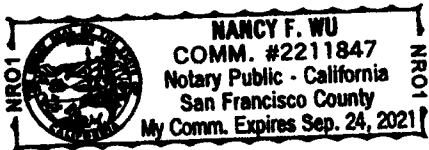
On March 30, 2020 before me, NANCY F. WU, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared TERRY WARD
Name(s) of Signer(s)

who 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 authorized capacity(ies), and that by 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Subordination Agreement Document Date: 1-2-2020
Number of Pages: 6 Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: TERRY WARD

Corporate Officer — Title(s): SVP

Partner — Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: Tic Counties Bank

Signer's Name: _____

Corporate Officer — Title(s): _____

Partner — Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: _____

Instrument prepared by:

Terry Ward
Tri Counties Bank
130 Battery Street
San Francisco, CA 94111

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Terry Ward