

# UNOFFICIAL COPY



Doc#: 0820722081 Fee: \$56.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 07/25/2008 11:28 AM Pg: 1 of 11

This instrument was prepared by and after recording should be returned to:

Michael L. Owen, Esq.  
Bell, Boyd & Lloyd LLP  
70 West Madison Street  
Suite 3100  
Chicago, IL 60602

Property of Cook County

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT is made and entered into as of the 22nd day of July, 2008 by and between OGDEN AVENUE MATERIALS, INC., an Illinois corporation ("Tenant"), OGDEN AVENUE PROPERTIES, LLC, an Illinois limited liability company ("Landlord"), and THE PRIVATEBANK AND TRUST COMPANY, its successors and assigns ("Mortgagee").

### RECITALS

A. Mortgagee is the holder of a certain Mortgage, Security Agreement and Financing Statement of even date herewith made by Landlord in favor of Mortgagee (such Mortgage, Security Agreement and Financing Statement, as the same may be amended, modified, supplemented or restated from time to time, hereinafter is referred to as the "Mortgage"), to be recorded concurrently herewith, encumbering the Real Estate (hereinafter defined) and securing the indebtedness under a Loan and Security Agreement of even date herewith entered into by and among Mortgagee, Tenant, Landlord, Bigane Paving Co., an Illinois corporation, Reliable Ogden LLC, an Illinois limited liability company, and BPC LLC, an Illinois limited liability company (such Loan and Security Agreement, as the same may be amended, modified, supplemented or restated from time to time, hereinafter is referred to as the "Loan Agreement").

B. Tenant and Landlord have entered into an Amended and Restated Lease dated July 15, 2008 (such Amended and Restated Lease, as the same may be amended, modified, supplemented or restated from time to time, hereinafter is referred to as the "Lease"), pursuant to which Tenant leased from Landlord certain property located in Chicago, Cook County, Illinois and legally described in Exhibit A attached hereto (the "Real Estate").

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

Box 334

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1. Tenant represents and warrants to Mortgagee that the certified copy of the Lease delivered by Tenant to Mortgagee on the date hereof constitutes the entire agreement between Tenant and Landlord as of the date hereof with respect to the Real Estate and there are no other agreements, written or verbal, governing the tenancy of Tenant with respect to the Real Estate.

2. Prior to pursuing any remedy available to Tenant under the Lease, at law or in equity as a result of any failure of Landlord to perform or observe any covenant, condition, provision or obligation to be performed or observed by Landlord under the Lease (any such failure hereinafter referred to as a "Landlord's Default"), Tenant shall: (a) provide Mortgagee with a notice of Landlord's Default specifying the nature thereof, the Section of the Lease under which same arose and the remedy which Tenant will elect under the terms of the Lease or otherwise, and (b) allow Mortgagee not less than thirty (30) days following receipt of such notice of Landlord's Default to cure the same; provided, however, that, if such Landlord's Default is not readily curable within such thirty (30) day period, Tenant shall give Mortgagee such additional time as Mortgagee may reasonably need to obtain possession and control of the Real Estate and to cure such Landlord's Default so long as Mortgagee is diligently pursuing a cure. Tenant shall not pursue any remedy available to it as a result of any Landlord's Default unless Mortgagee fails to cure same within the time period specified above. For purposes of this Paragraph 2, a Landlord's Default shall not be deemed to have occurred until all grace and/or cure periods applicable thereto under the Lease have lapsed without Landlord having effectuated a cure thereof.

3. Tenant covenants with Mortgagee that the Lease shall be subject and subordinate to the lien and all other provisions of the Mortgage and to all modifications and extensions thereof, to the full extent of all principal, interest and all other amounts now or hereafter secured thereby and with the same force and effect as if the Mortgage had been executed and delivered prior to the execution and delivery of the Lease. Without limiting the generality of the foregoing subordination provision, Tenant hereby agrees that any of its right, title and interest in and to insurance proceeds and condemnation awards (or other similar awards arising from eminent domain proceedings) with respect to damage to or the condemnation (or similar taking) of any of the Real Estate shall be subject and subordinate to Mortgagee's right, title and interest in and to such proceeds and awards, provided, however, that so long as no Event of Default or Potential Default (each as defined in the Mortgage) has occurred and is continuing Tenant shall be entitled to receive any such insurance proceeds and condemnation awards in an amount not to exceed, in the aggregate, \$25,000.

4. Tenant acknowledges that Landlord has collaterally assigned to Mortgagee all leases affecting the Real Estate, including the Lease, and the rents and other amounts, including, without limitation, lease termination fees, if any, due and payable under such leases. In connection therewith, notwithstanding any provision in any such leases to the contrary, Tenant agrees that, upon receipt of a notice of a default by Landlord under such assignment and a demand by Mortgagee for direct payment to Mortgagee of the rents due under the Lease, Tenant will honor such demand and make all subsequent rent payments directly to Mortgagee. Tenant further agrees that any Lease termination fees payable under the Lease shall be paid jointly to Landlord and Mortgagee.

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5. Mortgagee agrees that so long as Tenant is not in default under the Lease or the Loan Agreement:

(a) Tenant shall not be named or joined as a party in any suit, action or proceeding for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage (unless Tenant is a necessary party under applicable law); and

(b) the possession by Tenant of the Real Estate and Tenant's rights thereto shall not be disturbed, affected or impaired by, nor will the Lease or the term thereof be terminated or otherwise materially adversely affected by (i) any suit, action or proceeding for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage, or by any judicial sale or execution or other sale of the Real Estate, or any deed given in lieu of foreclosure, or (ii) any default under the Mortgage;

6. If Mortgagee or any future holder of the Mortgage shall become the owner of the Real Estate by reason of foreclosure of the Mortgage or otherwise, or if the Real Estate shall be sold as a result of any action or proceeding to foreclose the Mortgage or transfer of ownership by deed given in lieu of foreclosure, the Lease shall continue in full force and effect, without necessity for executing any new lease, as a direct lease between Tenant and the new owner of the Real Estate as "landlord" upon all the same terms, covenants and provisions contained in the Lease (subject to the exclusions set forth in subparagraph (b) below), and in such event:

(a) Tenant shall be bound to such new owner under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the extension periods, if Tenant elects or has elected to exercise its options to extend the term), and Tenant hereby agrees to attorn to such new owner and to recognize such new owner as "landlord" under the Lease without any additional documentation to effect such attornment (provided, however, if applicable law shall require additional documentation at the time Mortgagee exercises its remedies then Tenant shall execute such additional documents evidencing such attornment as may be required by applicable law);

(b) Such new owner shall be bound to Tenant under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the extension periods, if Tenant elects or has elected to exercise its options to extend the term); provided, however, that such new owner shall not be:

(i) liable for any act or omission of any prior landlord (including Landlord);

(ii) subject to any offsets or defenses which Tenant has against any prior landlord (including Landlord) unless Tenant shall have provided Mortgagee with (A) notice of the Landlord's Default that gave rise to such offset or defense and (B) the opportunity to cure the same, all in accordance with the terms of Section 3 above;

(iii) bound by any base rent, percentage rent, additional rent or any other amounts payable under the Lease which Tenant might have paid in advance for more than the current month to any prior landlord (including Landlord);

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(iv) liable to refund or otherwise account to Tenant for any security deposit not actually paid over to such new owner by Landlord;

(v) bound by any amendment or modification of the Lease made without Mortgagee's consent;

(vi) bound by, or liable for any breach of, any representation or warranty or indemnity agreement contained in the Lease or otherwise made by any prior landlord (including Landlord); or

(vii) personally liable or obligated to perform any such term, covenant or provision, such new owner's liability being limited in all cases to its interest in the Real Estate.

4. Any notices, communications and waivers under this Agreement shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) by overnight express carrier, addressed in each case as follows:

To Mortgagee: The PrivateBank and Trust Company  
120 South LaSalle Street  
Chicago, Illinois 60603  
Attn: David L. Sauerma

To Tenant: Ogden Avenue Materials, Inc.  
935 W. Chestnut, Suite 203  
Chicago, Illinois 60642  
Attention: Anne Bigane Wilson

To Landlord: Ogden Avenue Properties, LLC  
c/o Ogden Avenue Materials, Inc.  
935 W. Chestnut, Suite 203  
Chicago, Illinois 60642  
Attention: Anne Bigane Wilson

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this Paragraph shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

5. Tenant acknowledges and agrees that Mortgagee will be relying on the representations, warranties, covenants and agreements of Tenant contained herein and that any default by Tenant hereunder shall permit Mortgagee, at its option, to exercise any and all of its rights and remedies at law and in equity against Tenant and to join Tenant in a foreclosure action thereby terminating Tenant's right, title and interest in and to the Real Estate.

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6. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors and assigns and any nominees of Mortgagee, all of whom are entitled to rely upon the provisions hereof. This Agreement shall be governed by the laws of the State of Illinois.

7. This Agreement may be executed in multiple counterparts and all of such counterparts together shall constitute one and the same Agreement.

[remainder of this page intentionally left blank; signature page follows]


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IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year first above written.


Tenant:

OGDEN AVENUE MATERIALS, INC., an Illinois corporation

By:   
Anne Bigane Wilson  
President

Landlord:

OGDEN AVENUE PROPERTIES, LLC, an Illinois limited liability company

By:   
Anne Bigane Wilson  
Manager

Mortgagee:

THE PRIVATEBANK AND TRUST COMPANY

By: \_\_\_\_\_  
David L. Sauerian  
Managing Director

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year first above written.

Tenant:

OGDEN AVENUE MATERIALS, INC., an Illinois corporation

By: \_\_\_\_\_

Anne Bigane Wilson  
President

Landlord:

OGDEN AVENUE PROPERTIES, LLC, an Illinois limited liability company

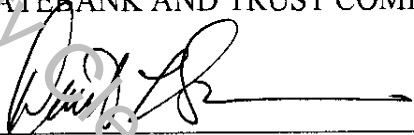
By: \_\_\_\_\_

Anne Bigane Wilson  
Manager

Mortgagee:

THE PRIVATEBANK AND TRUST COMPANY

By: \_\_\_\_\_

  
David L. Sauerman  
Managing Director

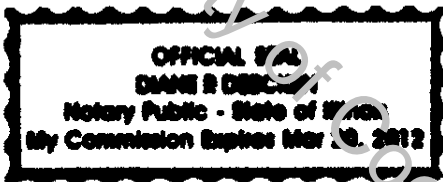
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STATE OF ILLINOIS )  
                                  ) SS  
COUNTY OF COOK \_\_\_\_\_)

I HEREBY CERTIFY that on this day, before me personally appeared Anne Bigane Wilson, the President of Ogden Avenue Materials, Inc., an Illinois corporation, to me known to be the same person who signed the foregoing instrument as such President, and acknowledged that she signed and delivered the foregoing instrument as her free and voluntary act and deed as such President for the uses and purposes therein mentioned, and that the said instrument is the free and voluntary act and deed of said President and corporation.

WITNESS my signature and official seal at Chicago, in the County of Cook and State of Illinois, this 22<sup>ND</sup> day of JULY, 2008.

(NOTARY SEAL)



Diane R. Decker  
Notary Public

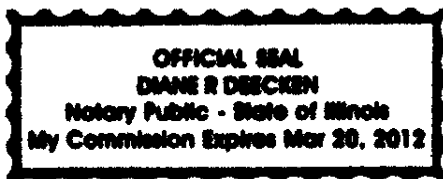
My Commission Expires: March 20, 2012

STATE OF ILLINOIS )  
                                  ) SS  
COUNTY OF COOK \_\_\_\_\_)

I HEREBY CERTIFY that on this day, before me personally appeared Anne Bigane Wilson, the sole manager of Ogden Avenue Properties, LLC, an Illinois limited liability company, to me known to be the same person who signed the foregoing instrument as such sole manager, and acknowledged that she signed and delivered the foregoing instrument as her free and voluntary act and deed as such sole manager for the uses and purposes therein mentioned, and that the said instrument is the free and voluntary act and deed of said sole manager and limited liability company.

WITNESS my signature and official seal at Chicago, in the County of Cook and State of Illinois, this 22<sup>ND</sup> day of JULY, 2008.

(NOTARY SEAL)



Diane R. Decker  
Notary Public

My Commission Expires: March 20, 2012



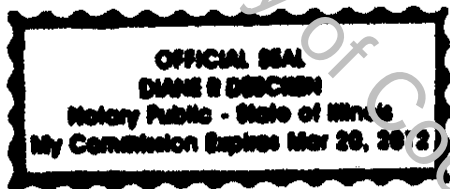
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STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF COOK\_\_\_\_\_)

I HEREBY CERTIFY that on this day, before me personally appeared David L. Sauerman, a Managing Director of The PrivateBank and Trust Company, to me known to be the same person who signed the foregoing instrument as such Managing Director, and acknowledged that he signed and delivered the foregoing instrument as his free and voluntary act and deed as such Managing Director for the uses and purposes therein mentioned, and that the said instrument is the free and voluntary act and deed of said Managing Director and company.

WITNESS my signature and official seal at Chicago, in the County of Cook and State of Illinois, this 22<sup>nd</sup> day of JULY, 2008.

(NOTARY SEAL)



Diane R. Decker  
Notary Public

My Commission Expires: March 20, 2012

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## EXHIBIT A

### Legal Description of Real Estate

#### PARCEL 1:

THAT PART OF THE CHICAGO NORTHWESTERN RAILROAD COMPANY. BLOCKS 2, 3, 4 AND 8 IN WRIGHT'S ADDITION TO CHICAGO, VACATED NORTH PEORIA STREET (FORMERLY DIX) VACATED BY CIRCUIT COURT DECREE NO. 165420 AND DOCUMENT NO. 14817346, WITH VACATED NORTH OGDEN AVENUE, WEST CHESTNUT STREET, NORTH SANGAMON STREET AND NORTH PEORIA STREET, ALL VACATED PER JOURNAL OF CITY COUNCIL OF CHICAGO, PAGES 73201 – 73206, DATED JULY 8, 1998, IN THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 5, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE CENTER LINE OF VACATED FRONT STREET, AS SAID FRONT STREET WAS ORIGINALLY LOCATED AND ESTABLISHED, WITH THE WEST LINE OF HALSTED STREET AS SAID HALSTED STREET WAS ORIGINALLY LOCATED AND ESTABLISHED; THENCE NORTH 0 DEGREES 09 MINUTES 44 SECONDS EAST, 62.0 FEET; THENCE NORTH 89 DEGREES 50 MINUTES 16 SECONDS EAST, 8.0 FEET; THENCE NORTH 0 DEGREES 09 MINUTES 44 SECONDS EAST, 45.63 FEET TO THE SOUTHERLY LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER; THENCE NORTH 73 DEGREES 56 MINUTES 16 SECONDS WEST ALONG SAID RIVER, 405.24 FEET; THENCE NORTH 51 DEGREES 20 MINUTES 48 SECONDS WEST ALONG SAID RIVER, 93.58 FEET; THENCE NORTH 40 DEGREES 42 MINUTES 58 SECONDS WEST ALONG SAID RIVER, 48.77 FEET TO POINT OF BEGINNING; THENCE SOUTH 49 DEGREES 05 MINUTES 34 SECONDS WEST, 256.65 FEET; THENCE SOUTH 11 DEGREES 48 MINUTES 27 SECONDS WEST, 70.58 FEET TO A LINE 15.0 FEET NORTHEASTERLY OF THE CENTER LINE OF I.C.C. TRACKS NUMBERS 2 AND 70 AS NOW LOCATED; THENCE NORTH 64 DEGREES 40 MINUTES 30 SECONDS WEST ALONG A LINE 15.0 FEET NORTHEASTERLY OF SAID TRACKS, 49.41 FEET TO THE EAST LINE OF N. LESSING STREET; THENCE NORTH 0 DEGREES 14 MINUTES 31 SECONDS EAST ALONG SAID EAST LINE 272.74 FEET TO THE NORTHEASTERLY LINE OF N. PEORIA ST.; THENCE NORTH 49 DEGREES 37 MINUTES 29 SECONDS WEST ALONG SAID NORTHEASTERLY LINE, 89.86 FEET TO THE NORTH LINE OF W. CHESTNUT STREET; THENCE NORTH 89 DEGREES 19 MINUTES 41 SECONDS WEST ALONG SAID NORTH LINE 328.59 FEET TO THE SOUTHEASTERLY LINE OF N. OGDEN AVENUE; THENCE SOUTH 40 DEGREES 21 MINUTES 48 SECONDS WEST ALONG SAID SOUTHEASTERLY LINE 98.07 FEET TO THE EAST LINE OF LOT 1 IN BLOCK 8 EXTENDED NORTH; THENCE NORTH 0 DEGREES 16 MINUTES 37 SECONDS EAST ALONG SAID EAST LINE EXTENDED NORTH, 35.46 FEET TO THE CENTER LINE OF W. CHESTNUT STREET; THENCE NORTH 89 DEGREES 19 MINUTES 41 SECONDS WEST ALONG SAID CENTER LINE, 40.50 FEET TO THE CENTER LINE OF NORTH OGDEN AVENUE; THENCE NORTH 40 DEGREES 21 MINUTES 48 SECONDS EAST ALONG SAID CENTER LINE 502.91 FEET TO THE SOUTHWESTERLY LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER; THENCE SOUTH 48 DEGREES, 48 MINUTES 28 SECONDS EAST ALONG SAID RIVER, 69.01 FEET; THENCE SOUTH 43 DEGREES 31 MINUTES 40 SECONDS EAST ALONG SAID RIVER, 241.50 FEET; THENCE SOUTH 40 DEGREES 42 MINUTES 58 SECONDS EAST ALONG SAID RIVER, 320.13 FEET TO THE POINT OF BEGINNING IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

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A NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY THE EASEMENT AGREEMENT DATED DECEMBER 24, 1998 AND RECORDED DECEMBER 24, 1998 AS DOCUMENT 08171345 MADE BY AND BETWEEN CHICAGO PAPERBOARD CORPORATION AND THE PAL GROUP, INC. FOR THE PURPOSE OF CREATING A SHARED PRIVATE DRIVEWAY OVER THE FOLLOWING DESCRIBED LAND:

BEGINNING AT THE INTERSECTION OF THE CENTERLINES OF WEST CHESTNUT STREET AND NORTH OGDEN AVENUE; THENCE NORTH 89 DEGREES 19 MINUTES 41 SECONDS WEST ALONG SAID CENTERLINE OF WEST CHESTNUT STREET, 19.49 FEET TO A LINE 15.00 FEET NORTHWESTERLY AT RIGHT ANGLES TO THE CENTERLINE OF NORTH OGDEN AVENUE; THENCE NORTH 40 DEGREES 21 MINUTES 48 SECONDS EAST AND PARALLEL TO THE CENTERLINE OF NORTH OGDEN AVENUE, 417.66 FEET TO A POINT OF A CURVE; THENCE NORTHWESTERLY ALONG THE CURVE HAVING A RADIUS OF 5000 FEET CONVEX TO THE NORTHWEST, 141.84 FEET TO THE CENTERLINE OF NORTH OGDEN AVENUE; THENCE SOUTH 40 DEGREES 21 MINUTES 48 SECONDS WEST 502.91 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

## PARCEL 3:

THAT PART OF THE CHICAGO NORTHWESTERN RAILROAD COMPANY, BLOCKS 2, 3, 4 AND 8 IN WRIGHT'S ADDITION TO CHICAGO, VACATED NORTH PEORIA STREET (FORMERLY DIX STREET) VACATED BY CIRCUIT COURT DECREE NO. 165420 AND RECORDED AS DOCUMENT NO. 14817346, TOGETHER WITH VACATED NORTH OGDEN AVENUE, WEST CHESTNUT STREET, NORTH SANGAMON STREET AND NORTH PEORIA STREET, VACATED PER JOURNAL OF CITY COUNCIL OF CHICAGO, PAGES 73201-73206, DATED JULY 8, 1998, IN THE EAST ½ OF THE SOUTHEAST ¼ OF SECTION 5, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTH LINE OF WEST CHESTNUT STREET AND THE EAST LINE OF NORTH SANGAMON STREET; THENCE NORTH 0 DEGREES 16 MINUTES 37 SECONDS EAST ALONG SAID EAST LINE, 72.24 FEET TO THE SOUTHWESTERLY LINE OF NORTH PEORIA STREET; THENCE NORTH 49 DEGREES 37 MINUTES 29 SECONDS WEST ALONG SAID SOUTHWESTERLY LINE, 43.40 FEET TO THE SOUTHEASTERLY LINE OF NORTH OGDEN AVENUE; THENCE SOUTH 40 DEGREES 21 MINUTES 48 SECONDS WEST ALONG SAID SOUTHEASTERLY LINE, 129.90 FEET TO THE NORTH LINE OF WEST CHESTNUT STREET; THENCE SOUTH 89 DEGREES 19 MINUTES 41 SECONDS EAST ALONG SAID NORTH LINE 116.86 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY ILLINOIS.

PINs: 17-05-413-016; 17-05-421-001; 17-05-425-001; 17-05-425-003; 17-05-425-004; 17-05-425-005; 17-05-425-006; 17-05-425-011; 17-05-425-012; and 17-05-425-016

Common Address: 931 North Ogden Avenue, Chicago, Illinois