



Doc#: 1003429022 Fee: \$54.00  
Eugene "Gene" Moore RHSP Fee:\$10.00  
Cook County Recorder of Deeds  
Date: 02/03/2010 10:58 AM Pg: 1 of 10

This Document Prepared by  
and after Recording Return to:

Holland & Knight LLP  
131 S. Dearborn Street  
30<sup>th</sup> Floor  
Chicago, Illinois 60603  
Francis L. Keldermans, Esq.

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

**THIS AGREEMENT** is made and entered into as of the 14<sup>th</sup> day of January, 2010, by and between Fresh Express Incorporated, a Delaware corporation, successor by merger to Redi-cut Foods, Inc., an Illinois corporation, ("Tenant"), FR Midwest 1, LLC, a Delaware limited liability company ("Landlord"), and **AMERICAN NATIONAL INSURANCE COMPANY**, a Texas corporation, its successors and assigns ("Mortgagee").

**RECITALS:**

A. **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:

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4055  
KEL/JLO  
NCS 4118082

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B. **FR Midwest 1, LLC, a Delaware limited liability company**, (together with its successors and assigns including, without limitation, with respect to any individual, such individual's heirs, administrators, legal representatives and executors being herein collectively referred to as "Borrower"), the lessor or successor to the lessor under the Lease, has requested Lender to make to Borrower a mortgage loan secured or to be secured by a mortgage or deed of trust from Borrower to Lender (such mortgage or deed of trust collectively together with all renewals, increases, replacements, consolidations, modifications and extensions thereof, the "Mortgage"), covering the property (the "Property") described on **EXHIBIT "B"** attached hereto and incorporated herein wherein the premises covered by the Lease are located.

C. Lender is willing to make the requested mortgage loan, provided Tenant executes this Agreement.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to induce Lender to make the requested mortgage loan, Tenant and Lender hereby agree and covenant as follows:

1. The Lease and the lien thereof are and shall at all times continue to be subject and subordinate in all respects to the lien of the Mortgage and all rights, privileges and provisions in favor of Lender thereunder. Tenant further waives all rights and claims to assert that the Lease or any provision thereof is superior to the lien or to any other provision of the Mortgage.

2. So long as Tenant is not in breach or default (beyond any period in the Lease given to Tenant to cure such breach or default) in the payment of rent or additional sums or in the performance of any of the other terms, covenants or conditions of the Lease on Tenant's part to be performed, Tenant's possession under the Lease and Tenant's rights and privileges thereunder, or under any extensions or renewals thereof which may be effected in accordance with any option therefor contained in the Lease, shall not be diminished or interfered with by Lender acting pursuant to the Mortgage, and Tenant's occupancy shall not be disturbed by Lender during the term of the Lease or any such extensions or renewals thereof in accordance with any extension or renewal options contained in the Lease.

3. If the interests of Borrower in the Property or the Lease shall be acquired by Lender by foreclosure, by deed in lieu of foreclosure or by any other method, and Lender succeeds to the interests of Borrower under the Lease, then provided that and so long as Tenant is not in default in the payment of any sums due from Tenant under the Lease or in the

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performance of any other obligation of Tenant under the Lease, the Lease and the rights of Tenant thereunder shall continue in full force and effect and shall not be terminated, diminished, interfered with or disturbed except in accordance with the terms of the Lease, and except that Tenant shall be bound to Lender under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining, and any extensions or renewals thereof which may be effected in accordance with any option therefor contained in the Lease, with the same force and effect as if Lender were the original lessor under the Lease, and Tenant does hereby attorn to Lender as its lessor, said attornment to be effective and self-operative without the execution of any other instruments on the part of either party hereto immediately upon Lender's succeeding to the interest of Borrower under the Lease; provided, however, that unless otherwise required by applicable law Tenant shall be under no obligation to pay rent to Lender by virtue of this Agreement until Tenant receives written notice from Lender that Lender has succeeded to the interests of Borrower under the Lease or exercised its assignment of rents. It is the intention of the parties hereto for this purpose to incorporate the Lease into this Agreement by reference for all purposes with the same force and effect as if set forth at length herein.

4. If Lender shall succeed to the interests of Borrower under the Lease, Lender shall be bound to Tenant under all of the terms, covenants and conditions of the Lease, and Tenant shall, from and after Lender's succession to the interests of Borrower under the Lease, have the same remedies against Lender for the breach or default by Lender of any agreement contained in the Lease that Tenant might have had under the Lease against Borrower for Borrower's breach or default; provided, however, that Lender shall not be

- (a) liable for any act or omission of any prior or succeeding landlord (including Borrower); or
- (b) liable for the return of any security deposit unless actually received by Lender;
- (c) subject to any offsets or defenses which Tenant might have against any prior or succeeding landlord (including Borrower);
- (d) bound by any rent or additional sums which Tenant might have paid for more than one month in advance to any prior or succeeding landlord (including Borrower);
- (e) bound by any agreement, amendment or modification of the Lease or any cancellation or termination of the Lease by any prior landlord (including Borrower), made without Lender's prior written consent;
- (f) liable for the completion of any construction on the Property or tenant improvements to the leased premises commenced, or agreed or represented to by any prior or succeeding landlord (including Borrower); or

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(g) bound by any provision of the Lease restricting the use of other properties owned by Lender, as landlord.

5. Tenant from and after the date hereof shall send a copy of any notice or statement of a breach or default (including matters which, but for the passage of time, the giving of notice, or both, would be a breach or default) under the Lease or any notices or statement of any intention to cancel or terminate the Lease by certified mail, return receipt requested to Lender at the address shown above at the same time such notice or statement is sent to Borrower. Tenant further agrees that, in the event of any act or omission by Borrower or other occurrence which would give Tenant the right to cancel or terminate the Lease or to claim a partial or total eviction (either actual or constructive), or in the event of any other breach or default by Borrower under the terms of the Lease, promptly thereupon, Tenant shall so notify Lender by certified mail, return receipt requested, at the address above.

6. Lender shall have the option, within a reasonable time, but not less than sixty (60) days following receipt by Lender of notice as provided in paragraph 5 above, to cure any such act, omission, breach, or default of Borrower described in such paragraph 5, including if necessary, the commencement and prosecution of foreclosure proceedings, and Tenant agrees to accept the performance of Lender in lieu of the performance of Borrower and that the Lease shall thereby remain in full force and effect. Tenant shall not exercise any such right to terminate or claim eviction or any other rights or remedies available at law or in equity for default or breach of the Lease or act or omission by Borrower in connection with the Lease, unless and until Tenant has notified Lender as provided in paragraph 5 hereof and until the time for Lender to commence and complete such cure has elapsed.

7. Tenant hereby agrees that for so long as the Mortgage encumbers or is a lien on the Property, or any portion thereof, and thereafter, should Lender acquire the Property, or any portion thereof, no covenant, agreement or other obligation of the Landlord which is to be performed or complied with beyond the boundaries of the Property and no act or omission or occurrence which occurs beyond the boundaries of the Property (including, without limitation, any restrictions prohibiting Landlord's or its affiliates or other related persons or entities from competing, operating or leasing in competition with Tenant or to cause or restrict certain actions or activities on other property not encumbered by the Mortgage) shall be a breach or default under the Lease nor permit Tenant to cancel or terminate the Lease or abate or reduce any rent or other sums. Nothing in this Section 7 shall prevent Tenant from seeking or obtaining a restraining order or injunction against such breach, default, act, omission or occurrence or from obtaining a monetary judgment against Borrower or any successor landlord other than Lender for any such breach, default, act, omission or occurrence.

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8. In the event the Tenant becomes the owner of the Property or any portion thereof, there shall be no merger of the leasehold interest and the fee interest and the Lease shall remain in existence and, without limiting the foregoing, Lender shall be permitted to collect rent thereunder if a breach or default occurs under the Mortgage or any indebtedness secured thereby or any assignment of leases and/or rents by and/or executed in connection with any of the preceding. Nothing in this Agreement shall be construed to permit a transfer of Tenant's interest not expressly permitted by the Lease.

9. This Agreement may not be amended or modified orally or in any other manner other 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, their respective successors and assigns including, any applicable, heirs, administrators, legal representatives and executors.

10. Tenant agrees that it will not, without the written consent of Lender, pay rent or any other sums becoming due under the Lease more than one (1) month in advance.

11. Tenant agrees that the mortgage and the indebtedness secured thereby may be increased, rearranged, renewed, extended, consolidated and modified from time to time by agreement between Borrower 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, increases, rearrangements, consolidations and modifications and all such exercises of rights.

12. In no event shall Lender be personally liable as landlord under the Lease either by virtue of any assignment of the Lease, the exercise of any right thereunder or hereunder, the foreclosure of its lien on the Property, the acquisition of the Property or the collection of any rent or other sums under the Lease as Owner or Mortgagee and Tenant shall look solely to the real estate that is the subject of the Lease and to no other assets of Lender for satisfaction of any liability in respect of the Lease; but Tenant shall have reserved to it all other remedies available to it at law or in equity.

13. Except as otherwise described on Exhibit "A" above, the Lease has not been amended or modified and is in full force and effect as originally executed, and there are no side letters or other arrangements, whether or not constituting amendments to the Lease, for tenant inducements or otherwise.

14. The Lease is in full force and effect. Neither Borrower nor Tenant is in breach or default under any provision of the Lease nor is Tenant aware of any act, omission or occurrence which, but for the passage of time, the giving of notice, or both, which would constitute a breach

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or default or would permit the Tenant to terminate the Lease or reduce or abate any rent thereunder. Borrower has complied fully and completely with all of Borrower's covenants, warranties and other obligations under the Lease to the date hereof. Tenant is fully obligated to pay, and is paying, the rent and other sums due from Tenant under the Lease, and is fully obligated to perform and is performing all of the obligations of Tenant under the Lease, without right of counterclaim, offset or other defense.

15. Where appropriate, all references to the singular shall include the plural and vice versa and all references to any gender shall include the others.

16. This Agreement may not be waived, amended or modified except by subsequent written agreement signed by the party to be bound.

17. The words "breach" and "default" are used interchangeably in this Agreement for convenience of drafting and there is no distinction between the meanings of either word.

18. This Agreement satisfies Borrower's obligation, if any, to provide a subordination, non-disturbance and attornment agreement, or similar document, pursuant to the Lease.

19. This Agreement may be executed in multiple counterparts, each of which shall be an original instrument and which, taken together, constitutes one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

FRESH EXPRESS INCORPORATED, a Delaware corporation,  
successor by merger to Redi-cut Foods, Inc., an Illinois corporation

By: Nahn Menon  
Name: NAN MENON  
Title: PLANT MANAGER

AMERICAN NATIONAL INSURANCE COMPANY, a Texas corporation

By: Scott F. Brast  
Name: Scott F. Brast  
Title: Senior Vice President



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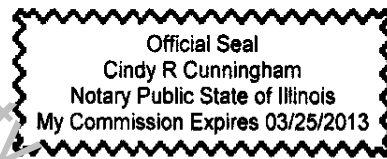
STATE OF ILLINOIS

COUNTY OF COOK

I, the undersigned, a Notary Public in and for said county, in the State of aforesaid, CERTIFY THAT NANU MENON, PLANT MANAGER of FRESH EXPRESS, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and official seal, this 14 day of JANUARY, 2010.

*Cindy R. Cunningham*  
Notary Public

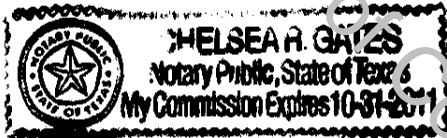


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STATE OF TEXAS                    )  
                                                   ) SS  
 COUNTY OF GALVESTON         )

Before me, the undersigned authority, a Notary Public, on this day personally appeared **Scott F. Brast**, **Senior Vice President** of AMERICAN NATIONAL INSURANCE COMPANY, a Texas corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed and delivered the foregoing instrument for the purposes and consideration therein expressed, and as the act of said corporation.

Given under my hand and notarial seal this 22 day of January, 2010.



Chelsea R. Gates  
 Notary Public, State of Texas



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## EXHIBIT "A"

TO

### SUBORDINATION, ATTORNMENMENT AND NON-DISTURBANCE AGREEMENT

Dated: 1/14/10

The Lease referred to in the foregoing Agreement is the Amended and Restated Lease dated December 13, 2000 (the "Lease") between **F.C. Limited Partnership, later assigned to First Industrial, LP** as lessor, and **Fresh Express Incorporated, an Illinois corporation, successor by merger to Redi-cut Foods, Inc., an Illinois corporation**, as lessee. The Lease has been amended and modified as follows:

Notice Letter dated September 29<sup>th</sup>, 2005

First Amendment to Restated Lease dated October 1<sup>st</sup>, 2005

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THAT PART OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 27, TOWNSHIP 40 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF THE NORTH 360 FEET OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 27 WITH A LINE 54.00 FEET EAST OF THE WEST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 27; THENCE SOUTH 89 DEGREES, 47 MINUTES, 00 SECONDS EAST ALONG THE SOUTH LINE OF THE NORTH 360 FEET OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 27, A DISTANCE OF 373.00 FEET TO A POINT IN THE WEST LINE OF A RAILROAD SPUR TRACK EASEMENT (22 FEET IN WIDTH) AS DESCRIBED IN DOCUMENT NO. 27127391; THENCE SOUTH AND SOUTHEASTERLY ALONG THE WESTERLY LINE OF SAID RAILROAD EASEMENT THE FOLLOWING DESCRIBED COURSES:

SOUTH 00 DEGREES, 10 MINUTES, 30 SECONDS EAST A DISTANCE OF 8.82 FEET TO A POINT OF CURVE; THENCE SOUTHEASTERLY ALONG THE ARC OF A CIRCLE CONVEX TO THE SOUTHWEST, HAVING A RADIUS OF 296.95 FEET, AN ARC LENGTH OF 189.56 FEET TO THE POINT OF TANGENCY; THENCE SOUTH 36 DEGREES, 45 MINUTES, 05 SECONDS EAST A DISTANCE OF 173.69 FEET; THENCE SOUTH 33 DEGREES, 10 MINUTES, 30 SECONDS EAST A DISTANCE OF 32.37 FEET; THENCE SOUTH 40 DEGREES, 19 MINUTES, 40 SECONDS EAST A DISTANCE OF 104.70 FEET TO A POINT OF CURVE; THENCE SOUTHEASTERLY ALONG THE ARC OF A CIRCLE CONVEX SOUTHWESTERLY, HAVING A RADIUS OF 977.64 FEET, AN ARC LENGTH OF 94.00 FEET TO THE POINT OF TANGENCY; THENCE SOUTH 45 DEGREES, 50 MINUTES, 13 SECONDS EAST A DISTANCE OF 64.08 FEET TO THE POINT OF INTERSECTION WITH A CURVED LINE, SAID CURVED LINE BEING THE NORTHERLY LINE OF A RAILROAD SPUR TRACK EASEMENT (22 FEET IN WIDTH) AS DESCRIBED IN DOCUMENT NO. 25396246; THENCE NORTHWESTERLY ALONG THE NORTHERLY LINE OF THE LAST DESCRIBED EASEMENT, BEING THE ARC OF A CIRCLE CONVEX NORTHEASTERLY HAVING A RADIUS OF 321.74 FEET, A CHORD LENGTH OF 126.16 FEET BEARING NORTH 78 DEGREES, 27 MINUTES, 16 SECONDS WEST, AN ARC LENGTH OF 126.98 FEET TO A POINT 660.40 FEET EAST OF THE WEST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 27; THENCE NORTH 0 DEGREES, 10 MINUTES, 30 SECONDS WEST ALONG A LINE 660.40 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 27, A DISTANCE OF 3.30 FEET; THENCE NORTH 89 DEGREES, 43 MINUTES, 00 SECONDS WEST A DISTANCE OF 0.50 FEET; THENCE NORTH 00 DEGREES, 10 MINUTES, 30 SECONDS WEST ALONG A LINE 659.90 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 27, A DISTANCE OF 1.00 FEET; THENCE NORTH 89 DEGREES, 43 MINUTES, 00 SECONDS WEST ALONG THE NORTH LINE OF THE SOUTH 445.00 FEET OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 27, A DISTANCE OF 605.90 FEET; THENCE NORTH 00 DEGREES, 10 MINUTES, 30 SECONDS WEST ALONG A LINE 54 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 27, A DISTANCE OF 513.81 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

Note: For informational purposes only, the land is known as:

9501 Nevada  
Franklin Park, IL

12-27-300-030-0000