

This document prepared by and after  
Recording return to:

Dykema Gossett PLLC  
10 South Wacker Drive  
Suite 2300  
Chicago, Illinois 60606  
Attn: C. Elizabeth Darke

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

This **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** (this "Agreement") dated this 19<sup>th</sup> day of September, 2013, is made by and among **FREEMAN DECORATING SERVICES, INC.**, a Texas corporation ("Tenant"), **BRIDGE MCCOOK I, LLC**, an Illinois limited liability company ("Landlord"), and **THE PRIVATEBANK AND TRUST COMPANY**, an Illinois state chartered bank, as administrative agent ("Agent" or "Mortgagee") for itself and certain other "Lenders" (as defined in the Loan Agreement (defined below)).

WHEREAS, pursuant to that certain Construction Loan Agreement of even date herewith by and among Borrower, Agent and the other Lenders (the "Loan Agreement"), Mortgagee has agreed to make a construction loan to Landlord in the maximum principal amount of \$27,200,000 and a letter of credit facility for the benefit of Landlord in the amount of \$3,646,000, secured by, among other things, a Construction Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rent (herein, as may from time to time be extended, amended, restated or supplemented, the "Mortgage"), covering, among other property, the land (the "Land") described in Exhibit "A" which is attached hereto and incorporated herein by reference, and the improvements thereon ("Improvements") (such Land and Improvements being herein together called the "Property");

WHEREAS, Tenant is the tenant under a lease from Landlord (or Landlord's predecessor in ownership of the Property) dated June 21, 2013, as amended by that certain First Amendment to Lease dated September 5, 2013 (collectively, as same may from time to time be extended, amended, restated or supplemented, the "Lease"), covering a portion of the Property (said portion being herein referred to as the "Premises"); and

WHEREAS, the term "Landlord" as used herein means the present landlord under the Lease or, if the landlord's interest is transferred in any manner, the successor(s) or assign(s) occupying the position of landlord under the Lease at the time in question.

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

NCS-023590 Part 1 of 4

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1. Subordination. Tenant agrees and covenants, subject to the terms of this Agreement, that the Lease and the rights of Tenant thereunder, all of Tenant's right, title and interest in and to the property covered by the Lease, and any lease thereafter executed by Tenant covering any part of the Property, are and shall be subject, subordinate and inferior in all respects to (a) the Mortgage and the rights of Mortgagee thereunder, and all right, title and interest of Mortgagee in the Property, and (b) all other security documents now or hereafter securing payment of any indebtedness of the Landlord (or any prior landlord) to Mortgagee which cover or affect all or any portion of the Property (collectively, the "Security Documents"). This Agreement is not intended and shall not be construed to subordinate the Lease to any mortgage, deed of trust or other security document other than those referred to in the immediately preceding sentence, securing the indebtedness owing to Mortgagee. Without limiting the generality of the foregoing subordination provision, the 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 Property, shall be subject and subordinate to the Mortgagee's right, title and interest in and to such proceeds and awards pursuant to the Security Documents.

2. Non-Disturbance. Mortgagee agrees that so long as the Lease is in full force and effect and Tenant is not in default in the payment of rent, additional rent or other payments due under the Lease or in the performance of any of the other terms, covenants or conditions of the Lease on Tenant's part to be performed (beyond the period, if any, specified in the Lease within which Tenant may cure such default),

(a) Tenant's possession of the Premises under the Lease shall not be disturbed or interfered with by Mortgagee in the exercise of any of its foreclosure rights under the Mortgage or in connection with the conveyance of the Property by deed in lieu of foreclosure, and

(b) Mortgagee will not join Tenant as a party defendant for the purpose of terminating Tenant's interest and estate under the Lease in any proceeding for foreclosure of the Mortgage.

3. Attornment.

(a) Tenant covenants and agrees that in the event of the foreclosure of the Mortgage, whether by power of sale or by court action, or upon a transfer of the Property by a deed in lieu of foreclosure (each being referred to herein as the "Transfer Date") (the purchaser at foreclosure or the transferee in such deed in lieu of foreclosure, including Mortgagee if it is such purchaser or transferee, being herein called the "New Owner"), Tenant shall attorn to the New Owner as Tenant's new landlord, and agrees that the Lease shall continue in full force and effect as a direct lease between Tenant and New Owner upon all of the terms, covenants, conditions and agreements set forth in the Lease and this Agreement, except for provisions which are impossible for New Owner to perform; provided, however, that in no event shall the New Owner be:

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(i) liable for any act, omission, default, misrepresentation, or breach of warranty, of any previous landlord (including Landlord) or obligations accruing prior to New Owner's actual ownership of the Property;

(ii) subject to any offset, defense, claim or counterclaim which Tenant might be entitled to assert against any previous landlord (including Landlord) unless the Tenant shall have provided the Mortgagee with (A) notice of the applicable 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 4(b) below;

(iii) bound by any payment of rent, additional rent or other payments, made by Tenant to any previous landlord (including Landlord) for more than one (1) month in advance of the date when due under the Lease;

(iv) bound by any amendment or modification of the Lease hereafter made, without the written consent of Mortgagee (if such consent is required pursuant to the terms of the Security Documents); or

(v) liable for any deposit that Tenant may have given to any previous landlord (including Landlord) which has not been transferred to New Owner.

(b) The provisions of this Agreement regarding attornment by Tenant shall be self-operative and effective without the necessity of execution of any new lease or other document on the part of any party hereto or the respective heirs, legal representatives, successors or assigns of any such party. Tenant agrees, however, to execute and deliver upon the request of New Owner, any reasonable instrument or certificate which in the reasonable judgment of New Owner may be necessary or appropriate to evidence such attornment, including a new lease of the Premises on the same terms and conditions as set forth in the Lease for the unexpired term of the Lease.

4. Acknowledgment and Agreement by Tenant. Tenant acknowledges and agrees as follows:

(a) Tenant will not amend, alter or waive any provision of, or consent to the amendment, alteration or waiver of any provision of the Lease without the prior written consent of Mortgagee, unless such amendment is permitted pursuant to the Security Documents. Tenant shall not prepay any rents or other sums due under the lease for more than one (1) month in advance of the due date therefor. Tenant acknowledges that Mortgagee will rely upon this instrument in connection with the financing being made by Mortgagee and secured, in part, by the Mortgage.

(b) From and after the date hereof, in the event of a default by Landlord which would give Tenant the right, either immediately or after the lapse of time, to terminate the Lease or to claim a partial or total eviction, Tenant will not exercise any such right (i) until it has given written notice of such act or omission to the Mortgagee; and (ii) until Tenant has given Mortgagee a period of thirty (30) days after the expiration of Landlord's applicable cure period to cure such default, or such longer period of time as may be necessary to cure or remedy such default, during which period of time Mortgagee shall be

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permitted to cure or remedy such default; provided, however, that Mortgagee shall have no duty or obligation to cure or remedy any default. It is specifically agreed that Tenant shall not, as to Mortgagee, require cure of any such default which is personal to Landlord, and therefore not susceptible to cure by Mortgagee.

(c) In the event that Mortgagee notifies Tenant of a default under the Mortgage or Security Documents and demands that Tenant pay its rent and all other sums due under the Lease directly to Mortgagee, Tenant shall honor such demand and pay the full amount of its rent and all other sums due under the Lease directly to Mortgagee, without offset, or as otherwise required pursuant to such notice beginning with the payment next due after such notice of default, without inquiry as to whether a default actually exists under the Mortgage or other Security Documents, and notwithstanding any contrary instructions of or demands from Landlord.

(d) Pursuant to Article XXII of the Lease, Tenant has a one-time right of first offer to purchase (the "ROFOP") the Premises, which ROFOP and, to the extent that Tenant hereafter acquires any other right or option to purchase the Premises or the Property, or any portion thereof or any interest therein, the same are hereby acknowledged to be subject and subordinate to the Mortgage and are hereby waived and released as against Mortgagee and New Owner.

(e) Mortgagee and any New Owner shall have no obligation nor incur any liability with respect to the erection or completion of any improvements in which the Premises are located or for completion of the Premises or any improvements for Tenant's use and occupancy, either at the commencement of the term of the Lease or upon any renewal or extension thereof or upon the addition of additional space, pursuant to any expansion rights contained in the Lease.

(f) Mortgagee and any New Owner shall have no obligation nor incur any liability with respect to any warranties of any nature whatsoever, whether pursuant to the Lease or otherwise, including, without limitation, any warranties respecting use, compliance with zoning, Landlord's title, Landlord's authority, habitability, fitness for purpose or possession provided that to the extent that the breach of any such warranty shall give the Tenant the right to terminate the Lease pursuant to the terms of the Lease, Tenant shall retain such right to terminate pursuant to the terms of the Lease.

(g) In the event that Mortgagee or any New Owner shall acquire title to the Premises or the Property, Mortgagee or such New Owner shall have no obligation, nor incur any liability, beyond Mortgagee's or New Owner's then equity interest, if any, in the Property or the Premises, and Tenant shall look exclusively to such equity interest of Mortgagee or New Owner, if any, for the payment and discharge of any obligations imposed upon Mortgagee or New Owner hereunder or under the Lease or for recovery of any judgment from Mortgagee, or New Owner, and in no event shall Mortgagee, New Owner, nor any of their respective officers, directors, shareholders, agents, representatives, servants, employees or partners ever be personally liable for such judgment.

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5. Acknowledgment and Agreement by Landlord. Landlord, as landlord under the Lease and grantor under the Mortgage, acknowledges and agrees for itself and its heirs, representatives, successors and assigns, that: (a) this Agreement does not constitute a waiver by Mortgagee of any of its rights under the Mortgage or any of the other Security Documents, or in any way release Landlord from its obligations to comply with the terms, provisions, conditions, covenants, agreements and clauses of the Mortgage and the other Security Documents; (b) the provisions of the Mortgage and the other Security Documents remain in full force and effect and must be complied with by Landlord; and (c) Tenant is hereby authorized to pay its rent and all other sums due under the Lease directly to Mortgagee upon receipt of a notice as set forth in paragraph 4(c) above from Mortgagee and that Tenant is not obligated to inquire as to whether a default actually exists under the Mortgage or any of the other Security Documents. Landlord hereby releases and discharges Tenant of and from any liability to Landlord resulting from Tenant's payment to Mortgagee in accordance with this Agreement. Landlord represents and warrants to Mortgagee that a true and complete copy of the Lease has been delivered by Landlord to Mortgagee.

6. Lease Status. Landlord and Tenant represent and warrant to Mortgagee that neither Landlord nor Tenant has knowledge of any default on the part of the other under the Lease, that the Lease is bona fide and contains all of the agreements of the parties thereto with respect to the letting of the Premises and that all of the agreements and provisions therein contained are in full force and effect.

7. Notices. All notices, requests, consents, demands and other communications required or which any party desires to give hereunder shall be in writing and shall be deemed sufficiently given or furnished if delivered by personal delivery, by expedited delivery service with proof of delivery, or by registered or certified United States mail, postage prepaid, at the addresses specified at the end of this Agreement (unless changed by similar notice in writing given by the particular party whose address is to be changed). Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein. Notwithstanding the foregoing, no notice of change of address shall be effective except upon receipt by the parties hereto other than the particular party whose address is to be changed. This Paragraph 7 shall not be construed in any way to affect or impair any waiver of notice or demand provided in this Agreement or in the Lease or in any document evidencing, securing or pertaining to the loan secured by the Mortgage or to require giving of notice or demand to or upon any person in any situation or for any reason.

8. Miscellaneous.

- (a) This Agreement supersedes any inconsistent provision of the Lease.
- (b) Nothing contained in this Agreement shall be construed to derogate from or in any way impair, or affect the lien, security interest or provisions of the Mortgage or the other Security Documents.
- (c) This Agreement shall inure to the benefit of the parties hereto, their respective successors and permitted assigns, and any New Owner, and its heirs, personal

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representatives, successors and assigns; provided, however, that in the event of the assignment or transfer of the interest of Mortgagee, all obligations and liabilities of the assigning Mortgagee under this Agreement shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the party to whom Mortgagee's interest is assigned or transferred.

(d) THIS AGREEMENT AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION SHALL BE GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS AND APPLICABLE UNITED STATES FEDERAL LAW EXCEPT ONLY TO THE EXTENT, IF ANY, THAT THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED NECESSARILY CONTROL.

(e) The words "herein", "hereof", "hereunder" and other similar compounds of the word "here" as used in this Agreement refer to this entire Agreement and not to any particular section or provision.

(f) 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.

(g) If any provision of the Agreement shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not apply to or affect any other provision hereof, but this Agreement shall be construed as if such invalidity, illegality, or unenforceability did not exist.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

County Clerk's Office

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

**ADDRESS OF MORTGAGEE:**

120 South LaSalle Street  
Chicago, IL 60603  
Attention: Maria Alexakis

**MORTGAGEE:**

**THE PRIVATEBANK AND TRUST COMPANY,**  
an Illinois state chartered bank

By: Andrea Tierney  
Name: Andrea Tierney  
Title: Associate Managing Director

**ADDRESS OF TENANT:**

Freeman Decorating Services, Inc.  
1600 Viceroy  
Suite 100  
Dallas, TX 75235  
Attn: Real Estate

**TENANT:**

**FREEMAN DECORATING SERVICES, INC.,** a  
Texas corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ADDRESS OF LANDLORD:**

c/o Bridge Development Partners, LLC  
350 West Hubbard  
Suite 430  
Chicago, IL 60654

**LANDLORD:**

**BRIDGE MCCOOK I, LLC,** an Illinois limited liability  
company

By: BDP Realty Holdings L.P., a Delaware limited  
partnership, its Sole Member

By: Bridge ASP, LLC, an Illinois limited liability  
company, its General Partner

By: \_\_\_\_\_  
Name: Ronald T. Frain  
Title: Manager

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

**ADDRESS OF MORTGAGEE:**

120 South LaSalle Street  
Chicago, IL 60603  
Attention: Maria Alexakis

**MORTGAGEE:**

**THE PRIVATEBANK AND TRUST COMPANY,**  
an Illinois state chartered bank

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ADDRESS OF TENANT:**

Freeman Decorating Services, Inc.  
1600 Viceroy  
Suite 100  
Dallas, TX 75235  
Attn: Real Estate

**TENANT:**

**FREEMAN DECORATING SERVICES, INC.,** a  
Texas corporation

By: William H. Baxley III  
Name: William H. Baxley III  
Title: Vice President & Treasurer

**ADDRESS OF LANDLORD:**

c/o Bridge Development Partners, LLC  
350 West Hubbard  
Suite 430  
Chicago, IL 60654

**LANDLORD:**

**BRIDGE MCCOOK I, LLC,** an Illinois limited liability  
company

By: BDP Realty Holdings L.P., a Delaware limited  
partnership, its Sole Member

By: Bridge ASP, LLC, an Illinois limited liability  
company, its General Partner

By: Ronald T. Frain  
Name: Ronald T. Frain  
Title: Manager

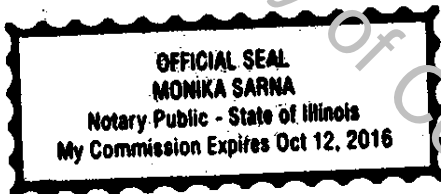


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STATE OF Illinois )  
 ) SS.  
COUNTY OF COOK )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Andreatieney the AMD of THE PRIVATEBANK AND TRUST COMPANY, an Illinois state chartered bank who is 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/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 12<sup>th</sup> day of September 2013.



Monika Sarna  
Notary Public

My Commission Expires:

10/12/16

# UNOFFICIAL COPY

STATE OF Texas )  
 ) SS.  
COUNTY OF Dallas )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Mrs H. Bailey III, the V.P. Assoc. of FREEMAN DECORATING SERVICES, INC., a Texas corporation who is 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/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 13<sup>th</sup> day of September, 2013.

Jacey W. Norton  
Notary Public



My Commission Expires:

06-06-2015

County Clerk's Office

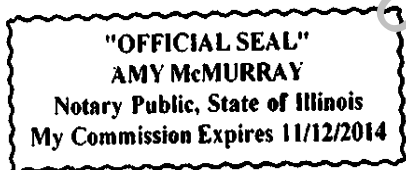
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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Ronald T. Frain, the Manager of Bridge ASP, LLC, an Illinois limited liability company, the General Partner of BDP Realty Holdings L.P., a Delaware limited partnership, the Sole Member of **BRIDGE MCCOOK I, LLC**, an Illinois limited liability company, who is 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 and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 16<sup>TH</sup> day of SEPTEMBER, 2013.

Amy McMurray  
Notary Public



My Commission Expires:

11.12.2014

Property of Cook County Clerk's Office



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## EXHIBIT "A"

### LEGAL DESCRIPTION OF THE PROPERTY

That part of the West 1/2 of the Northeast 1/4 of Section 11, Township 38 North, Range 12, East of the Third Principal Meridian, lying North of the center line of the Chicago and Joliet Road, otherwise known and described as Route 4, more particularly described as follows:

Beginning at a point in the East line of said West 1/2, said point being 634.18 feet North of the intersection of said East line with the center line of said Chicago and Joliet Road; Thence North along said East line for a distance of 683.52 feet more or less, to the Northeast corner of said West 1/2; thence West along the North line of said West 1/2 for a distance of 1326.17 feet more or less to the Northwest corner of said West 1/2; thence South along the West line of said West 1/2 for a distance of 1075.13 feet more or less, to a point, said point being 250 feet North of the Southwest corner of the North 1/2 of the said West 1/2 of said Northeast 1/4; thence East parallel to and 250 feet normally distant from the South line of said North 1/2 a distance of 505.22 feet to a point; thence Northeasterly for a distance of 758.54 feet more or less to a point, said point being 175.38 feet West of the point of beginning measured at right angles to the East line of said West 1/2; thence East 175.38 feet to the point of beginning, excepting all that part of the West 1/2 of the Northeast 1/4 of said Section 11 lying North of a line 50 feet South of and parallel to the North line of said Section 11 and except that part described as follows:

That part of the West 1/2 of the Northeast 1/4 of Section 11, Township 38 North, Range 12, East of the Third Principal Meridian, described as follows:

Commencing at the Northwest corner of said Northeast 1/4; Thence South 89 degrees 47 minutes 40 seconds, East (bearings and coordinates are based upon an assumed grid system that assigns the value of 2,000.00 North and 2,000.00 East to the Quarter Section corner between Sections 5 and 8, Township 38 North, Range 12, East of the Third Principal Meridian; and which assumes the North line of the Northeast 1/4 of Section 8 (South line of the Southeast 1/4 of Section 5) to have a bearing of North 90 degrees, 00 minutes, 00 seconds East) Along the North line of said Northeast 1/4 a distance of 1,292.47 feet to the point of intersection with a line drawn 33.00 feet West of and parallel with the East line of the West 1/2 of said Northeast 1/4; thence South 0 degrees 20 minutes 29 seconds West along said parallel line 50.00 feet to the point of beginning of the tract herein described, thence continuing South 0 degrees 20 minutes 29 seconds West, along said parallel line 5.00 feet; thence North 44 degrees 43 minutes 16 seconds West 7.06 feet to a point in a line 50.00 feet South of and parallel with the North line of the Northeast 1/4 of said Section 11, said point being 5.00 feet West of the herein above designated point of beginning; thence South 89 degrees 47 minutes 40 seconds East along said parallel line 5.00 feet to said point of beginning in Cook County, Illinois.

Commonly known as: 8201 West 47th Street, McCook, Illinois.

PIN: Parcel 1: 18-11-200-008-0000 Vol. 80