

UNOFFICIAL COPY

This document was prepared by,
and after recording, return to:

Horwood Marcus & Berk Chartered
500 W. Madison Street, Suite 3700
Chicago, Illinois 60661
Attn: Kenneth Klassman

Permanent Tax Index Number:

13-27-415-055

Property Address:

2424 North Pulaski
Chicago, Illinois 60639



Doc#: 1406545044 Fee: \$58.00

RHSP Fee: \$9.00 APRF Fee: \$1.00

Karen A. Yarbrough

Cook County Recorder of Deeds

Date: 03/06/2014 01:12 PM Pg: 1 of 11

This space reserved for Recorders use only.

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT, dated as of December 24, 2013 (this "Agreement"), is executed by and among Silver Real Estate Management and Development Corp., ("Landlord"), Allied Building Products Corp. ("Tenant"), and THE PRIVATEBANK AND TRUST COMPANY, as administrative agent and sole lead arranger, together with its respective successors and assigns (together with any other holder of the Loan (defined below) and their respective successors and assigns, collectively, "Lender").

RECITALS:

A. Lender is the mortgagee under that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated concurrently herewith (the "Mortgage"), which Mortgage encumbers the Real Estate (as hereinafter defined) and secures a principal indebtedness in the amount of \$22,500,000.00 (the "Loan").

B. Tenant has entered into that certain lease agreement dated March 1, 2002, with Landlord (the "Lease Agreement", the Lease Agreement, together with all amendments and modifications thereof, being collectively referred to herein as the "Lease"), pursuant to which Tenant has leased certain premises (the "Leased Premises") having an address of 2424 North Pulaski, Chicago, Illinois, which is located within the building (the "Building") on the parcel of land (the "Land"; the Land and Building being collectively referred to herein as the "Real Estate") legally described on Exhibit "A" attached hereto and made a part hereof.

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 400-CTCC

UNOFFICIAL COPY

AGREEMENTS:

1. Tenant represents and warrants to Lender that the Lease constitutes the entire agreement between Tenant and Landlord with respect to the Leased Premises and there are no other agreements, written or verbal, governing the tenancy of Tenant with respect to the Leased Premises.

2. Tenant has executed and delivered to Lender that certain Tenant Estoppel Certificate dated on or about the date hereof (the "Estoppel Certificate"). The provisions of the Estoppel Certificate are hereby incorporated into this Agreement as if fully set forth herein in their entirety, and Tenant acknowledges that Lender will be relying on the statements made in the Estoppel Certificate in determining whether to disburse the proceeds of the loan secured by the Mortgage and whether to enter into this Agreement.

3. Tenant covenants with Lender 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 Lender's right, title and interest in and to such proceeds and awards.

4. Tenant acknowledges that Landlord has collaterally assigned to Lender any and 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, Tenant agrees that, upon receipt of a notice of a default by Landlord under such assignment and a demand by Lender for direct payment to Lender of the rents due under the Lease, Tenant will honor such demand and make all subsequent rent payments directly to the Lender. Tenant further agrees that any Lease termination fees payable under the Lease shall be paid jointly to Landlord and Lender.

5. Lender agrees that so long as Tenant is not in default under the Lease:

(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 Leased Premises 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 Leased Premises, or any deed given in lieu of foreclosure; or (ii) any default under the Mortgage.

6. 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,

UNOFFICIAL COPY

provision or obligation to be performed or observed by Landlord under the Lease (any such failure being hereinafter referred to as a "Landlord's Default"), Tenant shall: (a) provide Lender with a notice of Landlord's Default, specifying the nature thereof, the section of the Lease under which such Landlord's Default arose, and the remedy which Tenant will elect under the terms of the Lease or otherwise; and (b) allow Lender not less than thirty (30) days following receipt of 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 Lender such additional time as Lender may reasonably need to obtain possession and control of the Real Estate and to cure such Landlord's Default so long as Lender is diligently pursuing a cure. Tenant shall not pursue any remedy available to it as a result of any Landlord's Default unless Lender fails to cure same within the time period specified above. For purposes of this Section 6, 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.

7. If Lender 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 subsection (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 Lender 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 the Landlord);

(ii) subject to any offsets or defenses which Tenant has against any prior landlord (including Landlord) unless Tenant shall have provided Lender with: (A) notice of 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 6 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);

UNOFFICIAL COPY

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

(v) bound by any amendment or modification of the Lease made without Lender's written 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.

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

To Lender: The PrivateBank and Trust Company
120 South LaSalle Street, Suite 200
Chicago, Illinois 60603
Attn: Judd Kohn

With a copy to: Horwood Marcus & Berk Chartered
500 W. Madison Street, Suite 3700
Chicago, Illinois 60661
Attn: Kenneth Klassen

To Landlord: Logan Square Aluminum Supply, Inc.
2500 North Pulaski
Chicago, Illinois 60603
Attn: Barry Cohodes

With a copy to: Knabe, Kroning & Bedell
20 South Clark Street, Suite 2301
Chicago, Illinois 60603
Attn: Robert M. Knabe

To Tenant: Allied Building Products Corp
15 E. Union Ave
East Rutherford NJ 07073
Attn: Legal Dept

With copies to: _____

Attn: _____

UNOFFICIAL COPY

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 section shall be deemed received: (i) if personally delivered, then on the date of delivery; (ii) 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; or (iii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent.

9. Tenant acknowledges and agrees that Lender will be relying on representations, warranties, covenants and agreements of Tenant contained herein and that any default by Tenant hereunder shall permit Lender, 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 Leased Premises.

10. 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 Lender, all of whom are entitled to rely upon the provisions hereof. This Agreement shall be governed by the laws of the State of Illinois.

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

[SIGNATURES ON FOLLOWING PAGE]

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have executed this Subordination, Non-Disturbance and Attornment Agreement the day and year first above written.

LANDLORD:

Silver Real Estate Management and Development Corp.

By: BARRY COHODES
Name: BARRY COHODES
Title: _____

TENANT:

Allied Building Products Corp.

By: Charles Egan
Name: Charles Egan
Its: Secretary & General Counsel

LENDER:

THE PRIVATEBANK AND TRUST COMPANY, Administrative Agent and a Mortgagee

By: _____
Name/Its: Judd Kohn, Associate Managing Director

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have executed this Subordination, Non-Disturbance and Attornment Agreement the day and year first above written.

LANDLORD:

TENANT:


Silver Real Estate Management and Allied Building Products Corp.
Development Corp.

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Its: _____

LENDER:

THE PRIVATEBANK AND TRUST
COMPANY, Administrative Agent and a
Mortgagee

By:  _____
Name/Its: Judd Kohn, Associate Managing
Director

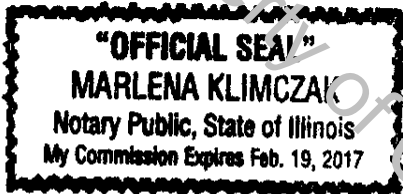
Property of Cook County Clerk's Office

UNOFFICIAL COPY

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 BARRY J. COHODES, the SILVER REAL ESTATE MANAGEMENT + DEVELOPMENT CORP./an ILLINOIS CORPORATION, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such _____, 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 entity, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 4TH day of FEB, 2014.



[Signature]
Notary Public
My Commission Expires:

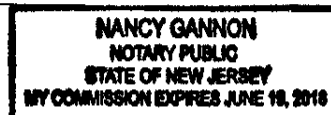
02/19/2017

New Jersey
STATE OF ILLINOIS)
) SS.
Dergen
COUNTY OF COOK)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Charles Egan, the Secretary of Allied Building Products Corp. an New Jersey Corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Secretary, 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 entity, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 30 day of Jan, 2018.

[Signature]
Notary Public
My Commission Expires: 6-19-2018



UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

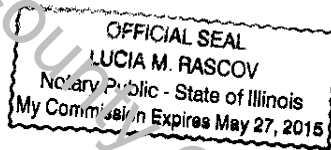
The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Judd Kohn, the Associate Managing Director of The PrivateBank and Trust Company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Associate Managing Director, 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 bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 3RD day of MARCH, 2014.

Lucia M. Rasco

Notary Public
My Commission Expires:

May 27, 2015



UNOFFICIAL COPY**EXHIBIT A**

THAT PART OF THE SOUTH 315 FEET OF THAT PART OF THE SOUTH EAST 1/4 OF THE SOUTH EAST 1/4 OF SECTION 27, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTHEASTERLY OF A LINE 100 FEET NORTHEASTERLY OF AND PARALLEL WITH THE ORIGINAL RIGHT OF WAY OF THE CHICAGO, MILWAUKEE AND ST. PAUL RAILROAD DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE NORTH LINE OF WEST FULLERTON AVENUE WITH THE WEST LINE OF NORTH PULASKI ROAD; THENCE NORTH 6 DEGREES, 17 MINUTES WEST A DISTANCE OF 113.84 FEET; THENCE WEST 31.92 FEET; THENCE 60 DEGREES 14 MINUTES WEST 16.16 FEET FOR A POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE CONTINUING SOUTH 60 DEGREES, 14 MINUTES WEST 25.32 FEET TO A POINT; THENCE CONTINUING SOUTH 69 DEGREES, 47 MINUTES WEST 42 FEET MORE OR LESS TO A POINT OF INTERSECTION WITH A LINE 100 FEET NORTHEASTERLY OF AND PARALLEL WITH THE ORIGINAL NORTHEASTERLY LINE OF THE RIGHT OF WAY OF THE CHICAGO, MILWAUKEE AND ST. PAUL RAILROAD; THENCE NORTH 20 DEGREES, 13 MINUTES WEST ALONG SAID PARALLEL LINE 198.50 FEET TO THE NORTH LINE OF THE SOUTH 315 FEET OF THE SOUTH EAST 1/4 OF THE SOUTH EAST 1/4 OF SAID SECTION 27 AFORESAID; THENCE EAST ALONG THE NORTH LINE OF THE SOUTH 315 FEET OF SAID SOUTH EAST 1/4 OF THE SOUTH EAST 1/4 OF SECTION 27 AFORESAID 175.19 FEET MORE OR LESS TO THE WEST LINE OF NORTH PULASKI ROAD; THENCE SOUTH ALONG THE WEST LINE OF NORTH PULASKI ROAD 74.97 FEET TO A POINT; THENCE WEST PARALLEL WITH THE NORTH LINE OF THE SOUTH 315 FEET OF THE SOUTH EAST 1/4 OF THE SOUTH EAST 1/4 OF SAID SECTION 27, 46 FEET; THENCE SOUTH PARALLEL WITH THE WEST LINE OF NORTH PULASKI ROAD 84.21 FEET TO THE POINT OF BEGINNING IN COOK COUNTY, ILLINOIS;

ALSO THAT PART OF THE SOUTH 315 FEET OF THE SOUTH EAST 1/4 OF THE SOUTH EAST 1/4 OF SECTION 27, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE WEST LINE OF NORTH PULASKI ROAD 113.84 FEET NORTH OF THE NORTH LINE OF WEST FULLERTON AVENUE, SAID POINT BEING 163.84 FEET NORTH OF THE SOUTH LINE OF THE SOUTH EAST 1/4 OF THE SOUTH EAST 1/4 OF SECTION 27 AFORESAID; THENCE WEST 31.92 FEET TO A POINT; THENCE SOUTH 60 DEGREES 14 MINUTES WEST 16.16 FEET TO A POINT; THENCE NORTH PARALLEL WITH THE WEST LINE OF NORTH PULASKI ROAD 84.21 FEET, MORE OR LESS, TO A POINT WHICH IS 74.97 FEET SOUTH OF THE NORTH LINE OF THE SOUTH 315 FEET OF SAID SOUTH EAST 1/4 OF THE SOUTH EAST 1/4 OF SECTION 27; THENCE EAST PARALLEL WITH THE NORTH LINE OF THE SOUTH 315 FEET OF THE SOUTH EAST 1/4 OF THE SOUTH EAST 1/4 OF SAID SECTION 27, 46 FEET TO THE WEST LINE OF NORTH PULASKI ROAD; THENCE SOUTH ALONG THE

UNOFFICIAL COPY

WEST LINE OF NORTH PULASKI ROAD 76.19 FEET, MORE OR LESS, TO THE POINT OF BEGINNING IN COOK COUNTY, ILLINOIS;

ALSO THAT PART OF THE SOUTH EAST 1/4 OF THE SOUTH EAST 1/4 OF SECTION 27, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE WEST LINE OF NORTH PULASKI ROAD, SAID POINT BEING 265.0 FEET NORTH OF THE NORTH LINE OF WEST FULLERTON AVENUE AND RUNNING THENCE WEST PARALLEL WITH SAID NORTH LINE OF FULLERTON AVENUE, A DISTANCE OF 175.19 FEET TO AN INTERSECTION WITH A LINE DRAWN PARALLEL WITH AND 100 FEET EASTERLY OF THE ORIGINAL 100 FOOT RIGHT OF WAY OF THE CHICAGO, MILWAUKEE AND ST. PAUL RAILROAD; THENCE NORTHWESTERLY ALONG THE LAST DESCRIBED PARALLEL LINE A DISTANCE OF 162.49 FEET TO AN INTERSECTION WITH THE EXTENSION WEST OF THE SOUTH MAIN FACE OF A BRICK WALL; THENCE EAST ALONG SAID SOUTH FACE OF SAID WALL AND THE EXTENSION OF THE SOUTH FACE OF THE WALL, A DISTANCE OF 230.46 FEET TO AN INTERSECTION WITH THE WEST LINE OF NORTH PULASKI ROAD, SAID INTERSECTION BEING 418.83 FEET NORTH OF THE NORTH LINE OF WEST FULLERTON AVENUE; THENCE SOUTH ALONG THE WEST LINE OF NORTH PULASKI ROAD, A DISTANCE OF 153.83 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

Commonly known as: 2424 North Pulaski, Chicago, Illinois 60639
 PIN: 13-27-415-055