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Doc#: 1431416079 Fee: \$56.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 11/10/2014 03:36 PM Pg: 1 of 10

AFTER RECORDING RETURN TO:

Inland Bank & Trust
2805 Butterfield Road
Oak Brook, IL 60523
Attention: Sean Gallagher, Sr. V.P.

PERMANENT INDEX NUMBER:

17-08-325-022-0000
17-08-325-023-0000

PROPERTY ADDRESS:

1300 W. Randolph St. and
1302-08 W. Randolph St.
Chicago, IL 60607

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT dated as of November 3, 2014 (this "Agreement") is entered into by and among (i) INLAND BANK AND TRUST (the "Senior Lender"), (ii) THE UNITED STATES SMALL BUSINESS ADMINISTRATION (the "SBA"), and (iii) DENOVO CONSTRUCTORS, INC. ("DCI"), a Delaware corporation, DENOVO PROPERTIES HOLDINGS LLC ("DPH LLC"), a Delaware limited liability company, 1300 RANDOLPH LLC ("1300 LLC"), an Illinois limited liability company, 1302-08 RANDOLPH LLC ("1302-08 LLC"), an Illinois limited liability company, D TRANSPORT, INC. ("DT INC"), a Delaware corporation and JONATHON K. MARKOFF ("Markoff") (collectively, jointly and severally, the "Borrower").

RECITALS

A. Pursuant to that certain Loan and Security Agreement dated March 14, 2013, as amended, modified and/or restated from time to time (the "Loan Agreement"), by and between the Senior Lender and the Borrower, the Senior Lender has made the following loans, *inter alia*, to the Borrower: (i) a certain revolving loan to the Borrower, other than DT LLC, in a principal amount not to exceed Ten Million and No/100 Dollars (\$10,000,000.00) (the "Revolving Loan") evidenced by a Replacement Revolving Note dated January 15, 2014, and (ii) a certain replacement mortgage loan to the Borrower, other than DT LLC, in a principal amount Two Million Eight Hundred Eighty Thousand and No/100 Dollars (\$2,880,000.00) (the "Mortgage Loan") evidenced by a Mortgage Note dated June 23, 2014 (the Revolving Loan, the Mortgage Loan and all other loans by the Senior Lender to the Borrower are hereinafter referred to as the "Senior Lender Loans").

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B. The Senior Lender Loans are secured by, *inter alia*, (i) a first priority security interest in all of the personal property of DCI, DPH LLC and DT Inc. pursuant to the Loan Agreement and UCC-1 Financing Statements filed with the Delaware Secretary of State on March 14, 2013 and January 21, 2014 (collectively, the "First Lien"); (ii) that certain first Real Estate Mortgage, Assignment of Rents, Security Agreement, Financing Statement (the "First Mortgage") dated March 14, 2013 which was recorded on March 26, 2013 as Document No. 1308501038 in the Office of the Cook County Recorder of Deeds, as amended and modified from time to time, and (iii) that certain first Assignment of Rents ("First Assignment of Rents") dated March 14, 2013 which was recorded on March 26, 2013 as Document No. 1308501039 in the Office of the Cook County Recorder of Deeds, which First Mortgage and Assignment of Rents encumber the real property commonly known as 1300 W. Randolph St. and 1302-08 W. Randolph St. Chicago, IL 60607, as more fully described in Exhibit A hereto, and all improvements thereon (the "Premises").

C. The Borrower has requested that the Senior Lender make a loan to Borrower in the original principal amount of \$3,095,000.00 to be approved by the SBA under Section 7(a) of the Small Business Act (the "SBA Loan") to be secured by (i) a security interest in all of the personal property of DCI, DPH LLC and DT Inc. (collectively, the "SBA Lien"), (ii) a second Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing dated as of November 3, 2014 (the "SBA Mortgage"), and recorded in the Recorder's Office on November 7, 2014 as Document No. 1431416077 encumbering the Premises, and (iii) a second Assignment of Rents and Leases dated as of November 3, 2014 (the "SBA Assignment of Rents"), and recorded in the Recorder's Office on November 7, 2014 as Document No. 1431416078 encumbering the Premises.

D. The Senior Lender has agreed to make the SBA Loan secured by the SBA Lien, the SBA Mortgage and the SBA Assignment of Rents, provided that SBA Lien, the SBA Mortgage and the SBA Assignment of Rents are subordinated to the First Liens, the First Mortgage and the First Assignment of Rents, upon and subject to all of the conditions contained in this Agreement.

NOW, THEREFORE, in order to induce the Senior Lender to permit transaction contemplated in the Recitals, and in consideration thereof, the Senior Lender, the SBA and the Borrower agree as follows:

1. Recitals. The foregoing Recitals to this Agreement are incorporated herein by this reference and made a part hereof.
2. Definitions. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Loan Agreement.
3. Permission for SBA Lien, the SBA Mortgage and the SBA Assignment of Rents. Subject to the conditions set forth herein, the Senior Lender agrees, notwithstanding the prohibition against inferior liens (a) on DCI, DPH LLC and DT, Inc.'s personal property

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contained in the Loan Agreement and (b) on the Premises contained in the First Mortgage, and subject to the provisions of this Agreement, to permit the filing of the SBA Liens against DCI, DPH LLC and DT, Inc.'s personal property and the recording of the SBA Mortgage and the SBA Assignment of Rents against the Premises to secure the Borrower's obligation to repay the SBA Note and all other obligations, indebtedness and liabilities of the Borrower under and in connection with the SBA Loan.

4. Terms of Subordination. Agreement to subordinate. The Senior Lender and the SBA agree that: (a) the SBA Lien on DCI, DPH LLC and DT, Inc.'s personal property are and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Lender's First Liens on DCI, DPH LLC and DT, Inc.'s personal property; provided, however, for the purposes of this Agreement only, the Senior Lender's First Lien shall be deemed to secure Senior Lender's Revolving Loan to a maximum principal amount of \$10,000,000.00 and not all of Senior Lender's Loans to Borrower, and (b) the SBA Mortgage and the SBA Assignment of Rents are and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Lender's First Mortgage and First Assignment of Rents; provided, however, for the purposes of this Agreement only, the Senior Lender's First Mortgage and First Assignment of Rents shall be deemed to secure Senior Lender's Mortgage Loan to a maximum principal amount of \$2,848,000.00 and not all of Senior Lender's Loans to Borrower. The SBA hereby approves the First Lien, the First Mortgage and the First Assignment of Rents.

5. Obligation of Borrower Unconditional. Except as specifically set forth herein, nothing contained herein is intended to or shall impair the obligation of Borrower, which is absolute and unconditional, to pay to Senior Lender's loans and to pay to the SBA Loan as and when the same shall become due and payable in accordance with their terms. The Borrower acknowledges that the terms and provisions of this Agreement shall not and shall not be deemed to create any right or benefit for the Borrower as against Senior Lender or SBA.

6. Conflict. The Borrower, the Senior Lender and the SBA each agree that, in the event of any conflict or inconsistency between the terms of the Senior Lender's Loan Documents or the SBA Loan Documents and the terms of this Agreement, the terms of this Agreement shall govern and control solely as to the following: (a) the relative priority of the liens and security interests of the Senior Lender and the SBA on DCI, DPH LLC and DT, Inc.'s personal property and in the Premises; (b) and the other rights and obligations which the Senior Lender and the SBA have agreed to as expressly provided in this Agreement.

7. Covenant Not to Challenge. This Agreement has been negotiated by the parties with the expectation and in reliance upon the assumption that the instruments and documents evidencing the loans and the liens of the Senior Lender and the SBA are valid and enforceable. In determining whether to enter into this Agreement, each party has assumed such validity and enforceability, and has agreed to the provisions contained herein, without relying upon any reservation of a right to challenge or call into question such validity or enforceability. As between the Senior Lender and the SBA, (i) the SBA hereby covenants and agrees, to the fullest

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extent permitted by law, that it shall not initiate in any proceeding a challenge to the validity or enforceability of the documents and instruments evidencing the Senior Lender's Loans or the validity, perfection or priority of any of the Senior Lender's liens; and (ii) the Senior Lender hereby covenants and agrees, to the fullest extent permitted by law, that it shall not initiate in any proceeding a challenge to the validity or enforceability of the documents and instruments evidencing the SBA Loan or the validity, perfection or priority of any SBA liens.

8. Notices. Each notice, request, demand, consent, approval or other communication (hereinafter in this Section referred to collectively as "notices" and referred to singly as a "notice") which the Senior Lender or the SBA is required or permitted to give to the other party pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if: (a) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered); or (b) sent by Federal Express (or other similar national overnight courier) designating early morning delivery (any notice so delivered shall be deemed to have been received on the next Business Day following receipt by the courier); or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been received two days after mailing in the United States), addressed to the respective parties as follows:

SENIOR LENDER:

Inland Bank and Trust
2805 Butterfield Road, Suite 200
Oak Brook, Illinois 60523
Attention: Sean Gallagher, Sr. V.P.

SBA:

BORROWER:

Denovo Constructors, Inc.
100 S. Wacker Dr., Ste LL 1-50
Chicago, IL 60606
Attention: Jonathon K. Markoff

Any party may, by notice given pursuant to this Section, change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses for its notices, but notice of a change of address shall only be effective upon receipt.

9. Termination of Agreement. This Agreement shall continue and shall be irrevocable until the earliest of (a) until the date all of the Senior Lender's Loans have been fully and indefeasibly paid and its commitments to lend have been irrevocably terminated, or (b) the date the SBA Loan has been fully and indefeasibly paid and its commitments to lend have been

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irrevocably terminated, or (c) the date the Senior Lender and the SBA agree in writing, signed by each of them, to terminate this Agreement.

10. General.

(a) Assignment/Successors. This Agreement shall be binding upon the Borrower, the Senior Lender and the SBA and shall inure to the benefit of the respective legal successors and assigns of the Senior Lender and the SBA.

(b) No Partnership or Joint Venture. The Senior Lender's permission for the making of the loan secured by the SBA Loan Documents does not constitute the Senior Lender as a joint venturer or partner of the SBA.

(c) Further Assurances. Each of the SBA, the Senior Lender and the Borrower agrees, at the Borrower's expense, to execute and deliver all additional instruments and/or documents reasonably required by any other party to this Agreement in order to evidence the intent of this Agreement.

(d) Amendment. This Agreement shall not be amended except by written instrument signed by all parties hereto.

(e) Governing Law. Except as otherwise set forth herein, this Agreement shall be governed by the laws of the State of Illinois.

(f) Severable Provisions. If any provision of this Agreement shall be invalid or unenforceable to any extent, the other provisions of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

(g) Counterparts. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement. Receipt of an executed signature page to this Agreement by facsimile or other electronic transmission shall constitute effective delivery thereof. Electronic records of executed documents maintained by the Senior Lender shall be deemed to be originals.

(h) SBA Provisions. The SBA Loan was made under a United States Small Business Administration ("SBA") nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:

(i) When SBA is the holder of the SBA Note, this document and all documents evidencing or securing the SBA Loan will be construed in accordance with federal law.

(ii) The Lender or the SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes.

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By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Borrower or SBA Guarantor may claim or assert against SBA any local or state law to deny any obligation of Borrowers, or defeat any claim of SBA with respect to the SBA Loan.

Any clause in any SBA Loan Document requiring arbitration is not enforceable when SBA is the holder of the Note.

[Signatures pages follow this page]

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

SENIOR LENDER:

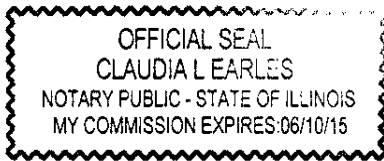
INLAND BANK AND TRUST, an Illinois state chartered banking institution

By: *Sean Gallagher*
Name: SEAN GALLAGHER
Title: SVP

THIS INSTRUMENT WAS DRAFTED BY: F. Kevin Murnighan, Carey, Filter, White & Boland, 33 W. Jackson, 5th Floor, Chicago, IL 60604

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

On this 3 day of NOV, 2014, before me appeared SEAN GALLAGHER, to me personally known, who, being by me duly sworn, did say that he/she is the SVP of Inland Bank and Trust, an Illinois state chartered banking institution, and that the foregoing instrument was signed on behalf of said corporation by authority of its board of directors, and said officer acknowledged said instrument to be the free act and deed of said corporation.



Claudia L. Earles
Notary Public


My Commission Expires:

6-10-15

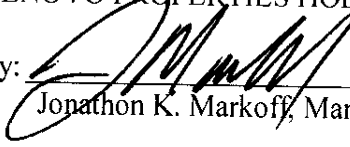
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BORROWER:

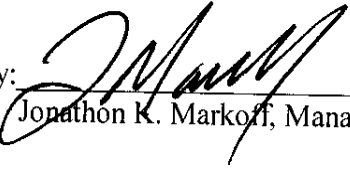
DENOVO CONSTRUCTORS, INC.

By: 
Jonathon K. Markoff, CEO

DENOVO PROPERTIES HOLDINGS, LLC

By: 
Jonathon K. Markoff, Manager

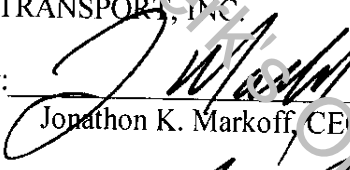
1300 RANDOLPH, LLC


By: 
Jonathon K. Markoff, Manager

1302-08 RANDOLPH, LLC

By: 
Jonathon K. Markoff, Manager

D TRANSPORT, INC.

By: 
Jonathon K. Markoff, CEO

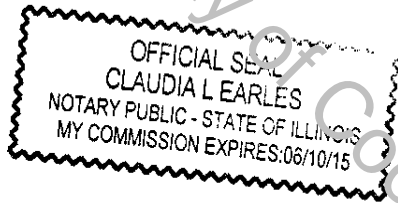

JONATHON K. MARKOFF

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

On this 3 day of NOV, 2014, before me appeared Jonathon K. Markoff, to me personally known, who, being by me duly sworn, did say that he is the CEO or Manager of ~~DENOVO~~ CONSTRUCTORS, INC., ~~DENOVO~~ PROPERTIES HOLDINGS LLC, 1300 RANDOLPH LLC, 1302-08 RANDOLPH LLC and D TRANSPORT, INC. and that the foregoing instrument was signed on behalf of himself and said companies by authority of its board of directors (or members), and said Jonathon K. Markoff acknowledged said instrument to be the free act and deed of himself and said companies.



✱ Claudia L. Earles
Notary Public

My Commission Expires:

✱ 6-10-15

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EXHIBIT A

Legal Description

PARCEL 1:

THE NORTH 25.00 FEET OF THE SOUTH 60.00 FEET OF LOT 4 IN THE ASSESSOR'S DIVISION OF LOTS 15 AND 16 IN BLOCK 1 IN SAWYER'S ADDITION TO CHICAGO IN SECTION 8, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOT 3 AND THE NORTH 40.00 FEET OF LOT 4 AND ALL OF LOTS 5 TO 8, INCLUSIVE, AND THE ALLEY NORTH OF AND ADJOINING SAID LOTS 4, 5, 6, 7, 8 ALL IN THE ASSESSOR'S DIVISION OF LOTS 15 AND 16 IN BLOCK 1 IN SAWYER'S ADDITION TO CHICAGO IN SECTION 8, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THAT PART THEREOF TAKEN FOR WIDENING OF RANDOLPH STREET), IN COOK COUNTY, ILLINOIS.

PIN: 17-08-325-022-0000

PIN: 17-08-325-023-0000

Address: 1300-08 W. Randolph, Chicago, IL