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RHSP Fee:\$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 04/08/2015 12:10 PM Pg: 1 of 8

Prepared by and  
Please Record and Return to:  
P. Michael Margolis, Esq.  
c/o Butler, Norris & Gold  
254 Prospect Avenue  
Hartford, CT 06106

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

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement"), dated this 10<sup>th</sup> day of February, 2015 (the "Effective Date"), is by and between **FIRSTMERIT BANK, N.A.** (the "Mortgagee"), with an address 501 W. North Avenue, Melrose Park, IL 60160, and **Bob's Discount Furniture, LLC**, a Massachusetts limited liability company (the "Tenant") with an address of 428 Tolland Turnpike, Manchester, CT 06042.

RECITALS

- (a) The Tenant has executed a lease dated February 10, 2015 (such lease together with any extensions, modifications or renewals thereof, the "Lease") with **Burbank Station Holdings, LLC** (the "Landlord") of the premises (the "Leased Premises") described in Exhibit A.
- (b) The Mortgagee holds a Mortgage on the Leased Premises or a portion of the Leased Premises, which Mortgage is dated November 6, 2012 and is recorded as Document#1231331054 with the Cook County Recorder of Deeds (the "Mortgage").
- (c) The Tenant and the Mortgagee desire to establish certain rights, safeguards, obligations, and priorities with regard to their respective interests by means of this Agreement.

TERMS OF THE AGREEMENT

IN CONSIDERATION of the mutual covenants of the parties and other good and valuable consideration, the Mortgagee and the Tenant agree as follows:

- 1) Provided the Tenant is not in default under the Lease beyond any period given under the Lease to cure defaults, then:
  - (i) the Tenant's right of possession to the Leased Premises and the Tenant's other rights arising out of the Lease shall not be affected or disturbed by the Mortgagee in the exercise of any of its rights under the Mortgage or the note which it secures.
  - (ii) In the event that the Mortgagee or any other person acquires title to the Leased Premises pursuant to the exercise of any remedy provided for in the Mortgage, or by conveyance in lieu of foreclosure, the Lease shall not be terminated or affected solely by the

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foreclosure, conveyance or sale in any such proceeding. The Mortgagee covenants that any sale by it of the Leased Premises as a result of the exercise of any rights and remedies under the Mortgage or otherwise, shall be subject to the Lease and the rights of the Tenant under the Lease and the Tenant covenants and agrees to attorn to the Mortgagee, or such person, as its new Landlord, and the Lease shall continue in full force and effect as a direct lease between the Tenant and the Mortgagee or such other person, upon all of the terms, covenants, conditions and agreements set forth in the Lease. However, in no event shall the Mortgagee or such person be:

- a) liable for any act or omission of the Landlord except for (i) acts or omissions of a continuing nature which continue after such time as the Mortgagee comes into possession of or acquires title to all or any portion of the Leased Premises and that Mortgagee has received prior written notice of from Tenant, and (ii) Tenant's right to monetary setoff of rent under expressly provided self help provisions set forth in the Lease for which Mortgagee has received prior written notice of from Tenant;
  - b) bound by any payment of rent or additional rent made by the Tenant to the Landlord for more than one month in advance excluding overpayments of estimated additional rent paid in advance by Tenant and reconciled at a later date;
  - c) notwithstanding anything set forth in subsection (a) above, bound by any covenant to undertake or complete any improvement to the Leased Premises, except as explicitly set forth in the Lease;
  - d) liable for (X) the return of any security deposit made by Tenant to Landlord unless Lender or such person shall have actually received that security deposit from Landlord; or (Y) any payment to Tenant of any sums, or the granting to Tenant of any credit, in the nature of a contribution towards the cost of preparing, furnishing or moving into the Premises or any portion thereof; and
  - e) bound by any amendment or modification to the Lease that modifies the rent, term, commencement date, or other material term of the Lease, or the waiver of any of the aforementioned provisions of the Lease, that has not been consented to in writing by Lender.
- 2) The Lease shall be subject and subordinate to the lien of the Mortgage and to all advances made or to be made and to any renewals, modifications, consolidations, extensions or replacements of the Mortgage.
  - 3) The above provisions shall be self-operative and effective without the execution of any further instruments on the part of either party. However, the Tenant agrees to execute and deliver to the Mortgagee or to any person to whom the Tenant agrees to attorn such other instruments as either shall reasonably request in order to comply with these provisions.
  - 4) This Agreement may not be modified other than by an agreement in writing signed by the parties or by their respective successors in interest.
  - 5) From the Effective Date, Landlord's consent, approval or waiver under or with respect to the

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Lease or the Leased Premises or any matter related thereto shall not be effective unless such consent, approval or waiver is accompanied by the written consent of Lender. Without limiting the generality of the foregoing, without the prior written consent of Lender, Tenant will not: (a) enter into any agreement amending the rent, term, commencement date and/or other material term of the Lease, (b) enter into any agreement terminating the Lease, (c) cancel the term of, or surrender, the Lease, or (d) assign or sublet all or any part of the Premises, except only pursuant to any assignment or sublease which, under the express provisions of the Lease, Tenant is entitled to make without the consent of the Landlord. Tenant agrees that Lender shall have the same rights of access to inspection of the Leased Premises as does Landlord under the Lease.

- 6) This Agreement inures to and binds the successors and assigns of the respective parties, including those permitted assignees as set forth in the Lease and any permitted leasehold mortgagee of Tenant. This Agreement may be executed in any number of counterparts and by each of the undersigned 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. The parties hereto agree that this Agreement may be recorded in the public records of the county in which the Property is located.
- 7) In the event that the Mortgagee shall acquire title to the Leased Premises, the Mortgagee shall have no obligation, nor incur any liability, beyond the Mortgagee's then equity interest, if any, in the Leased Premises, and the Tenant shall look exclusively to such equity interest of the Mortgagee, if any, in the Leased Premises for the payment and discharge of any obligations or liability imposed upon the Mortgagee hereunder, under the Lease or under any new lease of the Leased Premises, and the Mortgagee, and its partners, officers, directors, shareholders and agents are hereby released and relieved of any other obligations or liability hereunder, under the Lease or under any such new lease.
- 8) Tenant hereby agrees that any interest of Tenant in any insurance, condemnation or eminent domain proceeds or awards made with respect to any interest in the Leased Premises shall be subordinate to the interests of Lender in such proceeds or awards. Tenant will neither seek nor accept insurance, any condemnation or eminent domain proceeds or awards made with respect to any interest in the Premises until all amounts secured by the Mortgage have been paid in full; provided, however, that, subject to the Mortgage, Tenant and Landlord shall be permitted to make a claim for any insurance, condemnation and/or eminent domain proceeds or awards so long as there are no existing defaults under the Loan Documents. Notwithstanding the foregoing or anything else contained herein or any other Loan Document to the contrary, Tenant shall be permitted to make a separate claim for its personal property, trade fixtures and moving expenses if separately allocated in connection with any insurance, condemnation or eminent domain proceeds or awards. If a casualty occurs to, or a condemnation affects, the Leased Premises or the Shopping Center in which the Leased Premises are located, insurance and/or condemnation proceeds from such casualty or condemnation shall be applied in accordance with the Mortgage.
- 9) Tenant hereby agrees to provide Lender with written notice of any casualty damage to the Leased Premises and any default under the Lease by the Landlord and to provide Lender the greater of: (a) the notice period provided to Landlord under the Lease; or (b) thirty (30)

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days, prior to exercising any right or remedy of Tenant under the Lease. Notwithstanding the foregoing, Tenant agrees that Lender shall have no obligation to remedy any such default.

- 10) Tenant acknowledges that, as of the Effective Date, Landlord has executed and delivered Lender an *Assignment of Leases and Rents* conveying the rentals under the Lease as additional security for said loan, and Tenant hereby expressly consents to and recognizes such assignment, and agrees to pay the rent to Lender or its nominee whenever Lender claims or requests the rent under the terms of said Assignment. Tenant shall comply with such direction to pay and shall not be required to determine whether Landlord is in default under the Loan and/or the Mortgage before paying the sums due under the Lease over to Lender.
- 11) Each notice, demand or other communication in connection with this Agreement shall be in writing and shall be deemed to be given to and served upon the addressee thereof on the earlier of: (a) actual delivery to such addressee at its address set out above; or (b) the first (1<sup>st</sup>) business day after the deposit thereof with a national overnight carrier (e.g. FedEx), addressed to such addressee at its address set out above. By notice complying with this section, any party may from time to time designate a different address in the 48 contiguous continental United States as its address for the purpose of the receipt of notice hereunder.

[Signatures Appear on Following Page]

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To indicate their agreement to the above, the parties or their authorized representatives or officers have signed this document.

Witnesses:

[Signature]  
\_\_\_\_\_

MORTGAGEE:

**FIRSTMERIT BANK, N.A.**

BY: [Signature]

ITS: Vice President

Witnesses:

[Signature]  
\_\_\_\_\_

TENANT:

**Bob's Discount Furniture, LLC**

BY: [Signature]  
John Sullivan

ITS: Chief Financial Officer & Ex. Vice President

## ACKNOWLEDGED AND ACCEPTED BY:

Witnesses:

[Signature]  
\_\_\_\_\_

LANDLORD:

**Burbank Station Holdings, LLC**

BY: [Signature]  
Norris R. Eber Manager

[Signature]  
\_\_\_\_\_

BY: Norris R. Eber

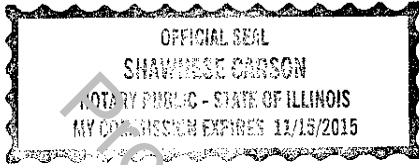
ITS: Manager

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## MORTGAGEE ACKNOWLEDGMENT

STATE OF Illinois )  
 ) SS:  
COUNTY OF Cook )

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of February, 2015, by Srikanth Krishan, as VP of **FIRSTMERIT BANK, N.A.**, a national banking association, on behalf said national banking association.



*Shaquese Carson*

Notary Public

## TENANT ACKNOWLEDGMENT

STATE OF CONNECTICUT )  
 ) SS: Manchester Hartford  
COUNTY OF HARTFORD )

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of February, 2015, by John Sullivan, Chief Financial Officer and Executive Vice President of **Bob's Discount Furniture, LLC**, a Massachusetts limited liability company, on behalf of the limited liability company.

Notary Public



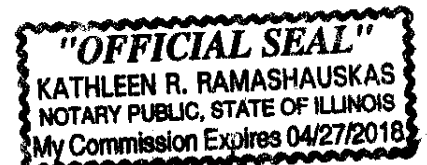
*Laura Rossignol*  
NOTARY PUBLIC  
State of Connecticut  
My Commission Expires  
October 31, 2016

## LANDLORD ACKNOWLEDGMENT

STATE OF Illinois )  
 ) SS:  
COUNTY OF Cook )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of February, 2015, by Norris R. Eber, as Manager of Burbank Station Holdings, LLC, a Delaware limited liability company, on behalf of the limited liability company.

*Kathleen R. Ramashauskas*  
Notary Public



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## EXHIBIT A-1

### LEGAL DESCRIPTION

#### Parcel A:

That Part of the South 6/12 of the North 8/12 of the South 60 acres of the East 1/2 of the Southeast 1/4 of Section 28, Township 38 North, Range 13, East of the Third Principal Meridian, lying North of the North Right of Way Line of 78th Street, (Except therefrom the West 33.00 feet taken for Lavergne Avenue) and (Except the East 60.00 feet taken for Cicero Avenue), in Cook County, Illinois.

#### Less and Except the following Outlot:

That Part of the South 1/7 of the North 7/12 and the South 1/8 of the North 8/12 of the South 60 acres of the East 1/2 of the Southeast 1/4 of Section 28, described as follows:

Beginning at the Point of Intersection of the North Line of 78th Street, (Being 33.00 feet North of the Center Line) and the West Line of Cicero Avenue, (Being 60.00 feet West of the Center Line); thence North 89 degrees, 54 minutes, 56 seconds West along said North line of 78th Street, a distance of 212.00 feet; thence North 00 degrees, 08 minutes, 56 seconds West Parallel to the West line of Cicero Avenue, a distance of 180.00 feet; thence South 89 degrees, 54 minutes, 56 seconds East, a distance of 212.00 feet to the West line of Cicero Avenue; thence South 00 degrees, 08 minutes, 56 seconds East, a distance of 180.00 feet to the Point of Beginning, all in Section 28, Township 38 North, Range 13, East of the Third Principal Meridian, being specifically described as:

Lot 1 in Burbank Station, a Subdivision of the East 1/2 of the Southeast 1/4 of Section 28, Township 38 North, Range 13, East of the Third Principal Meridian, according to the Plat thereof recorded July 29, 1994 as Document 94672782, in Cook County, Illinois;

#### Less and Except

That Portion conveyed to the Illinois Department of Transportation By Deed from Burbank Joint Venture, a Michigan General Partnership dated September 29, 1998 and Recorded November 17, 1998 as Document 08036669, in Cook County, Illinois.

#### Less and Except

The North 120.00 feet of the South 1/3 of the North 3/12 of the South 60 acres of the East Half of the Southeast Quarter of Section 28, Township 38 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois.

#### Less and Except

That Part of the South 60 acres of the East 1/2 of the Southeast 1/4 of Section 28, Township 38 North Range 13 East of the Third Principal Meridian, described as follows:

Commencing at the Point of Intersection of the East Line of Lavergne Avenue and the North Line of 78th Street; Thence North 00 degrees 00 minutes 15 seconds East along the East Line of Lavergne Avenue, 500.00 feet; Thence South 89 degrees 58 minutes 02 seconds East 85.05 feet to the Point of Beginning; thence Continuing South 89 degrees 58 minutes 02 seconds East 333.42 feet; Thence South 00 degrees 01 minutes 58 seconds West 8.39 feet; Thence South 89 degrees 58 minutes 02 seconds East 306.00 feet; Thence South 00 degrees 01 minutes 58 seconds West 487.29 feet to a Point 5.00 feet North of the North Line of 78th Street; thence North 89 degrees 54 minutes 49 seconds West along a Line 5.00 feet North of the North Line of 78th Street 669.42 feet; Thence North 00 degrees 01 minutes 58 seconds East 205.11 feet; thence South 89 degrees 58 minutes 02 seconds East 30.00 feet; Thence North 00 degrees 01 minutes 58 seconds East 90.00 feet; Thence North 89 degrees 58 minutes 02 seconds West 30.00 feet; Thence North 00 degrees 01 minutes 58 seconds East 146.73 feet; Thence South 89 degrees 58 minutes 02 seconds East 30.00 feet; Thence North 00 degrees 01 minute 58 seconds East 53.21 feet to the Point of Beginning.

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## Parcel B:

The North 33 Feet of the West 130 Feet (except the west 33 feet thereof) of the South 1/3 of the North 3/12 of the South 60 acres of the east half of the Southeast quarter of Section 28, Township 38 North, Range 13 East of The Third Principal Meridian, In Cook County, Illinois.

## Parcel C:

That Part of the South 60 acres of the East 1/2 of the Southeast 1/4 of Section 28, Township 38 North Range 13 East of the third Principal Meridian, Described As Follows: Commencing at the point of Intersection of the East Line of Lavergne Avenue and the North Line of 78th Street; thence North 00 degrees 00 minutes 15 seconds East along the East Line of Lavergne Avenue, 500.00 Feet; thence South 89 degrees 58 minutes 02 seconds East 85.05 Feet To The Point of Beginning; thence continuing South 89 degrees 58 minutes 02 seconds East 333.42 Feet; thence South 00 degrees 01 minutes 58 seconds West 8.39 Feet; thence South 89 degrees 58 minutes 02 seconds East 306.00 Feet; thence South 00 degrees 01 minutes 58 seconds West 487.29 Feet to a Point 5.00 Feet North of the North Line of 78th Street; thence North 89 degrees 54 minutes 49 seconds West Along a Line 5.00 Feet North of The North Line of 73th Street 669.42 Feet; thence North 00 degrees 01 minutes 58 seconds East 205.11 Feet; thence South 89 degrees 58 minutes 02 seconds East 30.00 Feet; thence North 00 degrees 01 Minute 58 seconds East 90.00 Feet; thence North 89 degrees 58 minutes 02 seconds West 30.00 Feet; thence North 00 degrees 01 minutes 58 seconds East 146.73 Feet; thence South 89 degrees 58 minutes 02 seconds East 30.00 Feet; thence North 00 degrees 01 Minute 58 seconds East 53.21 Feet To The Point of Beginning.

## Parcel D:

Perpetual Non-exclusive easement for the purpose of cross access, utilities, signs and future easements, for the benefit of parcel A and C over the common areas of the shopping center parcel more particularly described on Exhibit A-1 attached to the declaration of easements, restrictions and operating agreement; recorded as document number 94823987.

## Parcel E:

Easement for the benefit of parcels A and C for roadway purposes as created by grant for public roadway recorded December 11, 1997 as document number 97930150 and assigned by assignment and assumption of driveway easement dated January 26, 2005 and recorded February 2, 2005 as document number 0503334032 over the following described land:

That part of the South 1/3 of the North 3/12 of the South 60 acres of the East 1/2 of the Southeast 1/4 of Section 28, described as follows: Beginning at a point on the North line of said South 1/3 that is 711.0 feet East of the West line of said East 1/2 of the Southeast 1/4 of Section 28; thence East along said North line, 83.32 feet; thence Southwesterly along a line forming an angle of 106 degrees 15 minutes to the right from the previous course, a distance of 125.0 feet to a point 120.0 feet South of said North line of the South 1/3 of the North 3/12; thence West along a line 120.0 feet South of and parallel with said North line of the South 1/3, 83.32 feet; thence Northeasterly, 125.0 feet to the point of beginning, all in Township 38 North, Range 13, Range 13, East of the third principal meridian, in Cook County, Illinois.

## Parcel F:

Lot 1 In Burbank Station being a Subdivision of that part of the South 1/7 of the North 7/12 and the South 1/8 of the North 8/12 of the South 60 acres of the East 1/2 of the Southeast 1/4 of Section 28, Described As Follows:

Beginning at the point of Intersection of the North Line of 78th Street (being 33 feet north of the center line) and the West Line of Cicero Avenue (being 60 feet west of the center line) thence North 89 degrees 54 minutes, 56 seconds West along said North Line of 78th Street 212.0 Feet; thence North 0 degrees 08 minutes 56 seconds West parallel with said West Line of Cicero Avenue, 180.0 Feet; thence South 89 degrees 54 minutes 56 seconds East 212.0 feet to said West Line of Cicero Avenue; thence South 0 degrees 08 minutes 56 seconds East, 180.0 feet to the point of beginning, All in township 38 North, Range 13, East of the Third Principal Meridian, according to the plat thereof recorded July 24, 1994 as document 94672782, in Cook County, Illinois.

Property address : 7760 Cicero Avenue, Burbank, IL

PIN #s : 19-28-401-055-0000

19-28-412-039-0000

19-28-412-036-0000

19-28-412-040-0000

19-28-412-037-0000

19-28-412-038-0000