

BK: 2023 PG: 2345  
Recorded: 9/25/2023 at 1:25:41.0 PM  
Pages 7  
County Recording Fee: \$37.00  
Iowa E-Filing Fee: \$3.00  
Combined Fee: \$40.00  
Revenue Tax:  
BRANDY L. MACUMBER, RECORDER  
Madison County, Iowa

## **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT**

### **Recorder's Cover Sheet**

**Preparer Information:** (name, address and phone number)

Greg Grote, Charter Bank., 455 6<sup>th</sup> Street, P.O. Box 550, Wauke, IA 50263, (515) 987-1000

**Taxpayer Information:** (name and complete address)

McCartney Trim Corporation, 22351 360<sup>th</sup> St., De Soto, IA 50069

**Return Document To:** (name and complete address)

Greg Grote, Charter Bank., 455 6<sup>th</sup> Street, P.O. Box 550, Wauke, IA 50263, (515) 987-1000

**Grantors:**

N/A

**Grantees:**

N/A

**Legal Description:** Lot Ten (10) of Scenic Ridge Subdivision, located in the Northeast Quarter (1/4) of Section Twelve (12), Township Seventy-seven (77) North, Range Twenty-eight (28) West of the 5th P.M., Madison County, Iowa

**Document or instrument number of previously recorded documents:**

**SUBORDINATION, NON-DISTURBANCE AND  
ATTORNNMENT AGREEMENT**  
(LAND CONTRACT)

THIS AGREEMENT is made as of the 18<sup>th</sup> day of August, 2023, between Scenic Ridge Holdings, LLC, an Iowa limited liability company, with offices at 22351 360<sup>th</sup> Street, De Soto, IA 50069, 24937 Walnut Trail, Adel, IA 50003 and 503 NE 53<sup>rd</sup> Court, Ankeny, IA 50021 (hereinafter referred to as "Seller"), McCartney Trim Corporation, an Iowa corporation, with offices at 22351 360<sup>th</sup> Street, De Soto, IA 50069 (hereinafter referred to as "Buyer"), and Charter Bank, with offices at 455 6<sup>th</sup> Street, Waukee, IA 50263 (hereinafter referred to as "Mortgagee").

**WITNESSETH:**

**WHEREAS**, Buyer has entered that certain Real Estate Contract (the "Contract"), dated as of August 18, 2023, with Seller, filed September 25, 2023 in Book 2023 at Page 2342 in the Office of the Madison County, Iowa Recorder, covering certain property located at 2160 114<sup>th</sup> Court, Winterset, IA and legally described as:

**Lot Ten (10) of Scenic Ridge Subdivision, located in the Northeast Quarter (1/4) of Section Twelve (12), Township Seventy-seven (77) North, Range Twenty-eight (28) West of the 5th P.M., Madison County, Iowa**

(hereinafter referred to as the "Premises"); and

subject to the provisions of which Seller has conveyed all equitable interest in the Premises, but has retained legal title pending the satisfaction of the conditions set forth in the Contract; and

**WHEREAS**, Buyer has mortgaged its equitable interest in the Premises pursuant to the Mortgage to Mortgagee dated September 22, 2023, to be filed in the Office of the Madison County, Iowa Recorder ("Mortgage"). Mortgagee is the holder of said Mortgage.

**WHEREAS**, Seller desires that its interest in the Premises, pursuant to the Contract shall not terminate, but rather shall remain in full force and effect in accordance with its terms in the event the Mortgagee takes possession of the Premises upon default under the Mortgage or through any foreclosure sale or by any transfer thereof in lieu of foreclosure, and Mortgagee desires that Seller subordinate their interest in the Premises to the lien of the Mortgage; and

**WHEREAS**, Seller has delivered a copy of the Contract to Mortgagee, the receipt of which is hereby acknowledged, and

**NOW, THEREFORE**, in consideration of the premises set forth above and other good and valuable consideration in hand paid, the parties hereto agree as follows:

1. Mortgagee hereby acknowledges Seller's interest in the Premises pursuant to the Contract, and the terms thereof, and covenants and agrees that the exercise by Seller of its rights and remedies therein contained shall not constitute a default under the Mortgage.

2. The Contract is, and shall remain, subject and subordinate to the lien of the Mortgage and to any extensions, modifications, consolidations or renewals thereof; provided that as to any such extensions, modifications, consolidations or renewals thereof, a non-disturbance agreement in the form of this agreement is executed and delivered by the holder of the Mortgage as so extended, modified, consolidated or renewed.

3. So long as the Seller is not in default in the performance of any terms, covenants and conditions to be performed on its part under the Contract beyond any applicable cure period, then in such event:

(a) Seller shall not be joined as a party defendant in any foreclosure proceeding which may be instituted by Mortgagee unless Seller's joinder is required by applicable law;

(b) Seller's legal interest in the Premises under the Contract shall not be terminated, barred, cut off, or otherwise disturbed by reason of any default under the Mortgage or any foreclosure proceeding instituted by Mortgagee.

4. If Mortgagee, or any other purchaser at a foreclosure sale, shall succeed to the interest of Buyer in and under the Contract, whether through possession by exercise of rights under the Mortgage, or by foreclosure proceeding, or delivery of a deed in lieu of foreclosure, Mortgagee shall unconditionally attorn to and recognize Seller under the Contract as the legal titleholder, and if requested by Seller, shall promptly execute and deliver an attornment agreement in the form of this agreement to evidence such attornment. Upon and after such attornment, the Contract shall continue in full force and effect as a direct agreement between Mortgagee or such purchaser and Seller upon all of the terms, conditions and covenants as are set forth in the Contract and any written amendment thereof.

5. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.

6. Mortgagee agrees to provide Seller copies of any and all notices to Buyer advising of any breach of any obligation by Buyer under the Mortgage at the same time as such notice is sent to Buyer. At any time before the rights of the Buyer shall have been forfeited or adversely affected because of any default on its part, or within the time permitted the Buyer or Mortgagee to cure any default under the Contract as therein provided, Mortgagee may, at its option, but not be obligated to, pay any taxes and assessments, make any repairs and improvements, make any deposits or do any other act or thing required of or allowed by the Seller by the terms of the Contract, and all payments so made and all things so done and performed by Mortgagee shall be as effective to prevent the rights of the Buyer from being forfeited or adversely affected because of any default under the Contract as the same would have been if done and performed by the Buyer.

7. At any time within the time permitted the Buyer to cure any default under the Mortgage as therein provided, Seller may, at their option, pay any taxes and assessments, make any repairs and improvements, make any deposits or do any other act or thing required of the Buyer by the terms of the Mortgage, and all payments so made and all things so done and performed by Seller shall be as effective to prevent the rights of the Buyer from being forfeited or adversely affected because of any default under the Mortgage as the same would have been if done and performed by the Buyer.

8. Any required notices to Mortgagee, shall be in writing and shall be given by registered or certified mail, return receipt requested, postage prepaid, or by nationally-recognized overnight courier, at the address of Mortgagee as hereinabove set forth or at such other address as Mortgagee may designate by notice. During the period of any postal strike or other interference with the mail or courier service, personal delivery shall be substituted for registered or certified mail.

9. Any notices or communications given to Seller under this agreement shall be in writing and shall be given by registered or certified mail, return receipt requested, postage pre-paid, or by nationally-recognized overnight courier, at the address of Seller hereinabove set forth, or at such other address as Seller may designate by notice. During the period of any postal strike or other interference with the mail or courier service, personal delivery shall be substituted for registered or certified mail.

10. This agreement shall bind and inure to the benefit of and be binding upon and enforceable by the parties hereto and their respective successors and assigns.

11. This agreement contains the entire agreement between the parties regarding the relative rights of Seller and Buyer under the Contract and Mortgagee under the Mortgage and cannot be changed, modified, waived or canceled except by an agreement in writing executed by the party against whom enforcement of such modification, change, waiver or cancellation is sought.

12. This agreement and the covenants herein contained are intended to run with and bind all lands affected hereby. Time is of the essence in this Agreement.

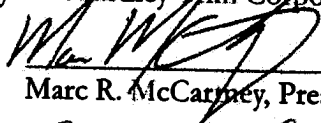
**IN WITNESS WHEREOF**, this Agreement has been duly executed by the parties hereto.

Signed, sealed and delivered this 18<sup>th</sup> day of August, 2023, by the duly-authorized officers of Seller, Buyer, and Mortgagee.

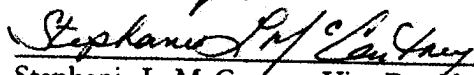
**SELLER:**

**SCENIC RIDGE HOLDINGS, LLC**  
an Iowa limited liability company

By: McCartney Tim Corporation

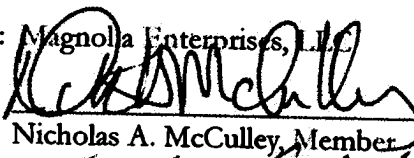


Marc R. McCartney, President

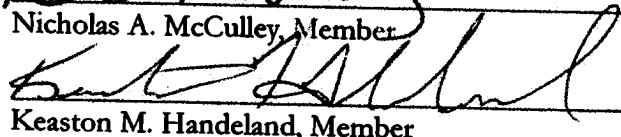


Stephanie L. McCartney, Vice President

By: Magnolia Enterprises, LLC



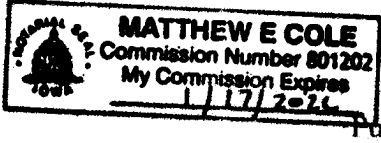
Nicholas A. McCulley, Member



Keaston M. Handeland, Member

STATE OF IOWA, COUNTY OF Dallas

This record was acknowledged before me this 18<sup>th</sup> day of August 2023, by Marc R. McCartney, as President of McCartney Trim Corporation.

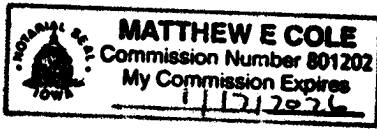


Public

Matthew E Cole  
Signature of Notary

STATE OF IOWA, COUNTY OF Dallas

This record was acknowledged before me this 18<sup>th</sup> day of August 2023, by Stephanie L. McCartney, as Vice President of McCartney Trim Corporation.



Public

Matthew E Cole  
Signature of Notary

STATE OF IOWA, COUNTY OF Dallas

This record was acknowledged before me this 23<sup>rd</sup> day of August 2023, by Nicholas A. McCulley, as Member of Magnolia Enterprises, LLC.

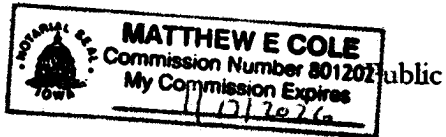


Public

Matthew E Cole  
Signature of Notary

STATE OF IOWA, COUNTY OF Dallas

This record was acknowledged before me this 18 day of August 2023, by Keaston M. Handeland, as Member of Magnolia Enterprises, LLC.



Public

Matthew E Cole  
Signature of Notary

BUYER:

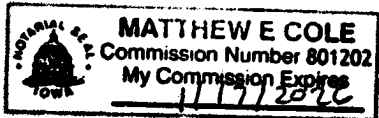
**MCCARTNEY TRIM CORPORATION,**  
an Iowa corporation

By: *Marc R. McCartney*  
Marc R. McCartney, President

By: *Stephanie L. McCartney*  
Stephanie L. McCartney, Vice President

STATE OF IOWA, COUNTY OF Dallas

This record was acknowledged before me this 18<sup>th</sup> day of August 2023, by Marc R. McCartney, as President of McCartney Trim Corporation.



Public

*Matthew E Cole*  
Signature of Notary

STATE OF IOWA, COUNTY OF Dallas

This record was acknowledged before me this 18<sup>th</sup> day of August 2023, by Stephanie L. McCartney, as Vice President of McCartney Trim Corporation.



Public

*Matthew E Cole*  
Signature of Notary

MORTGAGEE:

**CHARTER BANK**

By: *Greg Grote, President*  
Greg Grote, President

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STATE OF IOWA, COUNTY OF DALLAS

This record was acknowledged before me this 18<sup>th</sup> day of August 2023, by Greg Grote,  
as President of Charter Bank.

  
Signature of Notary Public

