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1328241078

Doc#: 1328241078 Fee: \$60.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 10/09/2013 10:38 AM Pg: 1 of 12

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

484

SHEFSKY & FROELICH LTD.
111 E. Wacker Drive, Suite 2800
Chicago, Illinois 60601
Attn: Kathryn Kovitz Arnold

Permanent Tax Index Number:
See **Exhibit A** attached hereto

Property Address:
FRESHCO, LLC
4800 W Diversey Avenue
Chicago, Illinois 60639

This space reserved for Recorders use only.

SUBORDINATION, NON-DISTURBANCE

AND ATTORNMEN AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT made in multiple copies as of the 29th day of August, 2013, by and between FIRST BANK AND TRUST COMPANY OF ILLINOIS, an Illinois banking corporation, ("Mortgagee"), DIVERSEY CICERO DEVELOPERS, LLC, an Illinois limited liability company ("Landlord") and FRESHCO, LLC, an Illinois limited liability company ("Tenant");

WITNESSETH:

WHEREAS, Mortgagee is the holder of a Note in the original principal amount of Four Million Five Hundred Thousand Fifty and No/100 Dollars (\$4,500,000.00), secured by a Mortgage ("Mortgage") dated September 6, 2013, recorded on October 9, 2013, as Document No. 1328241076, in the Official Records of the Office of Recorder of Deeds of Cook County, State of Illinois, covering the property legally described on Exhibit "A" attached hereto and made a part hereof;

WHEREAS, by Lease dated May 30, 2013 ("Lease"), Landlord, as landlord, leased to Tenant, as tenant, the property commonly known as 4800 West Diversey Avenue, in Chicago, Illinois, legally described on Exhibit "A" ("Leased Premises");

Box 400-CTCC

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WHEREAS, Mortgagee, Tenant and Landlord desire to confirm their understanding with respect to said Lease and said Mortgage;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and promises contained herein and other good and valuable consideration, the parties agree as follows:

1. Subject to the covenants, terms and conditions of this Agreement, in the event of a default under the Note, the lien of said Lease is hereby subordinated to the lien of said Mortgage. If there shall be a conflict between the terms of said Lease and the terms of said Mortgage, the terms of said Lease shall prevail.
2. In the event Mortgagee or any other party (collectively "Successor Landlord") acquires title or right of possession of the Leased Premises under said Mortgage through foreclosure, or other procedure related to a default under the Note, said Lease shall remain in full force and effect and Tenant shall continue occupancy of the Leased Premises in accordance with the terms and provisions of said Lease. In such event, during the period that it holds title to or possession of the Leased Premises, Successor Landlord shall be in all respects bound by said Lease as Landlord and by all of Tenant's rights thereunder. Successor Landlord's remedies pursuant to the Lease will be in full force and effect once Successor Landlord succeeds to the interest of Landlord under the Lease and once Successor Landlord is bound by all of the terms and conditions of said Lease.
3. So long as Successor Landlord shall be bound by the terms and conditions of said Lease, Tenant shall attorn to Successor Landlord when Successor Landlord is in possession of the Leased Premises, whether such possession is pursuant to Mortgagee's rights under said Mortgage (which such attornment shall be effective and self operative without the execution of any further instrument on the part of any of the parties hereto), or other procedure related to a default under the Note and will continue occupancy of the Leased Premises under the same terms and conditions of said Lease.
4. Mortgagee shall not include Tenant in any foreclosure proceeding involving the Leased Premises, unless required by applicable state law for Mortgagee to accomplish the foreclosure and then not to interfere with or diminish Tenant's rights under said Lease or disturb Tenant's possession.

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5. In the event that Successor Landlord succeeds to the interest of Landlord under such Lease, Successor Landlord shall not be:

a). Liable for any act or omission of any prior landlord (including Landlord) or subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord), except for any defaults or remedies of which Tenant has notified Mortgagee prior to Successor Landlord becoming bound by the Lease in accordance with paragraph 2. Successor Landlord will not be held liable for any consequential damages for defaults of any prior Landlord; or

b). Bound by any payment of any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord (including Landlord); or

c). Bound by any amendment or modification of the Lease made without Mortgagee's written consent.

6. During the continuance of said Mortgage, Tenant shall use reasonable efforts to give written notice to Mortgagee of all defaults by Landlord of those obligations under said Lease which are of a nature as to give Tenant a right to terminate said Lease, reduce rent, or to credit or offset any amounts against future rents, and Mortgagee shall have the same opportunity as provided to Landlord in said Lease (but shall not be required) to cure the same. In any event (except as otherwise provided in the next sentence of this paragraph), Tenant's failure to provide Mortgagee such written notice shall not impair any rights granted or derived by Tenant under said Lease and/or this Agreement. In no event shall Tenant terminate the Lease as a result of any breach or default of the Lease unless Tenant has provided Mortgagee notice and afforded the Mortgagee the same opportunity to cure such breach or default as provided to Landlord in said Lease; provided, however, that Mortgagee shall not be obligated to remedy or cure any default of Landlord under the Lease.

7. Tenant hereby agrees that upon receipt of written notice from Mortgagee of a default by Landlord under said Mortgage, all checks for rent and other sums payable by Tenant under said Lease to Landlord shall, from the date of Tenant's receipt of such written notice, be delivered to and drawn to the exclusive order of Mortgagee until Mortgagee or a court of competent jurisdiction shall direct otherwise. Such an assignment of rent shall not relieve Landlord of any of its obligations under said Lease and shall not modify or diminish any rights

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granted to Tenant by said Lease or this Agreement, including but not limited to, any rights contained in said Lease which allow Tenant the right of so-called self help, offsets or deductions in the event of default or otherwise. Landlord hereby consents and agrees to the provisions of this paragraph and hereby authorizes Tenant to direct all rental and other payments under said Lease as provided by this paragraph. Landlord hereby relieves Tenant from any liability by reason of Tenant's payment of any sums under said Lease as required by this paragraph. Tenant shall have no obligation to verify the existence of any such default stated in the notice from Mortgagee under this paragraph.

8. (This section left blank intentionally).

9. In the event Successor Landlord acquires title or right of possession of the Leased Premises, Tenant acknowledges and agrees that the liability of such Successor Landlord under the Lease shall be limited to its interest in the property described on Exhibit "A" and the rents, income and profits therefrom. Notwithstanding anything herein to the contrary, Tenant shall have all of its equitable remedies against Successor Landlord. Nothing contained herein shall otherwise limit Tenant's rights or remedies as provided in the Lease.

10. All notices under this Agreement shall be deemed to have been duly given if made in writing and sent by United States certified or registered mail, postage prepaid, or by overnight delivery service providing proof of receipt, and addressed as follows:

If to Mortgagee: First Bank and Trust Company of Illinois
300 East Northwest Highway
Palatine, Illinois 60067
Attn: Alan Reasoner

With Copy to: Shefsky & Froelich Ltd.
111 E. Wacker Drive, Suite 2800
Chicago, Illinois 60601
Attn: Kathryn Kovitz Arnold, Esq.

If to Tenant: Freshco, LLC
4800 West Diversey Avenue
Chicago, Illinois 60639

If to Landlord: Diversey Cicero Developers, LLC
4849 North Milwaukee Avenue, Suite 302
Chicago, IL 60630

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With Copy to: Loukas D. Kozonis, P.C.
4849 North Milwaukee Avenue, Suite 300
Chicago, Illinois 60630
Attn: Loukas D. Kozonis, Esq.

provided that each party by like notice may designate any future or different addresses to which subsequent notices shall be sent. Notices shall be deemed given upon receipt or upon refusal to accept delivery.

11. (This section left blank intentionally).

12. To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures and acknowledgment of, or on behalf of, each of the parties hereto. Any signature and acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures and acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature and acknowledgment pages.

13. This Agreement shall also bind and benefit the heirs, legal representatives, successors and assigns of the respective parties hereto, and all covenants, conditions and agreements herein contained shall be construed as running with the land.

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

(Signature Page to follow)

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TENANT:

FRESHCO, LLC

MORTGAGEE:

**FIRST BANK AND TRUST COMPANY
OF ILLINOIS**



Maria Dernis

Manager

By: _____

Title: _____

LANDLORD:

DIVERSEY CICERO DEVELOPERS, LLC

By: Demetrios L. Kozonis

Title: Manager

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TENANT:

FRESHCO, LLC

MORTGAGEE:

**FIRST BANK AND TRUST COMPANY
OF ILLINOIS**

Maria Dernis

Manager

By: _____

Title: _____

LANDLORD:

DIVERSEY CICERO DEVELOPERS, LLC



By: Demetrios L. Kozonis

Title: Manager

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TENANT:

FRESHCO, LLC

MORTGAGEE:

**FIRST BANK AND TRUST COMPANY
OF ILLINOIS**

Maria Dernis

Manager

By: EMAD MURRAY

Title: SVP

LANDLORD:

DIVERSEY CICERO DEVELOPERS, LLC

By: Demetrios L. Kozonis

Title: Manager

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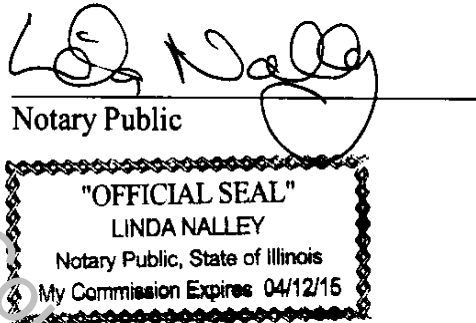
ACKNOWLEDGEMENT

STATE OF ILLINOIS §
 § ss.
 COUNTY OF COK §

On this 29th day of August 2013, before me appeared **Maria Dernis**, to me personally known, who, being by me duly sworn, did say that he is the **Manager of FRESHCO, LLC**, an Illinois limited liability company, and that said instrument was signed in behalf of said corporation by authority of its of its members, and said Manager acknowledged said instrument to be the free act and deed of said company.

(Seal)

My term expires:



ACKNOWLEDGEMENT

STATE OF ILLINOIS §
 § ss.
 COUNTY OF COOK §

On this ____ day of _____ 2013, before me appeared **Demetrios L. Kozonis**, to me personally known, who, being by me duly sworn, did say that he is the **Manager of Diversey Cicero Developers, LLC**, an Illinois limited liability company, and that said instrument was signed in behalf of said company by authority of its members, and said Manager acknowledged said instrument to be the free act and deed of said company.

(Seal)

My term expires:

 Notary Public

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ACKNOWLEDGEMENT

STATE OF ILLINOIS §
 § ss.
 COUNTY OF COK §

On this ____ day of _____ 2013, before me appeared **Maria Dernis**, to me personally known, who, being by me duly sworn, did say that he is the **Manager of FRESHCO, LLC**, an Illinois limited liability company, and that said instrument was signed in behalf of said corporation by authority of its of its members, and said Manager acknowledged said instrument to be the free act and deed of said company.

(Seal)

 Notary Public

My term expires:

ACKNOWLEDGEMENT

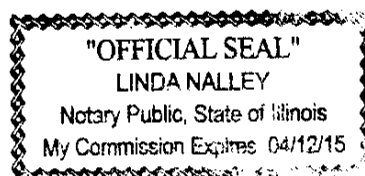
STATE OF ILLINOIS §
 § ss.
 COUNTY OF COOK §

On this 29 day of August 2013, before me appeared **Demetrios L. Kozonis**, to me personally known, who, being by me duly sworn, did say that he is the **Manager of Diversey Cicero Developers, LLC**, an Illinois limited liability company, and that said instrument was signed in behalf of said company by authority of its members, and said Manager acknowledged said instrument to be the free act and deed of said company.

(Seal)

 Notary Public

My term expires:



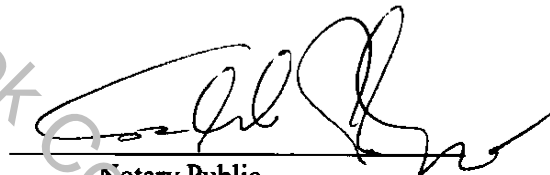
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ACKNOWLEDGEMENT

STATE OF ILLINOIS §
 § ss.
 COUNTY OF COOK §

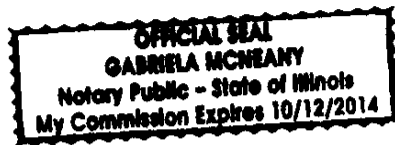
On this 4th day of September 2013, before me appeared Emad Murad, to me personally known, who, being by me duly sworn, did say that he is the SV President of First Bank and Trust Company of Illinois, and that said instrument was signed in behalf of said corporation by authority of its board of directors, and said SV President acknowledged said instrument to be the free act and deed of said corporation.

(Seal)



 Notary Public

My term expires:



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EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 AND 20 IN BLOCK 4 IN FALCONER'S SECOND ADDITION TO CHICAGO, BEING A SUBDIVISION OF THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ALL THAT PART OF THE NORTH-SOUTH 16 FOOT PUBLIC ALLEY LYING WEST OF THE WEST LINE OF LOTS 6 TO 10, BOTH INCLUSIVE; LYING EAST OF THE EAST LINE OF LOT 11; LYING NORTH OF A LINE DRAWN FROM THE SOUTHWEST CORNER OF SAID LOT 10 TO THE SOUTHEAST CORNER OF SAID LOT 11; AND LYING SOUTH OF THE EASTERLY EXTENSION OF THE NORTH LINE OF LOT 11, ALL IN BLOCK 4 IN FALCONER'S SECOND ADDITION TO CHICAGO A SUBDIVISION OF THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PROPERTY ADDRESS: 2820 N. CICERO, CHICAGO, ILLINOIS AND 4810-30 W. DIVERSEY, CHICAGO, ILLINOIS **60641**

PIN NUMBERS: 13-28-231-023-0000; 13-28-231-036-0000; 13-28-231-039-0000; 13-28-231-040-0000; 13-28-231-041-0000