

# UNOFFICIAL COPY



Doc#: 1426034086 Fee: \$50.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 09/17/2014 03:05 PM Pg: 1 of 7

## Subject Property

9 W. Erie  
Chicago, Illinois

PIN Numbers: 17-09-227-007-0000  
17-09-227-008-0000  
17-09-227-017-0000  
17-09-227-018-0000  
17-09-227-019-0000

Prepared By and  
To Be Mailed To:  
Vincent J. Tolve, Esq.  
Lakeside Bank  
55 West Wacker Drive  
Chicago, Illinois 60601  
312-435-1634

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") is made and entered into as of this 21<sup>st</sup> day of August, 2014, by and between TFK 9 WEST ERIE LLC, an Arizona limited liability company ("Tenant"), LAKESIDE BANK ("Lender") and 9 WEST ERIE HOLDINGS, LLC, a Delaware limited liability company ("Landlord").

WHEREAS, Landlord and Tenant executed a Lease dated as of August 14, 2014, (the "Lease") in favor of Tenant, a memorandum of which may be recorded simultaneously herewith, covering a certain Demised Premises therein described located on a parcel of real estate, a legal description of which is attached hereto and incorporated herein by this reference as Exhibit A (said parcel of real estate and the Demised Premises being sometimes collectively referred to herein the "Property"), record title to which is held by Landlord; and

WHEREAS, Landlord has executed a mortgage of the Property dated June 29, 2012 (the "Mortgage"), in favor of Lender, payable upon the terms and conditions described therein and recorded with the Cook County, Illinois, Recorder of Deeds on June 29, 2012, as Document Number 1218110104; and

WHEREAS, it is a condition to said loan that the Mortgage shall unconditionally be and remain at all times, a lien or charge upon the Property, prior and superior to the Lease and to the leasehold created thereby; and

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WHEREAS, the parties hereto desire to assure Tenant's possession and control of the Property under the Lease upon the terms and conditions therein contained;

NOW THEREFORE, for and in consideration of the mutual covenants and premises herein and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged and confessed by the parties hereto, the parties hereto do hereby agree as follows:

## AGREEMENT

- 1) The Lease is and shall be subject and subordinate to the Mortgage, and to all renewals, modifications, consolidations, replacements and extensions thereof, and to all future advances made thereunder.
- 2) Should Lender become the owner of the Property, or should the Property be sold by reason of foreclosure or other proceedings brought to enforce the Mortgage which encumbers the Property or should the Property be transferred by deed in lieu of foreclosure, or should any portion of the Property be sold under a trustee's sale, the Lease shall be recognized and shall continue in full force and effect as a direct lease between the then owner of the Property and Tenant, upon and subject to all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining, including any extensions therein provided and Tenant shall be recognized and shall be permitted to remain in undisturbed possession for the remainder of the term of the Lease, provided Tenant is not in default beyond applicable notice and cure periods. Tenant does hereby agree to attorn to Lender or to any such owner as its landlord in accordance with the foregoing, and Lender hereby agrees that it will accept such attornment.
- 3) Notwithstanding any other provision of this Agreement, Lender shall not be (a) liable for any default of any landlord under the Lease (including Landlord), except that the foregoing shall not limit Lender's obligations under the Lease to correct any conditions requiring Landlord under the Lease to perform maintenance or repairs that exist as of the date Lender takes legal title to the Property; (b) subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord), except (i) defenses arising from actual payment or performance and (ii) those offset rights expressly set forth in the Lease; (c) bound by any rent or additional rent that Tenant may have paid for more than one month in advance to any prior landlord (including Landlord); (d) bound by any amendment or modification of a material term of the Lease hereafter made without Lender's prior written consent (the parties acknowledge that any reduction in the term of the Lease or any reduction of Rent or other amounts due to Landlord under the Lease shall be deemed material), which consent Lender will not unreasonably withhold, condition or delay, and Lender's consent will be deemed given unless Lender makes objection in writing and properly noticed to Tenant within thirty (30) days after Lender's receipt of request for consent; and (e) responsible for the return of any security deposit delivered to Landlord under the Lease and not subsequently received by Lender.

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4) Although the foregoing provisions of this Agreement shall be self-operative, Tenant agrees to execute and deliver to Lender or to any person to whom Tenant herein agrees to attorn, such other reasonable instrument or instruments as Lender or such other person shall from time to time request in order to confirm such provision.

5) If Lender sends written notice to Tenant to direct its Rent payments under the Lease to Lender instead of Landlord, then Tenant agrees to follow the instructions set forth in such written instructions and deliver Rent payments to Lender; however, Landlord and Lender agree that Tenant shall be credited under the Lease for any Rent payment sent to Lender pursuant to such written notice and Landlord hereby releases and discharges Tenant of and from any liability to Landlord resulting from Tenant's payment of such Rent to Lender in accordance with such written notice.

6) Tenant hereby warrants and represents, covenants and agrees to and with Lender: (a) intentionally omitted; (b) to deliver to Lender at the address indicated herein a duplicate of each notice of default delivered to Landlord at the same time as such notice is given to Landlord; (c) that Tenant is now the sole owner of the leasehold estate created by the Lease; (d) not to seek to terminate the Lease by reason of any default of Landlord without prior written notice thereof to Lender and the lapse thereafter of such time as under the Lease was offered to Landlord in which to remedy the default, and the lapse of 30 days after the expiration of such time as Landlord was permitted to cure such default; provided, however, that with respect to any such default of Landlord under the Lease which cannot reasonably be remedied with such time, if Lender commences to cure such default within such time and diligently proceeds with such efforts and pursues the same to completion, Lender shall have such time as is reasonably necessary to complete curing such default; and provided further that this subsection (d) shall not apply to Tenant's express termination rights under Sections II(I), VI(A), XIX, and XXV of the Lease.

7) All notices which may or are required to be sent under this Agreement shall be in writing and shall be sent by first class certified United States mail, postage prepaid, return receipt requested or overnight courier service and sent to the party at the address appearing below or such other address as any party shall hereafter inform the other party by written notice given as set forth above.

Tenant: TFK 9 West Erie LLC  
4455 East Camelback Road, B-100  
Phoenix, Arizona 85018  
Attn: Brian Stoll

Landlord: 9 West Erie Holdings LLC  
c/o Jenel Management Corp.  
275 Madison Avenue, Suite 702  
New York, New York 10016

Lender: Lakeside Bank  
Attn:

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55 West Wacker Drive  
Chicago, Illinois 60601

All notices delivered as set forth above shall be deemed effective either when received or rejected by the recipient.

8) The Mortgage shall not cover or encumber and shall not be construed as subjecting in any manner to the lien thereof any of Tenant's Personal Property (as defined in the Lease) at any time placed or installed in the Demised Premises. In the event the Property or any part thereof shall be taken for public purposes by condemnation or transfer in lieu thereof or the same are damaged or destroyed, the rights of the parties to any condemnation award or insurance proceeds shall be determined and controlled by the applicable provisions of the Lease.

9) This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors in interest, heirs and assigns and any subsequent owner of the Property secured by the Mortgage.

10) Should any action or proceeding be commenced to enforce any of the provisions of this Agreement or in connection with its meaning the prevailing party in such action shall be awarded, in addition to any other relief it may obtain, its reasonable costs and expenses not limited to taxable costs and reasonable attorneys' fees.

11) Tenant shall not be joined as a party/defendant in any court action or proceeding which may be instituted or taken by reason or under any default by Landlord in the performance of the terms, covenants, conditions and agreements set forth in the Mortgage, including, but not limited to, a foreclosure proceeding unless required by applicable state law for Lender to accomplish the foreclosure and then not to interfere with or diminish Tenant's rights under the Lease or disturb Tenant's possession.

12) Tenant and Landlord each hereby certifies to Lender that the Term of the Lease shall commence in accordance with the terms of the Lease and that the Lease is presently in full force and effect and has not been modified or amended.

13) This Agreement may be executed in any numbers of counterparts, all of which taken together shall constitute one and the same instrument.

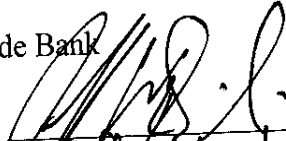
*[signature page follows]*

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

LENDER:


Lakeside Bank

By:   
Name: Jeff Wankel  
Title: Vice President

TENANT:


TFK 9 West Erie LLC,  
an Arizona limited liability company

By: FRC True Balance Management LLC,  
an Arizona limited liability company  
Its: Manager

By:   
Name: Brian Cross  
Title: CEO

LANDLORD:

9 West Erie Holdings LLC,  
a Delaware limited liability company

By:   
Name: David Dushey  
Title: Managing Member

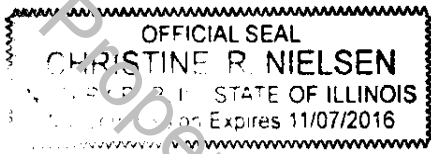
Property of Cook County Clerk's Office

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STATE OF ILLINOIS

COUNTY OF COOK

The foregoing instrument was acknowledged before me on September 12<sup>th</sup>, 2014, by Jeff Wisniewski, the Vice President of Lakeside Bank, an Illinois banking corporation, on behalf of the corporation.



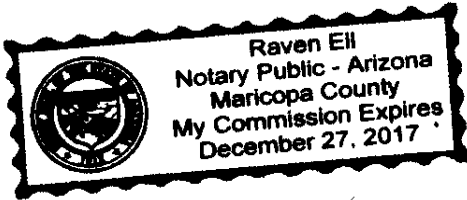
[Signature]  
NOTARY PUBLIC



STATE OF ARIZONA

COUNTY OF MARICOPA

The foregoing instrument was acknowledged before me on August 27, 2014, by Brian Stoll, the CEO of FRC True Balance Management LLC, manager of TFK 9 West Erie LLC, on behalf of the company.



[Signature]  
NOTARY PUBLIC

STATE OF New York

COUNTY OF New York

The foregoing instrument was acknowledged before me on Sept 8<sup>th</sup>, 2014, by DAVID DUSHEY, the Managing Member of 9W Enc. Holding LLC, on behalf of the corporation.

[Signature]  
NOTARY PUBLIC

ANNA PAPAIOANNOU  
Notary Public, State of New York  
No. 01PA6047865  
Qualified in Queens County  
Commission Expires Sept. 11, 2014

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## EXHIBIT A Legal Description

PARCEL 1: A PART OF LOTS 1 AND 2 OF ASSESSORS DIVISION OF LOT 16 IN BLOCK 24 IN WOLCOTT'S ADDITION TO CHICAGO AND THE NORTH 1/2 OF BLOCK 37 IN KINZIE'S ADDITION TO CHICAGO DESCRIBED AS FOLLOWS: COMMENCING AT A POINT ON THE NORTH LINE OF SAID LOT 1, 20 FEET 2 INCHES WEST OF THE NORTH EAST CORNER OF SAID LOT 1; RUNNING THENCE SOUTH ON A LINE PARALLEL WITH THE EAST LINE OF SAID LOTS 1 AND 2, 51 FEET TO THE SOUTH LINE OF SAID LOT 2; THENCE WEST ON THE SOUTH LINE OF SAID LOT 2, 19 FEET AND 4 INCHES; THENCE NORTH ON LINE PARALLEL WITH THE EAST LINE OF SAID LOTS 1 AND 2, 51 FEET TO THE NORTH LINE OF SAID LOT 1; THENCE EAST 19 FEET 4 INCHES TO THE PLACE OF BEGINNING IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2: A TRACT OF LAND DESCRIBED AS FOLLOWS: COMMENCING AT A PONT ON THE NORTH LINE OF LOT 1 OF ASSESSORS DIVISION OF LOT 16 IN BLOCK 24 OF WOLCOTT'S ADDITION TO CHICAGO AND THE NORTH 1/2 OF BLOCK 37 OF KINZIE'S ADDITION TO CHICAGO, 39 FEET 6 INCHES WEST OF THE NORTH EAST CORNER OF SAID LOT 1; THENCE RUNNING SOUTH ON A LINE PARALLEL WITH THE EAST LINE OF SAID LOT 1 AND LOT 2 IN SAID ASSESSOR'S DIVISION, 51 FEET TO THE SOUTH LINE OF THE SAID LOT 2; THENCE WEST ALONG THE SOUTH LINE OF SAID LOT 2, 19 FEET 4 INCHES; THENCE NORTH ON A LINE PARALLEL WITH THE EAST LINE OF SAID LOTS 1 AND 2, 51 FEET TO THE NORTH LINE OF SAID LOT 1; THENCE EAST 19 FEET 4 INCHES TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 3: THE WEST 20.66 FEET OF LOTS 1 AND 2 IN ASSESSOR'S DIVISION OF LOT 16 IN BLOCK 24 IN WOLCOTT'S ADDITION TO CHICAGO WITH THE NORTH 1/2 OF BLOCK 37 IN KINZIE'S ADDITION TO CHICAGO, IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 4: LOT 14 IN BLOCK 24 IN WOLCOTT'S ADDITION TO CHICAGO IN THE EAST 1/2 OF THE NORTH EAST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 5: LOT 15 IN BLOCK 24 IN WOLCOTT'S ADDITION TO CHICAGO IN THE EAST 1/2 OF THE NORTH EAST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as: 9 W. Erie Street, Chicago, IL 60611

PINS: 17-09-227-007-0000 17-09-227-018-0000  
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