

UNOFFICIAL COPY



Doc#: 1600849041 Fee: \$54.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 01/08/2016 11:19 AM Pg: 1 of 9

THIS DOCUMENT WAS PREPARED BY,

Courtney E. Mayster
MUCH SHELIST
191 North Wacker Drive
Suite 1800
Chicago, Illinois 60606.1615

PERMANENT TAX INDEX NUMBER:

17-16-212-007-0000

PROPERTY ADDRESS:

73 West Monroe Street
Chicago, Illinois 60603

Mail To:

FREEDOM TITLE CORPORATION
2260 HICKS ROAD SUITE 415
ROLLING MEADOWS IL 60008

67159114 4/4

This space reserved for Recorder's use only.

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** dated as of December 9, 2015 (this "**Agreement**"), is executed by and among 73 W. MONROE LLC, an Illinois limited liability company (the "**Landlord**"), PRET 73 WEST MONROE, INC., an Illinois corporation (the "**Tenant**"), and BRIDGEVIEW BANK GROUP, an Illinois banking corporation (together with its successors and assigns (the "**Lender**").

RECITALS:

A. The Lender is the mortgagee under that certain Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing dated as of and to be recorded concurrently herewith (the "**Mortgage**"), which Mortgage encumbers the Real Estate (as hereinafter defined) and secures a principal indebtedness in the amount of **SEVEN MILLION TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS** (\$7,250,000.00).

B. The Tenant has entered into that certain lease agreement dated February 18, 2011 with the Landlord (or the Landlord's predecessor-in-interest) (the "**Lease Agreement**"), the Lease Agreement, together with all amendments and modifications thereof, being collectively referred to herein as the "**Lease**"), pursuant to which the Tenant has leased certain premises (the "**Leased Premises**") consisting of the first floor retail space in the building commonly known as

UNOFFICIAL COPY

73 West Monroe Street, Chicago, Illinois 60603 ("Building") on the parcel of land (the "Land"; the Land and Building being collectively referred to herein as the "Real Estate") legally described on Exhibit "A" attached hereto and made a part hereof.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

AGREEMENTS:

1. The Tenant represents and warrants to the Lender that the Lease constitutes the entire agreement between the Tenant and the Landlord with respect to the Leased Premises and there are no other agreements, written or verbal, governing the tenancy of the Tenant with respect to the Leased Premises.
2. The Tenant has executed and delivered to the Lender that certain Tenant Estoppel Certificate dated on or about the date hereof (the "Estoppel Certificate"). The provisions of the Estoppel Certificate are hereby incorporated into this Agreement as if fully set forth in this Agreement in their entirety, and the Tenant acknowledges that the Lender will be relying on the statements made in the Estoppel Certificate in determining whether to disburse the proceeds of the loan secured by the Mortgage and whether to enter into this Agreement.
3. The Tenant covenants with the Lender that the Lease shall be subject and subordinate to the lien and all other provisions of the Mortgage and to all modifications and extensions thereof, to the full extent of all principal, interest and all other amounts now or hereafter secured thereby and with the same force and effect as if the Mortgage had been executed and delivered prior to the execution and delivery of the Lease. Without limiting the generality of the foregoing subordination provision, the Tenant hereby agrees that any of its right, title and interest in and to insurance proceeds and condemnation awards (or other similar awards arising from eminent domain proceedings) with respect to damage to or the condemnation (or similar taking) of any of the Real Estate, shall be subject and subordinate to the Lender's right, title and interest in and to such proceeds and awards. Nothing herein shall relieve the Landlord of its obligations to restore the Leased Premises and the Building nor alter Tenant's right to an abatement of rent in the event of fire or other casualty.
4. The Tenant acknowledges that the Landlord has collaterally assigned to the Lender any and all leases affecting the Real Estate, including the Lease, and the rents and other amounts, including, without limitation, lease termination fees, if any, due and payable under such leases. In connection therewith, the Tenant agrees that, upon receipt of a notice of a default by the Landlord under such assignment and a demand by the Lender for direct payment to the Lender of the rents due under the Lease, the Tenant will honor such demand and make all subsequent rent payments directly to the Lender. The Tenant further agrees that any Lease termination fees payable under the Lease shall be paid jointly to the Landlord and the Lender. Landlord agrees that Tenant may honor such request without inquiry and any such payment shall be credited to Tenant's obligations under the Lease.

UNOFFICIAL COPY

5. The Lender agrees that so long as the Tenant is not in default under the Lease beyond any applicable notice, grace or cure period:

(a) The Tenant shall not be named or joined as a party in any suit, action or proceeding for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage (unless the Tenant is a necessary party under applicable law); and

(b) The possession by the Tenant of the Leased Premises and the Tenant's rights thereto shall not be disturbed, affected or impaired by, nor will the Lease or the term thereof be terminated or otherwise materially adversely affected by (i) any suit, action or proceeding for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage, or by any judicial sale or execution or other sale of the Leased Premises, or any deed given in lieu of foreclosure irrespective of whether Tenant is named or joined in any such suit, action or proceeding, or (ii) any default under the Mortgage.

6. Prior to pursuing any remedy available to the Tenant under the Lease, at law or in equity as a result of any failure of the Landlord to perform or observe any covenant, condition, provision or obligation to be performed or observed by the Landlord under the Lease (any such failure being hereinafter referred to as a "Landlord's Default"), the Tenant shall: (a) provide the Lender with a notice of the Landlord's Default, specifying the nature thereof, the section of the Lease under which such Landlord's Default arose, and the remedy which the Tenant will elect under the terms of the Lease or otherwise, and (b) allow the Lender not less than thirty (30) days following receipt of notice of the Landlord's Default to cure the same; provided, however, that, if such Landlord's Default is not readily curable within such thirty (30) day period, the Tenant shall give the Lender such additional time as the Lender may reasonably need to obtain possession and control of the Real Estate and to cure such Landlord's Default so long as the Lender is diligently pursuing a cure. The Tenant shall not pursue any remedy available to it as a result of any Landlord's Default unless the Lender fails to cure same within the time period specified above. For purposes of this Section 6, a Landlord's Default shall not be deemed to have occurred until all grace and/or cure periods applicable thereto under the Lease have lapsed without the Landlord having effectuated a cure thereof.

7. If the Lender or any future holder of the Mortgage shall become the owner of the Real Estate by reason of foreclosure of the Mortgage or otherwise, or if the Real Estate shall be sold as a result of any action or proceeding to foreclose the Mortgage or transfer of ownership by deed given in lieu of foreclosure, the Lease shall continue in full force and effect, without necessity for executing any new lease, as a direct lease between the Tenant and the new owner of the Real Estate as "landlord" upon all the same terms, covenants and provisions contained in the Lease (subject to the exclusions set forth in subsection (b) below), and in such event:

(a) The Tenant shall be bound to such new owner under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the extension periods, if the Tenant elects or has elected to exercise its options to extend the term), and the Tenant hereby agrees to attorn to such new owner and to recognize such new owner as "landlord" under the Lease without any additional documentation to effect such attornment (provided, however, if applicable law shall require additional documentation at the time the

UNOFFICIAL COPY

Lender exercises its remedies then the Tenant shall execute such additional documents evidencing such attornment as may be required by applicable law);

(b) Such new owner shall be bound to the Tenant under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the extension periods, if the Tenant elects or has elected to exercise its options to extend the term); provided, however, that such new owner shall not be:

(i) liable for any act or omission of any prior landlord (including the Landlord) other than those of a continuing nature;

(ii) subject to any offsets or defenses which the Tenant has against any prior landlord (including the Landlord) unless the Tenant shall have provided the Lender with (A) notice of the Landlord's Default that gave rise to such offset or defense, and (B) the opportunity to cure the same, all in accordance with the terms of **Section 6** above;

(iii) bound by any base rent, percentage rent, additional rent or any other amounts payable under the Lease which the Tenant might have paid more than one (1) month in advance of when due to any prior landlord (including the Landlord);

(iv) liable to refund or otherwise account to the Tenant for any security or other deposits not actually paid over to such new owner by the Landlord;

(v) bound by any amendment or modification of the Lease made without the Lender's consent;

(vi) bound by, or liable for any breach of, any representation or warranty or indemnity agreement contained in the Lease or otherwise made by any prior landlord (including the Landlord); or

(vii) personally liable or obligated to perform any such term, covenant or provision, such new owner's liability being limited in all cases to its interest in the Real Estate.

8. Any notices, communications and waivers under this Agreement shall be in writing and shall be (a) delivered in person, (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (c) by overnight express carrier, addressed in each case as follows:

To the Lender:

BRIDGEVIEW BANK GROUP
4753 North Broadway Street
Chicago, Illinois 60640
Attention: Andrew Rosa, Vice President,
Commercial Lending

UNOFFICIAL COPY

With a copy to: MUCH *SHELIST*, P.C.
 191 North Wacker Drive, Suite 1800
 Chicago, Illinois 60606.1615
 Attention: Courtney Mayster

To the Landlord: 73 W. MONROE LLC
 73 W. Monroe, Suite 507
 Chicago, IL 60603
 Attention: William Bennett

With copy to: LYON & CARON LLP
 790 Estate Drive, Suite 180
 Deerfield, Illinois 60015
 Attention: Michael Caron

To the Tenant: PRET 73 WEST MONROE, INC.
 853 Broadway
 New York, New York 10003
 Attention: Real Estate Manager

With copy to: DAVIS & GILBERT LLP
 1740 Broadway
 New York, New York 10019
 Attention: Curt Myers, Esq

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this section shall be deemed received when actually delivered or when delivery is refused by the addressee, as the case may be.

9. The Tenant acknowledges and agrees that the Lender will be relying on the representations, warranties, covenants and agreements of the Tenant.

10. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors and assigns and any nominees of the Lender, all of whom are entitled to rely upon the provisions hereof. This Agreement shall be governed by the laws of the State of Illinois.

11. This Agreement may be executed in multiple counterparts and all of such counterparts together shall constitute one and the same Agreement.

[Remainder of Page Intentionally Left Blank—Signature Page Follows]

UNOFFICIAL COPY

[Signatures Continued from Preceding Page]

LENDER:

BRIDGEVIEW BANK GROUP

By: *Andrew J. Rosa*
 Name: *Andrew J. Rosa*
 Its: *Vice President*

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, **DOES HEREBY CERTIFY** that *Andrew T. Rosa*, the *Vice President* of **BRIDGEVIEW BANK GROUP**, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such _____, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this *29th* day of *December*, 2015.



Magdiel Rivera
 Notary Public

My Commission Expires: *06/30/2018*

UNOFFICIAL COPY

EXHIBIT "A"

LEGAL DESCRIPTION OF REAL ESTATE

THE WEST ½ OF LOT 2 IN BLOCK 120 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ALSO KNOWN AS LOT 6 IN COUNTY CLERK'S DIVISION OF BLOCK 120 AFORESAID, IN COOK COUNTY, ILLINOIS.

PROPERTY ADDRESS OF REAL ESTATE:

73 West Monroe Street
Chicago, Illinois 60603

PERMANENT TAX INDEX NUMBER:

17-16-212-007-0000