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Doc#: 1720212038 Fee: \$68.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 07/21/2017 11:43 AM Pg: 1 of 11

**THIS DOCUMENT WAS PREPARED BY,
AND AFTER RECORDING, RETURN TO:**

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

PERMANENT TAX INDEX NUMBERS:

17-09-227-008-0000

17-09-227-017-0000

17-09-227-018-0000

17-09-227-019-0000

17-09-227-007-0000

PROPERTY ADDRESS:

9 West Erie Street
Chicago, Illinois 60654

This space for Recorder's use only.

ASSIGNMENT OF RENTS AND LEASES

This **ASSIGNMENT OF RENTS AND LEASES** (this "*Assignment*") is dated as of July 20, 2017, and is executed by **9 W ERIE HOLDINGS, LLC**, a Delaware limited liability company, whose address is 275 Madison Avenue, Suite 1100, New York, New York 10016 (the "*Assignor*"), to and for the benefit of **WINTRUST BANK**, an Illinois state chartered bank (together with its successors and assigns, the "*Lender*"), whose address is 100 West North Avenue, Chicago, Illinois 60610.

RECITALS:

A. The Lender has agreed to loan to the Assignor the maximum principal amount of **NINE MILLION AND 00/100 DOLLARS (\$9,000,000.00)** (the "*Loan*"), as evidenced by that certain Promissory Note dated even date herewith (as the same may be amended, modified, replaced or restated from time to time, the "*Note*"), executed by the Assignor and made payable to the order of the Lender.

B. A condition precedent to the Lender's making of the Loan to the Assignor is the execution and delivery by the Assignor of this Assignment.

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NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto mutually agree as follows:

AGREEMENTS:

1. **DEFINITIONS.** Any capitalized word or phrase not otherwise defined in this Assignment has the meaning ascribed thereto in that certain Mortgage, Security Agreement, Assignment of Rents and Leases, and Fixture Filing dated as of even date herewith, executed by the Assignor to and for the benefit of the Lender (as amended, modified, or replaced from time to time, the "*Mortgage*").

2. **GRANT OF SECURITY INTEREST.** The Assignor hereby grants, transfers, sets over, and assigns to the Lender, all of the right, title, and interest of the Assignor in and to (i) all of the rents, revenues, issues, profits, proceeds, receipts, income, accounts, and other receivables arising out of or from the land legally described in *Exhibit "A"* attached hereto and made a part hereof and all buildings and other improvements located thereon (said land and improvements being hereinafter referred to collectively as the "*Premises*"), including, without limitation, lease termination fees, purchase option fees, and other fees and expenses payable under any lease; (ii) all leases and subleases (each, a "*Lease*", and collectively, the "*Leases*"), now or hereafter existing, of all or any part of the Premises together with all guaranties of any of such Leases and all security deposits delivered by tenants thereunder, whether in cash or letter of credit; (iii) all rights and claims for damage against tenants arising out of defaults under the Leases, including rights to termination fees and compensation with respect to rejected Leases pursuant to Section 365(a) of the Federal Bankruptcy Code or any replacement Section thereof; and (iv) all tenant improvements and fixtures located on the Premises. This Assignment is an absolute transfer and assignment of the foregoing interests to the Lender given to secure:

(a) the payment by the Assignor when due of (i) the indebtedness evidenced by the Note and any and all renewals, extensions, replacements, amendments, modifications, and refinancings thereof; (ii) any and all other indebtedness and obligations that may be due and owing to the Lender by the Assignor under or with respect to the Loan Documents (as defined in the Note); and (iii) all reasonable costs and expenses paid or incurred by the Lender in enforcing its rights hereunder, including without limitation, court costs and reasonable attorneys' fees; and

(b) the observance and performance by the Assignor of the covenants, conditions, agreements, representations, warranties, and other liabilities and obligations of the Assignor or any other obligor to or benefiting the Lender which are evidenced or secured by or otherwise provided in the Note, this Assignment, or any of the other Loan Documents, together with all amendments and modifications thereof.

3. **REPRESENTATIONS AND WARRANTIES OF THE ASSIGNOR.** The Assignor represents and warrants to the Lender that:

(a) this Assignment, as executed by the Assignor, constitutes the legal and binding obligation of the Assignor enforceable in accordance with its terms and provisions;

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- (b) the Assignor is the lessor under all Leases;
- (c) there is no other existing assignment of the Assignor's entire interest or any part of the Assignor's interest in or to any of the Leases, or any of the rents, issues, income, or profits assigned hereunder, nor has the Assignor entered into any agreement to subordinate any of the Leases or the Assignor's right to receive any of the rents, issues, income, or profits assigned hereunder;
- (d) the Assignor has not executed any instrument or performed any act which may prevent the Lender from operating under any of the terms and provisions hereof or which would limit the Lender in such operation; and
- (e) there are no defaults by the landlord and, to the Assignor's knowledge, there are no material defaults by tenants under any Leases.

4. **COVENANTS OF THE ASSIGNOR.** The Assignor covenants and agrees that so long as this Assignment is in effect:

- (a) the Assignor will not lease any portion of the Premises unless the Assignor obtains the Lender's prior written consent to all aspects of such lease;
- (b) the Assignor must observe and perform all of the covenants, terms, conditions, and agreements contained in the Leases to be observed or performed by the lessor thereunder, and the Assignor must not do or suffer to be done anything to impair the security thereof. The Assignor must not (i) release the liability of any tenant under any Lease except as specifically provided therein, (ii) consent to any tenant's withholding of rent (except as may be permitted by applicable laws) or making monetary advances and off-setting the same against future rentals, (iii) consent to any tenant's claim of a total or partial eviction, (iv) consent to a tenant termination or cancellation of any Lease, except as specifically provided therein, or (v) enter into any oral leases with respect to all or any portion of the Premises;
- (c) without the prior written consent of the Lender, the Assignor must not collect any of the rents, issues, income, or profits assigned hereunder more than thirty (30) days in advance of the time when the same becomes due, except for security or similar deposits;
- (d) the Assignor must not make any other assignment of its entire or any part of its interest in or to any or all Leases, or any or all rents, issues, income, or profits assigned hereunder, except as specifically permitted by the Loan Documents;
- (e) the Assignor must not modify the terms and provisions of any Lease and must not give any consent (including, but not limited to, any consent to any assignment of, or subletting under, any Lease, except as expressly permitted thereby) or approval, required or permitted by such terms and provisions or cancel or terminate any Lease, without the Lender's prior written consent, unless a tenant has the unilateral right under its Lease to do any of the foregoing; provided, however, that the Assignor may cancel or terminate any Lease as a result of a material default by the tenant thereunder and failure of such tenant to cure the default within the applicable time periods set forth in the Lease;

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(f) without the prior written consent of the Lender, the Assignor must not accept a surrender of any Lease or convey or transfer, or suffer or permit a conveyance or transfer, of the premises demised under any Lease or of any interest in any Lease so as to effect, directly or indirectly, proximately or remotely, a merger of the estates and rights of, or a termination or diminution of the obligations of, any tenant thereunder; any termination fees payable under a Lease for the early termination or surrender thereof must be paid jointly to the Assignor and the Lender;

(g) the Assignor must not alter, modify, or change the terms of any guaranty of any Lease, or cancel or terminate any such guaranty, except as may be expressly provided in any guaranty, or do or permit to be done anything which would terminate any such guaranty as a matter of law;

(h) the Assignor must not waive or excuse the obligation to pay rent under any Lease;

(i) the Assignor must, at its sole cost and expense, appear in and defend any and all actions and proceedings arising under, relating to, or in any manner connected with any Lease or the obligations, duties, or liabilities of the lessor or any tenant or guarantor thereunder, and must pay all reasonable costs and expenses of the Lender, including court costs and reasonable attorneys' fees, in any such action or proceeding in which the Lender may appear;

(j) the Assignor must give prompt notice to the Lender of any notice of any default by the lessor under any Lease received from any tenant or guarantor thereunder;

(k) the Assignor must enforce the observance and performance of each covenant, term, condition, and agreement contained in each Lease to be observed and performed by the tenants and guarantors thereunder and must immediately notify the Lender of any material breach by the tenant or guarantor under any such Lease;

(l) the Assignor must not permit any of the Leases to become subordinate to any lien or liens other than liens securing the indebtedness secured hereby or liens for general real estate taxes not delinquent;

(m) the Assignor must not execute hereafter any Lease unless there is included therein a provision providing that the tenant thereunder acknowledges that such Lease has been assigned pursuant to this Assignment and agrees not to look to the Lender as mortgagee, mortgagee in possession or successor in title to the Premises for accountability for any security deposit required by lessor under such Lease unless such sums have actually been received in cash by the Lender as security for tenant's performance under such Lease; and

(n) if any tenant under any Lease is or becomes the subject of any proceeding under the Federal Bankruptcy Code, as amended from time to time, or any other federal, state, or local statute which provides for the possible termination or rejection of the Leases assigned hereby, the Assignor covenants and agrees that if any such Lease is so terminated or rejected, no settlement for damages will be made without the prior written consent of the Lender, and any

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check in payment of damages for termination or rejection of any such Lease will be made payable both to the Assignor and the Lender. The Assignor hereby assigns any such payment to the Lender and further covenants and agrees that upon the request of the Lender, it will duly endorse to the order of the Lender any such check, the proceeds of which will be applied in accordance with the provisions of *Section 8* below.

5. **RIGHTS PRIOR TO DEFAULT.** Unless or until an Event of Default (as defined in *Section 6*) has occurred and is continuing, the Assignor shall have the right to collect, at the time (but in no event more than thirty days in advance) provided for the payment thereof, all rents, issues, income, and profits assigned hereunder, and to retain, use, and enjoy the same. Upon the occurrence of an Event of Default and during the continuation thereof, the Assignor's right to collect such rents, issues, income, and profits shall immediately terminate without further notice thereof to the Assignor and the Lender shall have the right to notify the tenants under the Leases of the existence of this Assignment.

6. **EVENTS OF DEFAULT.** An "Event of Default" shall occur under this Assignment upon the occurrence of (a) a breach by the Assignor of any of the covenants, agreements, representations, warranties, or other provisions hereof which is not cured or waived within the applicable grace or cure period, if any, set forth in the Mortgage or any of the Loan Documents, or (b) any other Event of Default described in the Note, the Mortgage, or any of the other Loan Documents.

7. **RIGHTS AND REMEDIES UPON DEFAULT.** At any time upon or following the occurrence and continuance of any Event of Default, the Lender, at its sole and reasonable option and at all times subject to the terms of the Loan Documents, may exercise any one or more of the following rights and remedies without any obligation to do so, without in any way waiving such Event of Default, without further notice or demand on the Assignor, without regard to the adequacy of the security for the obligations secured hereby, without releasing the Assignor or any guarantor of the Note from any obligation, and with or without bringing any action or proceeding to foreclose the Mortgage or any other lien or security interest granted by the Loan Documents:

(a) declare the unpaid balance of the principal sum of the Note, together with all accrued and unpaid interest thereon, immediately due and payable;

(b) enter upon and take possession of the Premises, either in person or by agent or by a receiver appointed by a court, and have, hold, manage, lease, and operate the same on such terms and for such period of time as the Lender may deem reasonably necessary or proper, with full power to make from time to time all alterations, renovations, repairs, or replacements thereto or thereof as may seem proper to the Lender, to make, enforce, modify, and accept the surrender of Leases, to obtain and evict tenants, to fix or modify rents, and to do any other act which the Lender deems reasonably necessary or proper;

(c) either with or without taking possession of the Premises, demand, sue for, settle, compromise, collect, and give acquittances for all rents, issues, income, and profits of and from the Premises and pursue all remedies for enforcement of the Leases and all the lessor's rights therein and thereunder. This Assignment constitutes an authorization and direction to the

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tenants under the Leases to pay all rents and other amounts payable under the Leases to the Lender, without proof of default hereunder, upon receipt from the Lender of written notice to thereafter pay all such rents and other amounts to the Lender and to comply with any notice or demand by the Lender for observance or performance of any of the covenants, terms, conditions, and agreements contained in the Leases to be observed or performed by the tenants thereunder, and the Assignor must facilitate in all reasonable ways the Lender's collection of such rents, issues, income, and profits, and upon request will execute written notices to the tenants under the Leases to thereafter pay all such rents and other amounts to the Lender; and

(d) make any payment or do any act required herein of the Assignor in such manner and to such extent as the Lender may deem reasonably necessary, and any amount so paid by the Lender will become immediately due and payable by the Assignor with interest thereon until paid at the Default Rate and will be secured by this Assignment.

8. **APPLICATION OF PROCEEDS.** All sums collected and received by the Lender out of the rents, issues, income, and profits of the Premises following the occurrence of any one or more Events of Default will be applied in accordance with the Illinois Mortgage Foreclosure Law (Chapter 735, Sections 5/15-1101 et seq., Illinois Compiled Statutes) and, unless otherwise specified in such act, in such order as the Lender elects in its sole and reasonable discretion.

9. **LIMITATION OF THE LENDER'S LIABILITY.** The Lender will not be liable for any loss sustained by the Assignor resulting from the Lender's failure to let the Premises or from any other act or omission of the Lender in managing, operating, or maintaining the Premises following the occurrence of an Event of Default. The Lender will not be obligated to observe, perform, or discharge, nor does the Lender hereby undertake to observe, perform, or discharge any covenant, term, condition, or agreement contained in any Lease to be observed or performed by the lessor thereunder, or any obligation, duty, or liability of the Assignor under or by reason of this Assignment. The Assignor must and does hereby agree to indemnify, defend (using counsel reasonably satisfactory to the Lender), and hold the Lender harmless from and against any and all liability, loss or damage which the Lender may incur under any Lease or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against the Lender by reason of any alleged obligation or undertaking on its part to observe or perform any of the covenants, terms, conditions, and agreements contained in any Lease; provided, however, in no event will the Assignor be liable for any liability, loss, or damage which the Lender incurs as a result of the Lender's negligence or willful misconduct. Should the Lender incur any such liability, loss, or damage under any Lease or under or by reason of this Assignment, or in the defense of any such claim or demand, the amount thereof, including reasonable costs, expenses, and reasonable attorneys' fees, will become immediately due and payable by the Assignor with interest thereon at the Default Rate and will be secured by this Assignment. This Assignment will not operate to place responsibility upon the Lender for the care, control, management, or repair of the Premises or for the carrying out of any of the covenants, terms, conditions, and agreements contained in any Lease, nor will it operate to make the Lender responsible or liable for any waste committed upon the Premises by any tenant, occupant, or other party, or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair, or control of the Premises resulting in loss or injury or death to any tenant, occupant, licensee, employee, or stranger. Nothing set forth herein

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or in the Mortgage, and no exercise by the Lender of any of the rights set forth herein or in the Mortgage will constitute or be construed as constituting the Lender a "mortgagee in possession" of the Premises, in the absence of the taking of actual possession of the Premises by the Lender pursuant to the provisions hereof or of the Mortgage.

10. **NO WAIVER.** Nothing contained in this Assignment and no act done or omitted to be done by the Lender pursuant to the rights and powers granted to it hereunder will be deemed to be a waiver by the Lender of its rights and remedies under any of the Loan Documents. This Assignment is made and accepted without prejudice to any of the rights and remedies of the Lender under the terms and provisions of such instruments, and the Lender may exercise any of its rights and remedies under the terms and provisions of such instruments either prior to, simultaneously with, or subsequent to any action taken by it hereunder. The Lender may take or release any other security for the performance of the obligations secured hereby, may release any party primarily or secondarily liable therefor, and may apply any other security held by it for the satisfaction of the obligations secured hereby without prejudice to any of its rights and powers hereunder.

11. **FURTHER ASSURANCES.** The Assignor must execute or cause to be executed such additional instruments (including, but not limited to, general or specific assignments of such Leases as the Lender may designate) and must do or cause to be done such further acts, as the Lender may request, in order to permit the Lender to perfect, protect, preserve, and maintain the assignment made to the Lender by this Assignment.

12. **SECURITY DEPOSITS.** The Assignor acknowledges that the Lender has not received for its own account any security deposited by any tenant pursuant to the terms of the Leases and that the Lender assumes no responsibility or liability for any security so deposited.

13. **SEVERABILITY.** If any provision of this Assignment is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, the Lender and the Assignor will negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Assignment and the validity and enforceability of the remaining provisions, or portions or applications thereof, will not be affected thereby and will remain in full force and effect.

14. **SUCCESSORS AND ASSIGNS.** This Assignment is binding upon the Assignor and its legal representatives, successors, and assigns, and the rights, powers, and remedies of the Lender under this Assignment will inure to the benefit of the Lender and its successors and assigns.

15. **WRITTEN MODIFICATIONS.** This Assignment will not be amended, modified, or supplemented without the written agreement of the Assignor and the Lender at the time of such amendment, modification, or supplement.

16. **DURATION.** This Assignment will become null and void at such time as the Assignor has paid the principal sum of the Note, together with all interest thereon, and has fully

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paid and performed all of the other obligations secured hereby and by the other Loan Documents, and by its acceptance thereof, the Lender agrees, at such time, to execute and deliver to the Assignor an instrument in recordable form, wherein the Lender acknowledges the termination of its rights hereunder or assigns such rights, without recourse, to the Assignor's designee.

17. **GOVERNING LAW.** This Assignment is governed by and must be construed in accordance with the laws of the State of Illinois.

18. **NOTICES.** All notices, demands, requests, and other correspondence which are required or permitted to be given hereunder will be deemed sufficiently given when delivered or mailed in the manner and to the addresses of the Assignor and the Lender, as the case may be, as specified in the Mortgage.

19. **WAIVER OF TRIAL BY JURY.** THE ASSIGNOR AND THE LENDER (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL, EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (A) UNDER THIS ASSIGNMENT OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT, OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS ASSIGNMENT OR (B) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS ASSIGNMENT, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. THE ASSIGNOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST THE LENDER OR ANY OTHER PERSON INDEMNIFIED UNDER THIS ASSIGNMENT ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES.

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

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IN WITNESS WHEREOF, the Assignor has executed and delivered this Assignment of Rents and Leases of the day and year first above written.

ASSIGNOR:

9 W ERIE HOLDINGS, LLC,
a Delaware limited liability company

By: 

Name: David Dushey

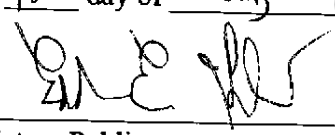
Title: Manager

Property of Cook County Clerk's Office

STATE OF <u>New York</u>)
) SS.
COUNTY OF <u>New York</u>)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that **DAVID DUSHEY**, personally known to me as manager of **9 W ERIE HOLDINGS, LLC**, a Delaware limited liability company and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as such manager of said limited liability company, as his own and free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 18th day of July, 2017.

[SEAL] EDWARD E. KLEIN
NOTARY PUBLIC-STATE OF NEW YORK
No. 02KL4971210 
Notary Public

Qualified in New York County
My Commission Expires August 27, 2018

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EXHIBIT "A"

LEGAL DESCRIPTION OF PREMISES

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 point 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.

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PROPERTY ADDRESS OF REAL ESTATE:

9 WEST ERIE STREET
CHICAGO, ILLINOIS 60654

PERMANENT TAX INDEX NUMBERS:

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