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Doc# 2327233009 Fee \$73.00

RHSP FEE:\$18.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 09/29/2023 10:51 AM PG: 1 OF 1

**THIS INSTRUMENT
PREPARED BY
AND WHEN RECORDED,
RETURN
TO:**

Kevin A. Sullivan, Esq.
Winstead PC
500 Winstead Building
2728 N. Harwood Street
Dallas, Texas 75201

RECORDED WITH THE
COOK COUNTY, ILLINOIS
RECORDER OF DEEDS

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") executed on the date(s) indicated on each acknowledgment, but effective as of September 22, 2023, among BANK CZK ("Lender"), HARRISON STREET REAL ESTATE CAPITAL, LLC, a Delaware limited liability company ("Tenant"), and 919 W FULTON OFFICE OWNER LLC, a Delaware limited liability company ("Landlord").

STATEMENT OF BACKGROUND

Landlord and Tenant (or the predecessor in interest to either) entered into that certain Office Lease Agreement, dated January 31, 2023, as amended by that certain First Amendment to Office Lease Agreement, dated June 30, 2023, and as further amended by that certain Reinstatement of and Second Amendment to Office Lease Agreement, dated as of September 22, 2023 (collectively, and as the same may be amended, supplemented or otherwise modified from time to time, the "Lease"), relating to the premises described therein (the "Premises") and being part of the Property (as defined below). Lender has made or has committed to make a loan (the "Loan") to Landlord (or Landlord's successor in interest) secured by a deed of trust, mortgage or security deed (the "Mortgage") and an assignment of leases and rents (the "Assignment of Leases") from Landlord to Lender covering certain property described in Exhibit A attached hereto and by this reference made a part hereof (the "Property"), and including the Premises. Tenant has agreed that the Lease shall be subordinate to the Mortgage, provided that, subject to the terms of this Agreement, Tenant is assured of continued occupancy of the Premises under the terms of the Lease.

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STATEMENT OF AGREEMENT

For and in consideration of the mutual covenants herein contained, the sum of Ten Dollars (\$10.00) and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, and notwithstanding anything in the Lease to the contrary, it is hereby agreed as follows:

1. Lease Subordinate to Mortgage. Lender, Tenant and Landlord do hereby covenant and agree that, subject to the terms of this Agreement, the Lease with all rights, liens and charges created thereby, and all of Tenant's right, title and interest in and to the Premises and any lease hereafter executed by Tenant covering any part of the Property, is and shall continue to be subordinate in all respects to (i) all liens and security interests of the Mortgage, and to any renewals, modifications, consolidations, replacements and extensions thereof and to all advances made thereunder, and to (ii) all right, title and interest of Lender in the Property created by the Mortgage or any other security instrument held by Lender in the same manner and to the same extent as if the Lease had been executed subsequent to the execution, delivery and recordation of such Mortgage. Landlord and Tenant hereby expressly subordinate to the lien of the Mortgage any and all options to purchase the Property contained in the Lease or in any modification or amendment to the Lease, and further acknowledge that any such option or right of first refusal pursuant to the Lease to acquire all or any portion of the Property shall not be applicable to or effective after Lender's acquisition of the Property by foreclosure or otherwise.

2. Non-Disturbance; Lender's Liability Limited. Lender does hereby covenant and agree with Tenant that, in the event Lender (or its designee) acquires title to the Premises by foreclosure, conveyance in lieu of foreclosure or otherwise, so long as Tenant is not in default under the Lease beyond any applicable notice and cure periods, (a) the Lease shall continue in full force and effect as a direct Lease between Lender (or its designee) and Tenant, upon and subject to all of the terms, covenants and conditions of the Lease (including, for the avoidance of doubt, the responsibility of Lender as "landlord" under the Lease for any repair and maintenance obligations), for the balance of the term of the Lease (including any extensions thereof), and Lender will not disturb the access to, possession of, or use of Premises by Tenant, and (b) the Premises shall be subject to the Lease and Lender shall recognize Tenant as the tenant of the Premises for the remainder of the term of the Lease (including any extensions thereof) in accordance with the provisions thereof; provided, however, that Lender (or its designee) shall not be (i) subject to any claims, offsets or defenses which Tenant might have against any prior landlord (including Landlord), provided the foregoing shall not limit any abatement rights, offset rights or rent credits expressly provided for in the Lease; (ii) liable for any act or omission of any prior landlord (including Landlord), but shall be responsible for any such act or omission, and the cure thereof, if same is a default under the Lease which is continuing after Lender (or its designee) acquires title to the Premises and Lender had notice thereof and an opportunity to cure such default in accordance with Section 5 hereof; (iii) bound by any rent or additional rent which Tenant might have paid for more than the current month (it being recognized that Additional Rent (as such term is defined in the Lease) may include monthly estimated payments of taxes and annual operating expenses that are pro-rated) and shall not be considered "paid for more than the current month" for purposes of this clause (iii) or any security deposit or other prepaid charge paid to any prior landlord (including Landlord), except to the extent such sums are actually received by Lender (or its designee); or (iv) bound by any amendment or modification of the Lease made subsequent to

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the date of this Agreement without its written consent, except for any amendment or modification, which, pursuant to the express terms of the Lease, does not require the consent of Landlord or which memorializes the exercise of rights expressly granted to Tenant in the Lease (in which events Lender's consent shall not be required). Nothing contained herein shall prevent Lender from naming Tenant in any foreclosure or other action or proceeding initiated by Lender pursuant to the Mortgage to the extent necessary under applicable law in order for Lender to avail itself of and complete the foreclosure or other remedy; provided, however, so long as Tenant is not in default in the payment of rent or in the performance of any of the terms, covenants or conditions of the Lease beyond any applicable notice and cure periods, (i) no judgment terminating or foreclosing the Lease will be sought in such foreclosure or other action or proceeding, and (ii) subject to the terms and provisions of this Agreement, such foreclosure or other action or proceeding shall not otherwise adversely affect Tenant's rights under the Lease or this Agreement.

3. Tenant to Attorn to Lender. Tenant does hereby covenant and agree with Lender that, in the event Lender (or its designee) acquires title to the Premises by foreclosure, conveyance in lieu of foreclosure or otherwise, then Tenant shall attorn to and recognize Lender (or its designee) as the landlord under the Lease for the remainder of the term thereof (including any extensions thereof), and Tenant shall perform and observe its obligations thereunder, subject only to the terms and conditions of the Lease. Tenant further covenants and agrees to execute and deliver upon request of Lender a commercially reasonable form of agreement of attornment to Lender and any subsequent titleholder of the Premises.

4. Assignment of Leases; Rent Payable to Lender upon Landlord Default. Tenant acknowledges that Landlord will execute and deliver to Lender the Assignment of Leases as security for the Loan, and Tenant hereby expressly consents to such assignment. Tenant has been advised that the Assignment of Leases gives Lender the right to collect rent and other sums payable under the Lease directly from Tenant upon the occurrence of a default thereunder, and Tenant agrees that upon the receipt from Lender of fifteen (15) business days' prior written notice of any such default, Tenant will thereafter pay all rent and other sums payable under the Lease directly to Lender (or as Lender shall direct) as they become due and payable. Notwithstanding anything to the contrary contained in the Mortgage, the Assignment of Leases, or the Lease, Landlord irrevocably authorizes and directs Tenant to immediately and continuously make all such payments by wire transfer to or at the direction of Lender, releases Tenant of any and all liability to Landlord for any and all payments so made, and defends, indemnifies and holds Tenant harmless from and against any and all claims, demands, losses or liabilities asserted by, through or under Landlord for any and all payments so made. Subject to any and all rights of Tenant under the Lease or at law or in equity, Tenant agrees to pay all monies due and becoming due from Tenant under the Lease to or at the direction of Lender upon fifteen (15) business days' prior written notice from Lender. Tenant agrees that neither Lender's demanding or receiving any such payments, nor Lender's exercising any other right, remedy, privilege, power of immunity granted by the Mortgage or the Assignment of Leases, will operate to impose any liability upon Lender for performance of any obligation of Landlord under the Lease unless and until Lender elects otherwise in writing or acquires the Property through foreclosure of the Mortgage or by deed from Landlord in lieu of foreclosure. Such payments shall continue until Lender directs Tenant otherwise in writing.

5. Notice of Default or Termination Event. Tenant hereby agrees to give simultaneous written notice to Lender of any default of Landlord under the Lease, and Lender shall have the

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same right to cure such default(s) as is provided to Landlord under the Lease. It is further agreed that such notice will be given to any successor in interest of Lender under the Mortgage, provided that prior to any such default of Landlord such successor in interest shall have given written notice to Tenant of its acquisition of Lender's interest therein, and shall have designated the address to which such notice is to be directed. Notwithstanding any provisions of the Lease to the contrary, Tenant may not terminate the Lease without affording to Lender or its successors a period of time to remedy any such default by Landlord equal to an additional fifteen (15) days beyond the time available to Landlord under the Lease to cure a monetary default by Landlord and an additional thirty (30) days beyond the time available to Landlord under the Lease to cure a non-monetary default by Landlord, or if such default cannot be cured within that time, then such additional time as may be necessary (up to a maximum of an additional sixty (60) days) if, within such initial thirty (30) days, Lender has commenced and is reasonably and diligently pursuing the remedies Lender deems necessary or appropriate to cure such default. The foregoing is not intended to limit, or extend the date for Tenant to exercise, any of Tenant's express rights and remedies under the Lease with respect to the applicable default (except for Tenant's termination right). If Lender or such successor commences or institutes foreclosure proceedings or advertises its intention to exercise the power of sale under the Mortgage within sixty (60) days after receipt of written notice of such default and then proceeds diligently to cure Landlord's default, the Lease shall not terminate and any purported termination by Tenant shall be ineffective.

6. Construction of Premises

(a) Intentionally omitted.

(b) Any provision of this Agreement to the contrary notwithstanding, Lender and any successor third party shall have no obligation or incur any liability with respect to the initial construction or initial completion of the Base Building Work (as defined in the Lease), for the Landlord's Contribution (as defined in the Lease) or to perform any work, supply any materials, incur any expense or make any alterations or improvements to prepare the Premises for Tenant's occupancy; provided, however, that in the event that (x) Lender (or its designee) has acquired title to the Premises, (y) any former Landlord under the Lease shall not have completed the Base Building Work (as defined in the Lease) in accordance with the terms and provisions of the Lease (the "Construction Obligations"), and (z) Lender (or its designee) shall not agree to assume such Construction Obligations within ninety (90) days after a written request therefor by Tenant, then Tenant may, at its election and as its sole remedy, terminate the Lease by giving written notice thereof to Lender (or its designee). Lender (or its designee) shall have no obligations nor incur any liability with respect to any warranties of any nature whatsoever, including any warranties respecting use, compliance with zoning, hazardous wastes or environmental laws, Landlord's title, Landlord's authority, habitability, fitness for purpose or possession, until Lender (or its designee) acquires title to the Tenant's Premises by foreclosure, conveyance in lieu of foreclosure or otherwise, and then such liability or obligation of Lender (or its designee) under the Lease shall extend only to those liabilities or obligations (i) accruing subsequent to the date that Lender (or its designee) has acquired the interest of Landlord in the Tenant's Premises as modified by the terms of this Agreement, or (ii) arising as a result of a default under the Lease which is existing as of the date that Lender (or its designee) has acquired the interest of Landlord in the Tenant's Premises and Lender had notice of such default and an opportunity to cure in accordance with Section 5 hereof. In the event that Lender (or its designee) acquires title to the Premises, Lender shall have

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no obligation, nor incur any liability, beyond Lender's then interest, if any, in the Property, together with all proceeds therefrom, and Tenant shall look exclusively to such interest of Lender, if any, in the Property for the payment and discharge of any obligations or liability imposed upon Lender hereunder, under the Lease or under any new lease of the Premises.

Notwithstanding the foregoing, if Lender (or its designee) shall acquire title to the Premises, Lender shall make tenant improvement allowance funds available to Tenant for improvements of the Premises as set forth in the Lease (the "T.I. Work") to the extent all of the following conditions apply: (i) Lender shall have not already made an advance or disbursement to Landlord or any other party in respect of such amounts for the T.I. Work, (ii) the T.I. Work has been completed in accordance with the terms of the Lease, and (iii) loan proceeds are actually available for an advance. However, if Lender (or its designee) does not make sufficient funds available to Tenant for the T.I. Work in the full amount of the tenant improvement allowances set forth in the Lease, then Tenant shall be entitled, as its sole remedy, to (A) terminate the Lease upon thirty (30) days' written notice to Landlord and Lender (or its designee) (and for the avoidance of doubt, Lender shall have no obligation to pay any reimbursement or termination fees to Tenant in connection with such termination, it being acknowledged that nothing in this clause (A) shall limit the right of Tenant to seek such reimbursement or termination fees from Landlord); or (B) complete the T.I. Work at its own expense and recover the cost thereof by offsetting against the rent or other payments due by Tenant under the Lease.

7. Reserved.

8. Lease Status. The Lease is in full force and effect and there are no amendments, supplements or modifications of any kind (except as referenced above) and together herewith constitutes the entire agreement between Tenant and Landlord with respect to the Premises. There are no other promises, agreements, understandings, or commitments of any kind between Landlord and Tenant with respect to the Premises or any other space at the Property.

9. Amendment, Rent Prepayment or Surrender. Without Lender's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, Tenant will not (i) enter into any agreement amending the rental, lease term or Landlord's obligations provided for in the Lease or terminating the Lease, (ii) prepay any of the rents, additional rents or other sums due under the Lease for more than one (1) month in advance of its accrual (it being recognized that Additional Rent (as such term is defined in the Lease) may include monthly estimated payments of taxes and annual operating expenses that are pro-rated which shall not constitute advance rent) or (iii) voluntarily surrender any portion of the Premises or terminate the Lease without cause or shorten the Lease term, and no such purported amendment, modification, termination, prepayment or voluntary surrender prohibited by clauses (i), (ii) or (iii) made subsequent to the date of this Agreement without Lender's prior written consent shall be binding on Lender. The foregoing notwithstanding, Lender's consent shall not be required for Tenant's exercise of rights or options expressly granted to Tenant in the Lease (including, without limitation, termination rights and extension options), or for any amendment, modification or agreement, which, pursuant to the express terms of the Lease, does not require the consent of Landlord or which memorializes the exercise of rights or options expressly granted to Tenant in the Lease.

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10. Invalid or Inoperative Provisions. If any portion or portions of this Agreement shall be held invalid or inoperative, then all of the remaining portions shall remain in full force and effect, and, so far as is reasonable and possible, effect shall be given to the intent manifested by the portion or portions held to be invalid or inoperative.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

12. No Mortgagee in Possession. Lender shall not, either by virtue of the Mortgage, the Assignment of Leases or this Agreement, be or become a mortgagee in possession or be or become subject to any liability or obligation under the Lease or otherwise until Lender acquires title to the Premises by foreclosure, conveyance in lieu of foreclosure or otherwise, and then such liability or obligation of Lender under the Lease shall extend only to those liabilities or obligations accruing subsequent to the date that Lender has acquired the interest of Landlord in the Premises as modified by the terms of this Agreement.

13. Notices. Any and all notices, elections, approvals, consents, demands, requests and responses thereto ("Communications") permitted or required to be given under this Agreement shall be in writing and shall be deemed to have been properly given (i) if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested; (ii) by delivering same in person to the intended addressee; or (iii) by delivery to a reputable independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee. Communications (i) mailed shall be effective upon two (2) Business Days' following its deposit (properly addressed) with the United States Postal Service or any successor thereto; (ii) given by personal delivery shall be effective only if and when received by the addressee; (iii) sent by a reputable commercial delivery service shall be effective upon the transmitting parties' receipt of written verification of delivery from such reputable commercial delivery service at the property address indicated hereinbelow; and (iv) given by other means shall be effective only if and when received at the designated address of the intended addressee. For purposes of Communications, the addresses of the parties shall be as set forth below:

Lender: Bank OZK
8300 Douglas Avenue
Suite 900
Dallas, Texas 75225
Attn: Clifton Hill

with a copy to: Bank OZK
6th and Commercial
P.O. Box 196
Ozark, Arkansas 72949
Attn: Regina Barker

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Landlord: 919 W Fulton Office Owner LLC
1035 N. Dearborn, Unit 10E
Chicago, Illinois 60604
Attn: Rostislav Babel

with a copy to: Akerman LLP
71 South Wacker Drive, 47th Floor
Chicago, Illinois 60606
Attn: Paul J. Russo

Tenant: Harrison Street Real Estate Capital, LLC
917 W. Fulton Market Street
Chicago, Illinois 60607
Attn: Caitlin Grossestreuer/Tax Dept.

with a copy to: Harrison Street Real Estate Capital, LLC
917 W. Fulton Market Street
Chicago, Illinois 60607
Attn: General Counsel

Any of the foregoing parties shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other party in the manner set forth herein.

14. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, successors-in-title and assigns. When used herein, the term "landlord" refers to Landlord and to any successor to the interest of Landlord under the Lease.

15. Multiple Counterparts; Modification or Termination. This Agreement may not be discharged or modified orally or in any manner other than by an agreement in writing specifically referring to this Agreement and signed by the party or parties to be charged thereby. This Agreement may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.

16. Further Assurances. Whenever reasonably requested by Lender, Landlord and Tenant from time to time shall severally execute and deliver to or at the direction of Lender, and without charge to Lender, one or more written certifications of all of the matters set forth above, and as to Tenant's occupancy of the Premises, whether Tenant has exercised any renewal or expansion options. Landlord and Tenant from time to time shall execute and deliver at Lender's

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request all instruments that may be necessary or appropriate to evidence their agreements hereunder.

[SIGNATURE PAGE FOLLOWS]

Property of Cook County Clerk's Office

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

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EXECUTED to be effective as of the date first written above.

LENDER:

BANK OZK

By: 7-778

Name: Juan Gonzalez
Title: Managing Director, Asset Management
Real Estate Specialties Group

STATE OF TEXAS §

COUNTY OF DALLAS §

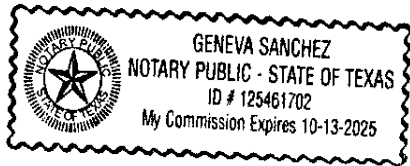
This instrument was **ACKNOWLEDGED** before me, on the 20th day of September, 2023, by **JUAN GONZALEZ**, Managing Director, Asset Management - Real Estate Specialties Group of **BANK OZK**.

[SEAL]

 Geneva Sanchez
Notary Public, State of Texas

My Commission Expires:
10-13-2025

 Geneva Sanchez
Printed Name of Notary Public

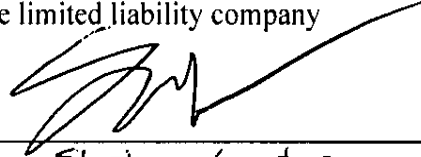


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EXECUTED to be effective as of the date first written above.

TENANT:

HARRISON STREET REAL ESTATE CAPITAL, LLC,
a Delaware limited liability company

By: 

Name: Stephen Gordon
Title: Authorized Signatory

(CORPORATE SEAL)

STATE OF IL §
COUNTY OF COOK §
§


BEFORE ME, a Notary Public in and for said County and State, personally appeared Stephen Gordon, Authorized Signatory of HARRISON STREET REAL ESTATE CAPITAL, LLC, a Delaware limited liability company, TENANT in the foregoing, and (s)he acknowledged that (s)he did sign said instrument for and on behalf of said limited liability company, as the voluntary act and deed of said limited liability company, for all the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on this 26 day of Sep, 2023.

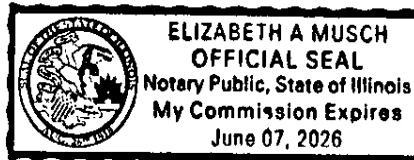
[SEAL]

My Commission Expires:

6-7-2026


Notary Public, State of IL

Elizabeth A. Musch
Printed Name of Notary Public




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EXECUTED to be effective as of the date first written above.

LANDLORD:

919 W FULTON OFFICE OWNER LLC,
a Delaware limited liability company

By: 

Name: ALEX NAJEM
Title: AUTHORIZED SIGNATORY

STATE OF Illinois §
§
COUNTY OF Cook §

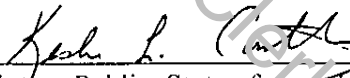
BEFORE ME, a Notary Public in and for said County and State, personally appeared ALEX NAJEM, AUTHORIZED SIGNATORY of 919 W FULTON OFFICE OWNER LLC, a Delaware limited liability company, LANDLORD in the foregoing, and (s)he acknowledged that (s)he did sign said instrument for and on behalf of said limited liability company, as the voluntary act and deed of said limited liability company, for all the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on this 22 day of September, 2023.

[SEAL]

My Commission Expires:

2/9/2027


Notary Public, State of Illinois
Kesha L. Carthen
Printed Name of Notary Public



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EXHIBIT A Legal Description

Parcel 1:

Lots 3, 4, 5, 6, 9, 10, 15 and 16 in Block 21 in Carpenter's Addition to Chicago, being a Subdivision of the Southeast ¼ of Section 8, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

and,

Part of Lot 14 in Block 21 in Carpenter's Addition to Chicago in the Southeast 1/4 of Section 8, Township 39 North, Range 14 East of the Third Principal Meridian, lying West of the Southerly extension of the East line of Lot 10 in Block 21 in said Carpenter's Addition to Chicago, in Cook County, Illinois.

Parcel 2:

Non-exclusive easements for the benefit of Parcel 1 as contained in the Declaration of Covenants, Conditions, Easements and Restrictions dated 9/20/2003, and recorded 9/29/2003 _____, as document number 2327233009 made by 919 W Fulton Partners LLC, a Delaware limited liability company, Declarant.

Permanent Index Nos.:

17-08-424-017-0000 - (Lot 3 & part of Lot 4)
 17-08-424-016-0000 - (part of Lot 4)
 17-08-424-001-0000 - (Lot 5)
 17-08-424-018-0000 - (Lot 6 & part of Lot 4)
 17-08-424-006-0000 - (Lot 9)
 17-08-424-007-0000 - (Lot 10)
 17-08-424-013-0000 - (Affects Lot 15, part of Lot 14 and other property)
 17-08-424-012-0000 - (Lot 16)