

# UNOFFICIAL COPY



Doc#: 1329622051 Fee: \$64.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 10/23/2013 11:48 AM Pg: 1 of 14

PREPARED BY AND UPON  
RECORDATION RETURN TO:

DLA PIPER LLP (US)  
1251 AVENUE OF AMERICAS  
NEW YORK NEW YORK 10020  
Attention: Joseph Philip Forte

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "**Agreement**") dated as of the 3<sup>rd</sup> day of October, 2013 between UBS REAL ESTATE SECURITIES, INC., a Delaware corporation ("**Lender**"), and M. ARTHUR GENSLER, JR. & ASSOCIATES, INC., a California corporation ("**Tenant**").

### RECITALS:

A. Tenant has entered into a Lease dated December 1, 2007 (as the same has been amended by First Amendment to Lease Between Gensler as Tenant and Sullivan Center as Landlord dated March 31, 2008, the "**Lease**") with ONE SOUTH STATE PROPCO, L.L.C., a Delaware limited liability company ("**Landlord**"), covering certain premises more fully described in the Lease (the "**Premises**"), which Premises are a part of the real property located at One South State Street, Chicago, Illinois and legally described on Exhibit A attached hereto and made a part hereof (the "**Property**");

B. Lender has made a loan (the "**Loan**") in the original principal amount of \$113,500,000.00 to Landlord pursuant to the terms and conditions of that certain Loan Agreement, dated on or about the date hereof, between Lender and Landlord (together with any and all extensions, renewals, substitutions, replacements, amendments, modifications and/or restatements thereof, the "**Loan Agreement**");

C. The Loan is evidenced by a promissory note, dated on or about the date hereof, made by Landlord to Lender (together with any and all extensions, renewals, substitutions, replacements, amendments, modifications and/or restatements thereof, the "**Note**") and secured by a mortgage, dated on or about the date hereof, made by Landlord to Lender (together with any and all extensions, renewals, substitutions, replacements, amendments, modifications and/or restatements thereof, the "**Security Instrument**"), which encumbers the fee estate of Landlord in the Property; and

D. Landlord, Tenant and Lender desire to enter into the following Agreement with respect to priority of the Lease and the Security Instrument.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained, the parties hereto, intending to be legally bound hereby, promise, covenant and agree as follows:

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1. The Lease and all estates, rights, options, liens and charges therein contained or created under the Lease are and shall be subject and subordinate to (a) the Security Instrument and to all renewals, modifications, consolidations, replacements and extensions thereof, and to all advances made or to be made thereunder, to the full extent of amounts secured thereby and interest thereon, (b) the lien and effect of the Security Instrument insofar as it affects the real and personal property of which the Premises form a part.

2. In the event Lender takes possession of the Property, as mortgagee-in-possession or otherwise, or forecloses the Security Instrument or otherwise causes the Property to be sold pursuant to the Security Instrument, Lender agrees not to affect, terminate or disturb Tenant's right to quiet enjoyment and possession of the Premises under the terms of the Lease or any of Tenant's other rights under the Lease in the exercise of Lender's rights under the Security Instrument so long as (a) Tenant is not then in default (after expiration of applicable notice and cure periods) under any of the terms, covenants or conditions of the Lease or this Agreement, (b) the term of the Lease shall have commenced pursuant to the provisions thereof, (c) Tenant or Transferee (as defined in section 12.01 of the Lease) shall be in possession of the Premises and (d) the Lease shall be in full force and effect.

3. In the event that Lender succeeds to the interest of the Landlord under the Lease and/or Landlord's fee title to the Property, or if anyone else acquires title to or the right to possession of the Property upon the foreclosure of the Security Instrument or by other sale pursuant to the Security Instrument, or upon the sale of the Property by Lender or its successors or assigns after foreclosure or other sale pursuant to the Security Instrument or acquisition of title in lieu thereof or otherwise, provided that the conditions set forth in Section 2 above have been met at the time Lender or its successors or assigns or the then owner of Landlord's fee title to the Property after foreclosure or other sale pursuant to the Security Instrument (hereinafter collectively referred to in this paragraph as "**Successor Landlord**") becomes the owner of the Property, Successor Landlord and Tenant hereby agree to recognize one another as landlord and tenant, respectively, under the Lease and to be bound to one another under all of the terms, covenants and conditions of the Lease, and Successor Landlord shall assume all of the obligations of the Landlord under the Lease. Accordingly, from and after such event, Successor Landlord and Tenant shall have the same remedies against each other for the breach of an agreement contained in the Lease as Tenant and Landlord had before Successor Landlord succeeded to the interest of the Landlord; provided, however, notwithstanding anything to the contrary contained herein, that Successor Landlord shall not be:

(a) liable for any act or omission or failure to perform any of its obligations under the Lease except where the act, omission or failure to perform the obligations is ongoing and effects quiet enjoyment of the Premises by Tenant, provided that Successor Landlord shall have received the notice and opportunity to cure the default (as set forth in Paragraph 5 of this Agreement) that is the basis of any such notice and such liability shall be limited to compensatory damages relating to acts or omissions occurring after the date Successor Landlord obtains fee title to the Property. Nothing in this provision limits Tenant's right to terminate under sections 17.03 or 19.05 of the Lease; or

(b) subject to any offsets, abatements (except as set forth in Section 7.02 and Articles XVII and XVIII of the Lease) counterclaims or defenses that Tenant might have against any prior landlord (including Landlord); or

(c) bound by any rent, additional rent or other sums that Tenant might have paid for more than one month in advance to any prior landlord (including Landlord); provided, however,

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that notwithstanding the foregoing, Tenant shall be entitled to the benefit of (and credit for) all of the Tenant's Pro Rata Share of Landlord's estimate made to any prior landlord (including Landlord) on account of Expenses and Taxes for any calendar year for which the required annual adjustment statement has not been provided to Tenant prior to the date on which the Successor Landlord has succeeded to the interests of Landlord under the Lease when the annual adjustment statement for such calendar year is prepared by the Successor Landlord; or

(d) bound by any amendment, modification or termination of the Lease made after the date of this Agreement without Lender's prior written consent, which shall not be unreasonably withheld, conditioned or delayed; or

(e) liable for return of any security deposit, if any, paid by Tenant to Landlord in accordance with the terms of the Lease unless Successor Landlord has actually received such security deposit from its predecessor in interest; or

(f) required to make any repairs to the Property or to the Premises required as a result of fire or other casualty or by reason of condemnation unless Successor Landlord shall be obligated under the Lease to make such repairs;

(g) bound to make any payment to Tenant which was required under the Lease, or otherwise, to be made prior to the time Successor Landlord succeeded to Landlord's interest; or

(h) bound by any assignment of the Lease or sublease of the Premises, or any portion thereof, made prior to the time Successor Landlord succeeded to Landlord's interest other than if pursuant to the provisions of the Lease unless such assignment or sublease was consented to by Lender.

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 instrument or instruments as Lender or such other person shall from time to time request in order to confirm such provision.

5. Tenant hereby warrants and represents, covenants and agrees to and with Lender:

(a) except for amendments arising out of section 2.02 of the Lease, not to enter into any agreement to alter, modify or terminate the Lease in any respect without prior written consent of Lender, which shall not be unreasonably withheld, conditioned or delayed;

(b) to deliver to Lender at the address indicated above a duplicate of each notice of default delivered to Landlord pursuant to the Lease at the same time as such notice is given to Landlord, and Tenant shall notify Lender of any default by Landlord under the Lease and agrees that, notwithstanding any provisions of the Lease to the contrary, no notice of cancellation thereof shall be effective unless Lender shall have received notice of default giving rise to such cancellation and shall have failed within sixty (60) days after receipt of such notice to cure such default, or if such default cannot be cured within sixty (60) days, shall have failed within sixty (60) days after receipt of such notice to commence and thereafter diligently pursue any action necessary to cure such default (notwithstanding the foregoing, Lender shall have no obligation to cure any such default);

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(c) that Tenant is now the sole owner of the leasehold estate created by the Lease and shall not hereafter transfer the Lease or sublet the Premises or any portion thereof except as permitted by the terms of the Lease and with the prior written consent of Lender, which will not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, consent of Lender is not required with respect to a Permitted Transfer as defined by section 12.05 of the Lease;

(d) not to pay any rent, additional rent or other sums due or to become due under the Lease more than thirty (30) days in advance of the date on which the same are due or to become due under the Lease;

(e) to certify promptly within 10 business days in writing to Lender in connection with any proposed assignment of the Security Instrument, whether or not any default on the part of Landlord then exists under the Lease;

(f) upon receipt from Lender of notice of any default by Landlord under the Security Instrument, to pay to Lender directly all rent and other sums due under the Lease and Landlord hereby expressly authorizes Tenant to make such payments to Lender and hereby releases and discharges Tenant from any liability to Landlord on account of any such payments; and

(g) not to voluntarily surrender the Premises or terminate the Lease without cause or shorten the term thereof, except where permitted by the Lease.

For the avoidance of doubt and notwithstanding anything to the contrary contained in the Lease or herein, any amendment, modification or termination of the Lease, or prepayment, voluntary surrender, assignment or subletting, without Lender's prior consent, shall not be binding upon Lender.

6. All notices or other written communications hereunder shall be deemed to have been properly given (a) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged by the recipient thereof and confirmed by telephone by sender, (b) one (1) Business Day (hereinafter defined) after having been deposited for overnight delivery with any reputable overnight courier service, or (c) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Tenant: M. Arthur Gensler, Jr. & Associates, Inc.  
11 East Madison Street  
Suite 300  
Chicago, Illinois 60602  
Attention: Lamar Johnson  
Facsimile No.: [\_\_\_\_\_]

If to Lender: UBS Real Estate Securities Inc.  
1285 Avenue of the Americas  
New York, New York 10019  
Attention: Henry Chung  
Facsimile No.: 212-821-2943

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With a copy to: DLA Piper LLP  
1251 Avenue of the Americas  
New York, New York 10020-1104  
Attention: Joseph Philip Forte, Esq.  
Facsimile No.: 212-335-4501

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Section 6, the term "Business Day" shall mean a day on which commercial banks are not authorized or required by law to close in New York, New York.

Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

8. The term "Lender" as used herein shall include the successors and assigns of Lender and any person, party or entity which shall become the owner of the Property by reason of a foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or otherwise. The term "Landlord" as used herein shall mean and include the present landlord under the Lease and such landlord's predecessors and successors in interest under the Lease, but shall not mean or include Lender. The term "Property" as used herein shall mean the Property, the improvements now or hereafter located thereon and the estates therein encumbered by the Security Instrument.

9. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto.

10. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision.

11. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement.

12. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

13. Lender may sell, transfer and deliver the Note and assign the Security Instrument, this Agreement and the other documents executed in connection therewith to one or more investors in the secondary mortgage market ("**Investors**"). In connection with such sale, Lender may retain or assign responsibility for servicing the Loan (including the Note, the Security Instrument, this Agreement and the other documents executed in connection therewith) or may delegate some or all of such responsibility and/or obligations to a servicer (including, but not limited to, any subservicer or master servicer), on behalf of the Investors. All references to "Lender" herein shall refer to and include any such servicer to the extent applicable.

14. Tenant will, do, execute, acknowledge and deliver all and every such further acts and assurances as Lender shall, from time to time, require, for the better assuring and confirming unto Lender the property and rights hereby intended now or hereafter so to be, or for carrying out the intention or

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facilitating the performance of the terms of this Agreement or for filing, registering or recording this Agreement, or for complying with all applicable laws.

15. Tenant acknowledges that Lender is obligated only to Landlord to make the Loan upon the terms and subject to the conditions set forth in the Loan Agreement. In no event shall Lender or any purchaser of the Property at foreclosure sale or any grantee of the Property named in a deed-in-lieu of foreclosure, nor any heir, legal representative, successor, or assignee of Lender or any such purchaser or grantee (Lender, such purchaser, grantee, heir, legal representative, successor or assignee, collectively, the "**Subsequent Landlord**") have any personal liability for the obligations of Landlord under the Lease and should the Subsequent Landlord succeed to the interests of Landlord under the Lease, Tenant shall look only to the estate and property of any such Subsequent Landlord in the Property for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) in the event of any default by any Subsequent Landlord as landlord under the Lease, and no other property or assets of any Subsequent Landlord shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to the Lease.

16. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns.

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

[NO FURTHER TEXT ON THIS PAGE]

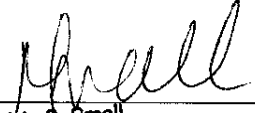


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In witness whereof, the parties have executed this Subordination, Non-Disturbance and  
Attornment Agreement as of the date first above written.

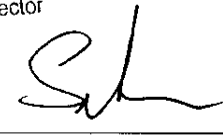
LENDER:

UBS REAL ESTATE SECURITIES INC.,  
a Delaware corporation

By: 

Name: Racquel A. C. Small

Title: Director

By: 

Name: **Siho Ham**

Title: **Director**


[SIGNATURES CONTINUE ON FOLLOWING PAGE]

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TENANT:

M. ARTHUR GENSLER, JR. &  
ASSOCIATES, INC.,  
a California corporation

By:   
Name: Laura Johnson  
Title: MANAGING PARTNER

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

Property of Cook County Clerk's Office



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## AGREEMENT BY LANDLORD

Landlord, as the mortgagor under the Security Instrument, agrees for itself and for its successors and assigns to the provisions of Section 5(f) of the foregoing Subordination, Non-Disturbance and Attornment Agreement (the "**Agreement**") and that (i) the Agreement does not constitute a waiver or partial waiver by Lender of any of its rights under the Security Instrument and (ii) the Agreement does not in any way release Landlord from its obligations to comply with every term, provision, condition, covenant, agreement, representation, warranty and obligation of the Security Instrument, and that each of same remain in full force and effect and must be complied with by the Landlord thereunder.

Date: this 7 day of October, 2013.

LANDLORD:

On South State Propco, L.L.C., a Delaware limited liability company, successor to One South State Street, LLC

By: One South State Street, LLC, an Illinois limited liability company, its Managing Member

By: One South State Street Investors, L.L.C., an Illinois limited liability company, its Manager

By: \_\_\_\_\_  
Name: Laurance H. Freed  
Title: Manager

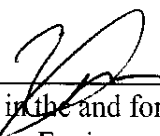
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## LENDER ACKNOWLEDGMENT

STATE OF NEW YORK           §  
  §  
COUNTY OF NEW YORK       §

The instrument was acknowledged before me on October 7, 2013  
by Balquid Small, on the Director of UBS Real Estate  
Securities Inc., a Delaware corporation, on behalf of such corporation.

XIN LIANG ZHU  
Notary Public, State of New York  
No. 02ZH6286321  
Qualified in Kings County  
Commission Expires July 22, 2017

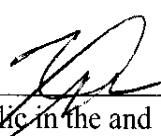
  
\_\_\_\_\_  
Notary Public in the and for the State of New York  
My Commission Expires: \_\_\_\_\_

[NOTARY SEAL]

STATE OF NEW YORK           §  
  §  
COUNTY OF NEW YORK       §

The instrument was acknowledged before me on October 7, 2013  
by SHO HOY, on the Director of UBS Real Estate  
Securities Inc., a Delaware corporation, on behalf of such corporation.

XIN LIANG ZHU  
Notary Public, State of New York  
No. 02ZH6286321  
Qualified in Kings County  
Commission Expires July 22, 2017

  
\_\_\_\_\_  
Notary Public in the and for the State of New York  
My Commission Expires: \_\_\_\_\_

[Acknowledgments to SNDA]

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## TENANT ACKNOWLEDGMENT

STATE OF Illinois )  
 ) ss.  
COUNTY OF Cook )

On the 3<sup>rd</sup> day of October in the year 2013 before me, the undersigned, a Notary Public in and for said state, personally appeared Lamar A. Johnson, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Lisa D. Nelson  
Signature of Notary Public



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## LANDLORD ACKNOWLEDGMENT

STATE OF Illinois )  
 ) ss.  
COUNTY OF Cook )

On the 7<sup>th</sup> day of October in the year 2013 before me, the undersigned, a Notary Public in and for said state, personally appeared Laurance Freed, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Erin Biondi  
Signature of Notary Public



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## EXHIBIT A

### LEGAL DESCRIPTION

#### PARCEL 1:

LOTS 1 TO 12, BOTH INCLUSIVE, IN B. S. MORRIS' SUBDIVISION OF ORIGINAL LOTS 2, 3 AND THE NORTH QUARTER OF LOT 6 IN BLOCK 2 IN FRACTIONAL SECTION 15 ADDITION TO CHICAGO, BEING A SUBDIVISION OF FRACTIONAL SECTION 15, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN; TOGETHER WITH THE VACATED ALLEY BETWEEN SAID LOTS 1 TO 7 IN SAID B. S. MORRIS' SUBDIVISION, AND SAID LOTS 10, 11 AND 12 IN SAID SUBDIVISION (EXCEPTING FROM SAID PREMISES SO MUCH OF LOTS 1 TO 9 IN SAID SUBDIVISION AS HAS BEEN TAKEN FOR THE WIDENING OF STATE STREET OR IS NOW OCCUPIED BY THE CITY OF CHICAGO AS PART OF STATE STREET) AND ALSO EXCEPTING FROM SAID LOTS 7, 8, 9 AND 10 THAT PART THEREOF TAKEN FOR ALLEY;

#### ALSO

THAT PART OF THE NORTH 1/2 AND THE NORTH 10.00 FEET OF THE SOUTH 1/2 OF LOT 6 (EXCEPTING THEREFROM SO MUCH THEREOF AS HAS BEEN TAKEN FOR THE WIDENING OF STATE STREET OR IS NOW OCCUPIED BY THE CITY OF CHICAGO AS A PART OF STATE STREET, AND ALSO EXCEPTING THAT PART THEREOF TAKEN FOR ALLEY) IN BLOCK 2 IN FRACTIONAL SECTION 15 ADDITION TO CHICAGO, FALLING SOUTH OF THE SOUTH LINE OF LOT 9 IN B. S. MORRIS' SUBDIVISION OF ORIGINAL LOTS 2, 3 AND THE NORTH QUARTER OF LOT 6 IN SAID BLOCK 2;

#### ALSO

SUBLOTS 1, 2 AND 3 (EXCEPT THE SOUTH 10.00 FEET OF SUBLOT 3) IN WADSWORTH'S SUBDIVISION OF LOTS 7 AND 10 IN BLOCK 2 OF FRACTIONAL SECTION 15 ADDITION TO CHICAGO (EXCEPT THAT PART THEREOF TAKEN FOR WIDENING OF STATE STREET), IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

LOT 5 AND THE NORTH 1/2 OF LOT 8 IN BLOCK 2 IN FRACTIONAL SECTION 15 ADDITION TO CHICAGO, EXCEPTING FROM EACH OF SAID LOTS 5 AND 8 THOSE PARTS THEREOF TAKEN FOR ALLEY, IN FRACTIONAL SECTION 15, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 3:

THE SOUTH 1/2, (EXCEPT THE NORTH 10.00 FEET THEREOF) OF LOT 6 IN BLOCK 2 OF FRACTIONAL SECTION 15 ADDITION TO CHICAGO (EXCEPTING THE WEST 27.00 FEET TAKEN FOR WIDENING STATE STREET AND EXCEPT A STRIP ABOUT 9.00 FEET IN WIDTH OFF THE EAST END THEREOF USED FOR AN ALLEY) IN TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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## PARCELS D AND E:

THE SOUTH 1/2 OF LOT 8 AND ALL OF LOT 9 IN BLOCK 2 IN FRACTIONAL SECTION 15 ADDITION TO CHICAGO, EXCEPTING FROM EACH OF SAID LOTS 8 AND 9 THOSE PARTS THEREOF TAKEN FOR ALLEY, IN FRACTIONAL SECTION 15, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

## PARCEL F:

SUBLOTS 5 AND 6 IN N. K. FAIRBANKS' RESUBDIVISION OF SUBLOTS 5 AND 6 IN WADSWORTH'S SUBDIVISION OF LOTS 7 AND 10 IN BLOCK 2 OF FRACTIONAL SECTION 15 ADDITION TO CHICAGO, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PINs: 17-15-100-001-0000; 17-15-100-002-0000; 17-15-100-003-0000; 17-15-100-004-0000;  
17-15-100-005-0000; 17-15-100-006-0000; 17-15-100-007-0000; 17-15-100-008-0000;  
17-15-100-009-0000; 17-15-100-011-0000; 17-15-100-012-0000; 17-15-100-013-0000;  
17-15-100-014-0000; 17-15-100-010-0000; 17-15-100-020-0000; 17-15-100-021-0000;  
17-15-100-022-0000; 17-15-100-023-0000; 17-15-100-024-0000; and  
17-15-100-017-0000

Address: One South State Street, Chicago, Illinois