

# UNOFFICIAL COPY



PREPARED BY AND AFTER  
RECORDING RETURN TO:  
Riemer & Braunstein LLP  
Times Square Tower  
7 Times Square, Suite 2506  
New York, New York 10036  
Attn: Erik F. Andersen, Esq.

Doc# 1719229127 Fee \$60.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 07/11/2017 04:27 PM PG: 1 OF 12

(For Recorder's Use Only)

## 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 April 14, 2017, among **BANK OF THE OZARKS** ("Lender"), **WINDERMERE HOUSE, LLC**, an Indiana limited liability company ("Tenant"), and **SOLSTICE ON THE PARK, LLC**, a Delaware limited liability company ("Landlord").

### STATEMENT OF BACKGROUND

Landlord and Tenant entered into that certain Parking Lease, dated as of September 23, 2013, as modified by (a) that certain First Amendment to Parking Lease dated as of April 14, 2017 by and between Landlord, Tenant and Aareal Capital Corporation, a Delaware corporation, as Tenant's Mortgagee (as hereinafter defined), (b) that certain Letter Agreement dated as of April 14, 2017 by and between Landlord and Tenant and (c) that certain Second Amendment to Parking Lease dated as of June 29, 2017 by and between Landlord, Tenant and Tenant's Mortgagee (as the same may be amended, supplemented or otherwise further modified from time to time, the "Lease"), relating to the premises described therein (the "Premises") and being part of the Property (as defined below). A memorandum of the Lease was recorded with the Cook County Recorder of Deeds, Illinois (the "Recorder's Office") on October 16, 2013, as Document Number 1328942192, a memorandum of first amendment to parking lease and letter agreement dated as of April 14, 2017 was recorded with the Recorder's Office on April 17, 2017 as Document Number 1710729088 and a memorandum of second amendment to parking lease

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dated as of June 29, 2017 was recorded with the Recorder's Office on July 11, 2017 as Document Number 1719229127. Lender has made or has committed to make a loan (the "Loan") to Landlord (or Landlord's successor in interest) secured by a mortgage (the "Mortgage") and an assignment of leases and rents (the "Assignment of Leases") from Landlord to Lender covering certain property located at **5534-5558 South Cornell Avenue & 1604-1624 East 56th Street, Chicago, Illinois**, as more particularly described on Exhibit A attached hereto (the "Property"), and including the Premises. Tenant has agreed that the Lease shall be subject and subordinate to the lien of 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.

## 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. Lender, Tenant and Landlord do hereby covenant and agree that the Lease with all rights, options (including options to acquire or lease all or any part of the Premises), liens and charges created thereby, is and shall continue to be subject and subordinate in all respects to the lien of the Mortgage and to any renewals, modifications, consolidations, replacements and extensions thereof and to all advancements made thereunder.

2. 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 (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, for the balance of the term of the Lease (including any extensions thereof), and Lender will not disturb the possession or rights of Tenant or any Leasehold Mortgagee (as defined in the Lease) under the Lease, 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 shall not be (i) subject to any claims, offsets or defenses which Tenant might have against any prior landlord (including Landlord) (unless the basis therefor is then continuing and Lender receives notice thereof and has an opportunity to cure such default in accordance with Section 4 hereof), (ii) liable for any act or omission of any prior landlord (including Landlord), except to the extent the act or omission is then continuing and Lender had notice thereof and an opportunity to cure such default in accordance with Section 4 hereof, (iii) bound by any rent or additional rent which Tenant might have paid for more than the current month or any security deposit or other prepaid charge paid to any prior landlord (including Landlord), or (iv) bound by any amendment or modification of the Lease made without its written consent. 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 and then only for such purpose and not for the purpose of terminating the Lease. Lender recognizes the rights of Tenant and Tenant's Mortgagee in and to condemnation proceeds as provided in

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Section 12 of the Lease and recognizes and agrees that insurance and condemnation proceeds will be applied as provided for in Section 28 of the Lease. Notwithstanding clause (ii) of the definition of "Construction Activities Information" in the Lease, Tenant agrees that Landlord's current Construction Period (as defined in the Lease) as of the date of this Agreement may extend until September 30, 2017 and such extension shall not constitute a default under the Lease.

3. 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 an agreement of attornment to Lender and any subsequent titleholder of the Premises in a form mutually acceptable to Tenant and Lender.

4. 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 agrees to notify Lender of any default(s) (beyond any applicable notice and cure periods) by Landlord under the Lease and Lender shall have the same right to cure such default(s) as is provided to Landlord under the Lease.

5. Lender shall have no obligation or incur any liability with respect to the construction or completion of the improvements in which the Premises are located or for completion of the Premises or any improvements for Tenant's use and occupancy, including, without limitation, any obligations to provide Temporary Leased Premises (as defined in the Lease). Lender 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. In the event that Lender (or its designee) acquires title to the Premises, Lender shall have no obligation, nor incur any liability, beyond Lender's (or such designee's) then equity interest, if any, in the Premises, and Tenant shall look exclusively to such equity interest of Lender, if any, in the Premises 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.

6. 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.

7. 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.

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

9. 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.

10. 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 proper 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 OF THE OZARKS 8201 Preston Road Suite 700 Dallas, Texas 75225 Attn: Brannon Hamblen
with a copy to:	BANK OF THE OZARKS 6th and Commercial P.O. Box 196 Ozark, Arkansas 72949 Attn: Robert Lloyd
Landlord:	SOLSTICE ON THE PARK, LLC c/o Antheus Capital, LLC 40 North Dean Street, 2 <sup>nd</sup> Floor, Englewood, New Jersey 07631 Attn: David Gefsky

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with a copy to: Faegre Baker Daniels LLP  
110 West Berry Street, Suite 2400  
Fort Wayne, Indiana 46802  
Attn: David Kuker, Esq.

Tenant: WINDERMERE HOUSE, LLC  
c/o Antheus Capital, LLC  
40 North Dean Street, 2<sup>nd</sup> Floor,  
Englewood, New Jersey 07631  
Attn: David Gefsky

with a copy to: Faegre Baker Daniels LLP  
110 West Berry Street, Suite 2400  
Fort Wayne, Indiana 46802  
Attn: David Kuker, Esq.

Leasehold Mortgagee: Aareal Capital Corporation  
250 Park Avenue, Suite 820  
New York, New York 10177  
Attn: Jennifer Hochberg, Esq.

with a copy to: Loeb & Loeb LLP  
345 Park Avenue  
New York, New York 10154  
Attn: Steven M. Kornblau, Esq.

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.

11. 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.

12. 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. This Agreement may be transmitted and/or signed by facsimile or e-mail transmission (e.g., "pdf" or "tif").

**[SIGNATURE PAGES FOLLOW]**

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

**LENDER:**

BANK OF THE OZARKS

By: *Dan Thomas*

Name: Dan Thomas

Title: President- Real Estate Specialties

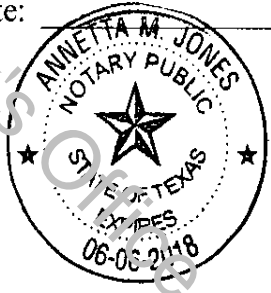
STATE OF TEXAS            §  
  §        SS:  
COUNTY OF DALLAS       §

BEFORE ME, a Notary Public in and for said County and State, personally appeared Dan Thomas, President – Real Estate Specialties Group of Bank of the Ozarks, LENDER in the foregoing, and he acknowledged that he did sign said instrument for and on behalf of said banking corporation, as the voluntary act and deed of said banking corporation, for all the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on this 21<sup>st</sup> day of March, 2017.

Notary Public *Annetta M Jones*

Commission Expiration Date: \_\_\_\_\_

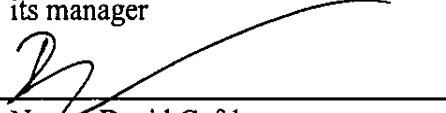


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**TENANT:**

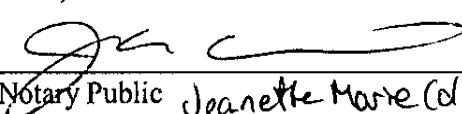
WINDERMERE HOUSE, LLC,  
an Indiana limited liability company

By: AL-Windermere House, LLC,  
an Indiana limited liability company,  
its manager

By:   
Name: David Gefsky  
Title: Vice President

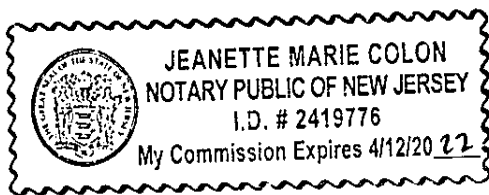
STATE OF NEW JERSEY )  
 )ss.  
COUNTY OF BERGEN )

On the 13<sup>th</sup> day of April in the year 2017, before me, the undersigned, a notary public in and for said state, personally appeared David Gefsky 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 official capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public Jeanette Marie Colon

My Commission Expires:

4/12/2022

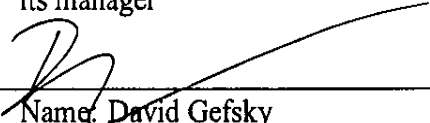


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**LANDLORD:**

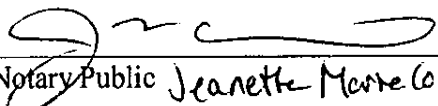
SOLSTICE ON THE PARK, LLC,  
a Delaware limited liability company

By: AL-Solstice on the Park, LLC,  
a Delaware limited liability  
company,  
its manager

By:   
Name: David Gefsky  
Title: Vice President

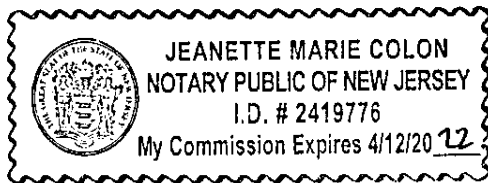
STATE OF NEW JERSEY )  
 )ss.  
COUNTY OF BERGEN )

On the 13<sup>th</sup> day of April in the year 2017, before me, the undersigned, a notary public in and for said state, personally appeared David Gefsky 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 official capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public Jeanette Marie Colon

My Commission Expires:

4/12/2022





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## TENANT'S MORTGAGEE'S CONSENT

Aareal Capital Corporation, a Delaware corporation, having an address at 250 Park Avenue, Suite 820, New York, New York 10177, as administrative agent ("Tenant's Mortgagee"), and as (i) mortgagee of the Tenant's leasehold interest in the Premises pursuant to that certain Fee and Leasehold Mortgage, Security Agreement, Assignment of Leases, Rents and Revenues and Fixture Filing dated as of September 23, 2013 and recorded on October 16, 2013 as Document Number 1328942194 with the Recorder's Office ("Tenant's Mortgage") by Tenant, as borrower and Tenant's Mortgagee, and (ii) assignee of a security interest in all of Tenant's right, title and interest in and to any and all existing Leases and Operating Agreements (each as defined in Tenant's ALR (as hereinafter defined)) pursuant to that certain Assignment of Leases, Rents and Revenues dated as of September 23, 2013 and recorded on October 16, 2013 as Document Number 1328942195 with the Recorder's Office ("Tenant's ALR") by Tenant, as assignor and Tenant's Mortgagee, as assignor, consents to Tenant's execution, delivery and performance of the foregoing Agreement in accordance with Section 9.2 of Tenant's Mortgage. To Tenant's Mortgagee's knowledge, Tenant is not in default (beyond any applicable notice and cure periods) under the provisions of Tenant's Mortgage, including, without limitation, Article IX thereof. For purposes of clarity, the Premises (which constitutes the sole portion of the Property in which Tenant Mortgagee has an interest as mortgagee) are those "Leased Premises" as defined in the Lease, subject to Landlord's rights as reserved therein. Lender recognizes the rights of Tenant and Tenant's Mortgagee in and to condemnation proceeds as provided in Section 12 of the Lease and recognizes and agrees that insurance and condemnation proceeds will be applied as provided for in Section 28 of the Lease.

### TENANT'S MORTGAGEE:

AAREAL CAPITAL CORPORATION,  
as Administrative Agent for the Lenders


By: Sarka Rahmanova  
Name: Sarka Rahmanova  
Title: Director

By: Jennifer Hochberg  
Name: Jennifer Hochberg  
Title: Counsel

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STATE OF NEW YORK )  
: SS:  
COUNTY OF NEW YORK )

On the 27th day of June in the year 2017, before me, the undersigned, personally appeared Sarka Rahmanova 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 s/he executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


  
\_\_\_\_\_  
Notary Public

Commission Expiration Date: Oct. 18, 2018

ALAN L. GRIFFIN  
Notary Public, State of New York  
No. 02GR6012772  
Qualified in New York County  
Commission Expires October 18 ~~200~~ 2018

STATE OF NEW YORK )  
: SS:  
COUNTY OF NEW YORK )

On the 27th day of June in the year 2017, before me, the undersigned, personally appeared Jennifer Hochberg 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 s/he executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

Commission Expiration Date: Oct. 18, 2018

ALAN L. GRIFFIN  
Notary Public, State of New York  
No. 02GR6012772  
Qualified in New York County  
Commission Expires October 18 ~~200~~ 2018

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## EXHIBIT A LEGAL DESCRIPTION

### PARCEL 1:

LOTS 18 AND 19 IN BLOCK 1 IN ILLINOIS CENTRAL SUBDIVISION OF THE WEST PART OF THE SOUTH WEST 14.09 ACRES IN THE FRACTIONAL SOUTHWEST 1/4 OF SECTION 12, AND THE WEST PART OF THE NORTHWEST 17.93 ACRES IN THE FRACTIONAL NORTHWEST 1/4 OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCLUDING THE WEST 131 FEET OF SAID LOTS 18 AND 19 AND ALSO EXCLUDING THE NORTHERLY 18 FEET OF LOT 18, AS MEASURED PERPENDICULAR TO THE NORTHERLY LINE THEREOF, AS SHOWN ON THE PLAT OF DEDICATIONS RECORDED JUNE 5, 2014 AS DOCUMENT NUMBER 1415618069 AND JUNE 26, 2014 AS DOCUMENT NUMBER 1417718038), IN COOK COUNTY, ILLINOIS.

### ALSO

LOTS 23 TO 26 INCLUSIVE, IN BLOCK 1 IN ILLINOIS CENTRAL SUBDIVISION OF THE WEST PART OF THE SOUTH WEST 14.09 ACRES OF THE FRACTIONAL SOUTHWEST 1/4 OF SECTION 12, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND THE WEST PART OF THE NORTH WEST 17.93 ACRES IN THE FRACTIONAL NORTHWEST 1/4 OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

### PARCEL 2:

THE VACATED ALLEY LYING IN THAT PART OF BLOCK 1 OF ILLINOIS CENTRAL SUBDIVISION OF THE WEST PART OF THE SOUTHWEST 14.09 ACRES IN THE FRACTIONAL SOUTHWEST 1/4 OF SECTION 12 AND THE WEST PART OF THE NORTHWEST 17.93 ACRES IN THE FRACTIONAL NORTHWEST 1/4 OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ADJACENT TO LOT 19 (EXCLUDING THE WEST 131 FEET OF SAID LOT 19) AND ADJACENT TO LOTS 23, 24, 25 AND 26, VACATED PURSUANT TO ORDINANCE RECORDED JUNE 5, 2014 AS DOCUMENT NUMBER 1415618070, THE PLAT OF WHICH WAS RERECORDED JUNE 26, 2014 AS DOCUMENT NUMBER 1417718039, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF LOT 26 OF BLOCK 1 IN SAID ILLINOIS CENTRAL SUBDIVISION; THENCE SOUTH 89°59'34" WEST ALONG THE NORTH LINE OF LOTS 23 TO 26 INCLUSIVE, A DISTANCE OF 200.05 FEET (MEASURED) TO THE NORTHWEST CORNER OF LOT 23 OF BLOCK 1 IN SAID ILLINOIS CENTRAL SUBDIVISION, ALSO BEING THE NORTHEAST CORNER OF LOT 22 OF BLOCK 1 IN SAID ILLINOIS CENTRAL SUBDIVISION, THENCE NORTHERLY TO THE INTERSECTION OF THE NORTHERLY EXTENSION OF THE WEST LINE OF LOT 23 OF BLOCK 1 OF SAID ILLINOIS CENTRAL SUBDIVISION, ALSO BEING THE NORTHERLY EXTENSION OF THE EAST LINE OF LOT 22 OF BLOCK 1 OF SAID ILLINOIS CENTRAL SUBDIVISION TO THE SOUTH LINE OF LOT 19 OF BLOCK 1 IN SAID ILLINOIS CENTRAL SUBDIVISION, SAID INTERSECTION BEING 131.00 FEET EAST OF THE SOUTHWEST CORNER OF SAID LOT 19 OF BLOCK 1 IN SAID ILLINOIS CENTRAL SUBDIVISION, A DISTANCE OF 16.00 FEET; THENCE NORTH 89°59'34" EAST ALONG THE SOUTH LINE OF LOT 19 OF BLOCK 1 IN SAID ILLINOIS CENTRAL SUBDIVISION, A DISTANCE OF 19.00 FEET TO THE EAST LINE OF THE WEST 150 FEET OF LOT 19 OF BLOCK 1 IN SAID ILLINOIS CENTRAL SUBDIVISION; THENCE CONTINUING NORTH 89°59'34" EAST ALONG THE SOUTH LINE OF LOT 19 OF BLOCK 1 IN SAID ILLINOIS CENTRAL SUBDIVISION TO THE WEST RIGHT OF WAY OF SOUTH CORNELL AVENUE A DISTANCE OF 181.05 FEET (MEASURED); THENCE SOUTH 00°06'59" EAST ALONG THE WEST RIGHT OF WAY OF SOUTH CORNELL AVENUE, A DISTANCE OF 16.00 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

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PARCEL 3:

A NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCELS 1 AND 2 AS CREATED BY SETBACK EASEMENT AGREEMENT DATED JUNE 2, 2014 AND RECORDED JANUARY 12, 2015 AS DOCUMENT 1501219075 FROM THE CITY OF CHICAGO IN TRUST FOR THE USE OF SCHOOLS FOR THE BENEFIT AND USE OF THE BOARD OF EDUCATION OF THE CITY OF CHICAGO TO SOLSTICE ON THE PARK, LLC FOR THE PURPOSE OF UNOBSTRUCTED LIGHT AND AIR OVER THE PROPERTY DESCRIBED THEREIN.

PROPERTY ADDRESS:

5534-5558 S. CORNELL AVE & 1604-1624 E. 56TH STREET *wob 31*

PERMANENT INDEX NUMBER: 20-13-100-020-0000 VOL. 255

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2101897.12

Property of Cook County Clerk's Office