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## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption



Report Mortgage Fraud  
844-768-1713



\*1915845063\*

Doc# 1915845063 Fee \$88.00

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

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 06/07/2019 12:54 PM PG: 1 OF 35

The property identified as: **PIN:** 17-16-100-049-0000

**Address:**

**Street:** 727 W Madison Street

**Street line 2:**

**City:** Chicago

**State:** IL

**ZIP Code:** 60661

**Lender:** KREF Capital TRS LLC

**Borrower:** One South Halsted, LLC

**Loan / Mortgage Amount:** \$148,800,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is commercial property.

11902812 1 of 4

S V  
P 35  
S L  
M N  
SC X  
E N  
INT R

**Certificate number:** 79CC0CF2-EA3D-4B02-AFF7-4BCD778A6D2E

**Execution date:** 6/6/2019

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PREPARED BY AND UPON  
RECORDATION RETURN TO:

Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, NY 10166  
Attention: Victoria Shusterman, Esq.

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**ONE SOUTH HALSTED, LLC**, as mortgagor  
(Borrower)

to

**KREF CAPITAL TRS LLC**, as mortgagee  
(Lender)

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**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**

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Dated: June 6, 2019  
Location: 727 W Madison Street  
Chicago, Illinois 60661  
County: Cook County

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## MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Security Instrument") is made as of this 6th day of June, 2019, by **ONE SOUTH HALSTED, LLC**, Delaware limited liability company, having an address at c/o F&F Realty, Ltd., 5005 Touhy Avenue, Suite 200, Skokie, Illinois 60077 (together with its permitted successors and permitted assigns, "Borrower"), as mortgagor, for the benefit of **KREF CAPITAL TRS LLC**, a Delaware limited liability company, having an address at 9 West 57th Street, Suite 4200, New York, New York 10019, as mortgagee (together with its successors and assigns, "Lender").

### WITNESSETH:

WHEREAS, this Security Instrument is given to secure a loan (the "Loan") in the maximum principal sum of ONE HUNDRED FORTY-EIGHT MILLION EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS (\$148,800,000.00) or so much thereof as may be advanced pursuant to that certain Loan Agreement dated as of the date hereof between Borrower and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "Loan Agreement") and evidenced by the Note (as defined in the Loan Agreement);

WHEREAS, Borrower desires to secure the payment of the Debt (as defined in the Loan Agreement), all Additional Interest and the performance of all of its obligations under the Note, the Loan Agreement and the other Loan Documents. "Additional Interest" shall mean all interest, fees (including the Origination Discount, the Spread Maintenance Premium, any servicing fee (including, without limitation, the Servicing Fees) under the Servicing Agreement, and any fees due and payable in connection with the extension of the term of the Loan pursuant to the Loan Agreement (including, without limitation, the Extension Fee)), costs and expenses (including reasonable attorneys' fees and expenses), all transfer taxes, and other charges and fees for which Borrower is obligated to Lender pursuant to this Security Instrument, the Loan Agreement and the other Loan Documents (as defined herein); and

WHEREAS, this Security Instrument is given pursuant to the Loan Agreement, and payment, fulfillment, and performance by Borrower of its obligations thereunder and under the other Loan Documents are secured hereby, and each and every term and provision of the Loan Agreement and the Note, including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Security Instrument (the Loan Agreement, the Note, this Security Instrument, and all other documents evidencing or securing the Debt or delivered in connection with the making of the Loan are hereinafter referred to collectively as the "Loan Documents").

NOW THEREFORE, in consideration of the making of the Loan by Lender to Borrower and the covenants, agreements, representations and warranties set forth in this Security

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Instrument, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender agree as follows:

## Article 1 - GRANTS OF SECURITY

Section 1.1 PROPERTY MORTGAGED. Borrower does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Lender, and grant a security interest to Lender in, the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the "**Property**");

(a) Land. The real property described in Exhibit A attached hereto and made a part hereof (the "**Land**");

(b) Additional Land. All additional lands, estates and development rights hereafter acquired by Borrower for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Security Instrument;

(c) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (collectively, the "**Improvements**");

(d) Appurtenances. All of Borrower's right and interest in and to (i) all air, light lateral support and development rights now or hereafter pertaining to or used in connection with the Land; (ii) all and singular, the tenements, hereditaments, rights of way, easements, appendages and appurtenances and property now or hereafter belonging or in any way appertaining to the Land; and (iii) all estate, right, title, claim or demand whatsoever, either at law or in equity, in possession or expectancy, of, in and to the Land (collectively, the "**Appurtenances**");

(e) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, excess or unused zoning floor area development rights, abatements, zoning floor area bonuses, zoning incentives or awards, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, appurtenant to, relating or pertaining to the Land and the Improvements or otherwise owned by Borrower and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(f) Equipment. All "equipment," as such term is defined in Article 9 of the Uniform Commercial Code (as hereinafter defined), now owned or hereafter acquired by Borrower, which is used at or in connection with the Improvements or the Land or is located thereon or therein (including, but not limited to, all machinery, equipment, furnishings, and electronic data-

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processing and other office equipment now owned or hereafter acquired by Borrower and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (collectively, the "**Equipment**"). Notwithstanding the foregoing, Equipment shall not include any property belonging to tenants under leases except to the extent that Borrower shall have any right or interest therein;

(g) **Fixtures.** All Equipment now owned, or the ownership of which is hereafter acquired, by Borrower which is so related to the Land and Improvements forming part of the Property that it is deemed fixtures or real property under the law of the particular state in which the Equipment is located, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Land and Improvements, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including, but not limited to, engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, plumbing, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Borrower's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the "**Fixtures**"). Notwithstanding the foregoing, "Fixtures" shall not include any property which tenants are entitled to remove pursuant to leases except to the extent that Borrower shall have any right or interest (reversionary or otherwise) therein;

(h) **Personal Property.** All furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, general intangibles, contract rights, accounts, accounts receivable, franchises, licenses, certificates and permits, and all other personal property of any kind or character whatsoever (as defined in and subject to the provisions of the Uniform Commercial Code as hereinafter defined), other than Fixtures, which are now or hereafter owned by Borrower and which are located within or about the Land and the Improvements, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the "**Personal Property**"), and the right, title and interest of Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state, states, commonwealth or commonwealths where any of the Property is located (the "**Uniform Commercial Code**"), superior in lien to the lien of this Security Instrument and all proceeds and products of the above;

(i) **Leases and Rents.** All leases, subleases, subsubleases, lettings, licenses, concessions or other agreements (whether written or oral) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every modification, amendment or other agreement relating to such leases,

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subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into, whether before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "**Bankruptcy Code**") (collectively, the "**Leases**") and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, cash, letters of credit or securities deposited thereunder (to the extent permitted by applicable Legal Requirements) to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower or its agents or employees from any and all sources arising from or attributable to the Property, including, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Borrower or Manager and proceeds, if any, from business interruption or other loss of income insurance whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (collectively, the "**Rents**") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(j) Condemnation Awards. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including but not limited to any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(k) Insurance Proceeds. All proceeds in respect of the Property under any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance policies, judgments, or settlements made in lieu thereof, for damage to the Property;

(l) Tax Certiorari. All refunds, rebates or credits in connection with reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

(m) Rights. The right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Lender in the Property;

(n) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into by or on behalf of Borrower, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any

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Improvements or respecting any business or activity conducted by Borrower on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right, upon the occurrence and during an Event of Default, to receive and collect any sums payable to Borrower thereunder;

(o) Trademarks. All tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(p) Accounts. All reserves, escrows and deposit accounts maintained by Borrower with respect to the Property, including, without limitation, all accounts established or maintained pursuant to the Cash Management Agreement; together with all deposits or wire transfers made to such accounts and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof;

(q) Interest Rate Protection Agreement. The Interest Rate Protection Agreement, including, but not limited to, all "accounts", "chattel paper", "general intangibles" and "investment property" (as such terms are defined in the Uniform Commercial Code as from time to time in effect) constituting or relating to the foregoing; and all products and proceeds of any of the foregoing;

(r) Uniform Commercial Code Property. All documents, instruments, chattel paper and intangibles, as the foregoing terms are defined in the Uniform Commercial Code, and general intangibles relating to the Property;

(s) Minerals; Vegetation. All minerals, crops, timber, trees, shrubs, flowers and landscaping features now or hereafter located on, under or above the Land;

(t) Proceeds. All proceeds of any of the foregoing, including, without limitation, proceeds of insurance and condemnation awards, whether cash, liquidation or other claims or otherwise; and

(u) Other Rights. Any and all other rights of Borrower in and to the items set forth in Subsections (a) through (t) above.

AND without limiting any of the other provisions of this Security Instrument, to the extent permitted by applicable Legal Requirements, Borrower expressly grants to Lender, as secured party, a security interest in the portion of the Property which is or may be subject to the provisions of the Uniform Commercial Code which are applicable to secured transactions; it being understood and agreed that the Improvements and Fixtures are part and parcel of the Land (the Land, the Improvements and the Fixtures collectively referred to as the "**Real Property**") appropriated to the use thereof and, whether affixed or annexed to the Real Property or not, shall for the purposes of this Security Instrument be deemed conclusively to be real estate and mortgaged hereby.

Section 1.2 ASSIGNMENT OF RENTS. Borrower hereby absolutely and unconditionally assigns to Lender all of Borrower's right, title and interest in and to all current and future Leases

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and Rents; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of the Loan Agreement, the Assignment of Leases and Section 7.1(h) of this Security Instrument, Lender grants to Borrower a revocable license (the "License") to collect, receive, use and enjoy the Rents and to exercise the rights and perform the obligations of the landlord and enforce the obligations of the tenants under the Leases. Borrower shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums.

**Section 1.3 SECURITY AGREEMENT.** This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Lender, as security for the Obligations (hereinafter defined), a security interest in the Fixtures, the Equipment, the Personal Property and other property constituting the Property to the full extent that the Fixtures, the Equipment, the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the "Collateral"). If an Event of Default shall occur and be continuing, Lender, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Lender after the occurrence and during the continuance of an Event of Default, Borrower shall, at its expense, assemble the Collateral and make it available to Lender at a convenient place (at the Land if tangible property) reasonably acceptable to Lender. Borrower shall pay to Lender on demand any and all expenses, including reasonable out-of-pocket legal expenses and attorneys' fees, incurred or paid by Lender in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or other intended action by Lender with respect to the Collateral sent to Borrower in accordance with the provisions hereof at least ten (10) business days prior to such action, shall, except as otherwise provided by applicable Legal Requirements, constitute reasonable notice to Borrower. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable Legal Requirements, be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper. The principal place of business of Borrower (Debtor) is as set forth on page one hereof and the address of Lender (Secured Party) is as set forth on page one hereof.

**Section 1.4 FIXTURE FILING.** Certain of the Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land, described or referred to in this Security Instrument, and this Security Instrument, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement naming Borrower as Debtor and Lender as Secured Party filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures. As to all of the above described Property which is or which hereafter becomes a "fixture" under applicable Legal Requirements, this Security



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Instrument constitutes a fixture filing under the Uniform Commercial Code. This Security Instrument creates a security interest in the Collateral, and, to the extent the Collateral is not real property, this Security Instrument constitutes a security agreement from Borrower to Lender under the Uniform Commercial Code.

Name of Debtor: One South Halsted, LLC  
 Debtor's Address: 5005 Touhy Avenue, Suite 200, Skokie, Illinois 60077  
 Debtor's Jurisdiction of Organization: Delaware  
 Debtor's Taxpayer I.D. No.: 81-2856192

Name of Secured Party: KREF CAPITAL TRS LLC  
 Secured Party's Address: 9 West 57<sup>th</sup> Street, New York, New York 10019  
 Collateral Covered by Financing Statement: As described in Section 1.3  
 Place of Filing: To be filed in the Real Property Records of Cook County  
 Description of Real Property to which Collateral is Related: See attached Exhibit A  
 Owner of Record of the Real Property is: Debtor

Section 1.5 PLEDGES OF MONIES HELD. Borrower hereby pledges to Lender any and all monies now or hereafter held by Lender or on behalf of Lender in connection with the Loan, including, without limitation, any sums deposited in the Accounts (as defined in the Cash Management Agreement) and Net Proceeds, as additional security for the Obligations until expended or applied as provided in this Security Instrument, the Cash Management Agreement or the Loan Agreement.

## CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Lender and its successors and assigns, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall pay to Lender the Debt at the time and in the manner provided in the Note, the Loan Agreement and this Security Instrument, shall perform the Other Obligations as set forth in this Security Instrument and shall abide by and comply with the covenants and conditions set forth herein and in the Note, the Loan Agreement and the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void and Lender shall, at Borrower's sole cost and expense, execute such instruments and documents as may be reasonably requested by Borrower to evidence such termination and the release of the lien hereof; provided, however, that Borrower's obligation to indemnify and hold harmless Lender pursuant to the provisions hereof shall survive any such payment or release.

## Article 2 - DEBT AND OBLIGATIONS SECURED

Section 2.1 DEBT. This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the Debt which by its definition (as set forth in the Loan Agreement) includes, but is not limited to, the obligations of Borrower to pay to Lender the principal and interest owing pursuant to the terms and conditions of the Note.

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Section 2.2 OTHER OBLIGATIONS. This Security Instrument and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the following (the "**Other Obligations**"):

- (a) the performance of all other obligations of Borrower contained herein;
- (b) the performance of each obligation of Borrower contained in the Loan Agreement and any other Loan Document; and
- (c) the performance of each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, the Loan Agreement or any other Loan Document.

Section 2.3 DEBT AND OTHER OBLIGATIONS. Borrower's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively herein as the "**Obligations**."

## Article 3 - BORROWER COVENANTS

Borrower covenants and agrees that:

Section 3.1 PAYMENT OF DEBT. Borrower will pay the Debt at the time and in the manner provided in the Loan Agreement, the Note and this Security Instrument.

Section 3.2 INCORPORATION BY REFERENCE. All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Note and (c) all and any of the other Loan Documents, are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

Section 3.3 INSURANCE. Borrower shall obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Borrower and the Property as required pursuant to the Loan Agreement.

Section 3.4 MAINTENANCE OF PROPERTY. Borrower shall cause the Property to be maintained in accordance with the terms and conditions of Sections 4.1.17, 5.2 and 5.3 of the Loan Agreement.

Section 3.5 WASTE. Borrower shall not commit or suffer any physical waste of the Property that may in any way materially impair the value of the Property or the security of this Security Instrument. Borrower will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

Section 3.6 PAYMENT FOR LABOR AND MATERIALS.

(a) Subject in all respects to Borrower's contest rights in accordance with the terms and conditions of Section 4.2.2 of the Loan Agreement, Borrower (i) will pay when due all bills

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and costs for labor, materials, and specifically fabricated materials (“Labor and Material Costs”) incurred in connection with the Property, (ii) will not permit to exist beyond the due date thereof in respect of the Property or any part thereof any Lien or security interest, even though inferior to the liens and the security interests hereof, and (iii) will in any event not permit to be created or exist in respect of the Property or any part thereof any other or additional Lien or security interest other than the liens or security interests hereof except for the Permitted Encumbrances.

(b) Borrower, at its own expense, may contest by appropriate legal proceeding, and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Labor and Material Costs or any lien, in accordance with the terms and provisions of Section 4.2.2 of the Loan Agreement.

Section 3.7 INTENTIONALLY OMITTED.

Section 3.8 PERFORMANCE OF OTHER AGREEMENTS. Borrower shall observe and perform each and every term, covenant and provision to be observed or performed by Borrower pursuant to the Loan Agreement, any other Loan Document and, in all material respects, any other agreement or recorded instrument affecting or pertaining to the Property and any amendments, modifications or changes thereto.

Section 3.9 CHANGE OF NAME, IDENTITY OR STRUCTURE. Borrower shall not change Borrower’s name, identity (including its trade name or names) or, if not an individual, Borrower’s corporate, partnership or other structure, except as may otherwise be permitted under the Loan Agreement. Borrower shall execute and deliver to Lender, prior to or contemporaneously with the effective date of any change referenced above, any financing statement or financing statement change required by Lender to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Lender, Borrower shall execute a certificate in form satisfactory to Lender listing the trade names under which Borrower intends to operate the Property, and representing and warranting that Borrower does business under no other trade name with respect to the Property.

## Article 4 - OBLIGATIONS AND RELIANCES

Section 4.1 RELATIONSHIP OF BORROWER AND LENDER. The relationship between Borrower and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Borrower, and no term or condition of any of the Loan Agreement, the Note, this Security Instrument and the other Loan Documents shall be construed so as to deem the relationship between Borrower and Lender to be other than that of debtor and creditor.

Section 4.2 NO RELIANCE ON LENDER. Borrower is not relying on Lender’s expertise, business acumen or advice in connection with the Property.

Section 4.3 NO LENDER OBLIGATIONS.

(a) Notwithstanding the provisions of Subsections 1.1(i) or Section 1.2, Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with

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respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to this Security Instrument, the Loan Agreement, the Note or the other Loan Documents, including, without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Lender.

Section 4.4 RELIANCE. Borrower recognizes and acknowledges that in accepting the Loan Agreement, the Note, this Security Instrument and the other Loan Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Article III of the Loan Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; that such reliance existed on the part of Lender prior to the date hereof, that the warranties and representations are a material inducement to Lender in making the Loan; and that Lender would not be willing to make the Loan and accept this Security Instrument in the absence of the warranties and representations as set forth in Article III of the Loan Agreement.

## Article 5 - FURTHER ASSURANCES

Section 5.1 RECORDING OF SECURITY INSTRUMENT, ETC. Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the other Loan Documents creating a Lien or security interest or evidencing the Lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the Lien or security interest hereof upon, and the interest of Lender in, the Property. Borrower will pay all taxes, filing, registration or recording fees, and all actual out-of-pocket expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument, the other Loan Documents, any note, deed of trust or mortgage supplemental hereto, any other security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any deed of trust or mortgage supplemental hereto, any other security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

Section 5.2 FURTHER ACTS, ETC. Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted

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and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Legal Requirements. Borrower hereby authorizes Lender to file one or more financing statements (including, without limitation, initial financing statements and amendments thereto and continuation statements) to evidence more effectively the security interest of Lender in the Property. Borrower also ratifies its authorization for Lender to have filed any like initial financing statements, amendments thereto and continuation statements, if filed prior to the date of this Security Instrument. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including without limitation such rights and remedies available to Lender pursuant to this Section 5.2; provided, that Lender will not exercise such power of attorney until the occurrence (and only during the continuance) of an Event of Default.

## Section 5.3 CHANGES IN TAX, DEBT, CREDIT AND DOCUMENTARY STAMP LAWS.

(a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Borrower will pay the tax, with interest and penalties thereon, if any, within ten (10) Business Days of written demand therefor. If Lender is advised by counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury then Lender shall have the option by written notice of not less than one hundred twenty (120) days to declare the Debt immediately due and payable without prepayment penalty or premium.

(b) Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Property Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, then Lender shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable without prepayment penalty or premium.

(c) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note, this Security Instrument, or any of the other Loan Documents or shall impose any other tax (but excluding any income, franchise or other similar taxes) or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.

Section 5.4 SPLITTING OF SECURITY INSTRUMENT. Subject to the terms of Article IX of the Loan Agreement, this Security Instrument and the Note may, at any time until the same shall be fully paid and satisfied, at the sole election of Lender, be split or divided into two or more notes and two or more security instruments, each of which shall cover all or a portion of the Property to be more particularly described therein. To that end, Borrower, upon written request of Lender, shall execute, acknowledge and deliver to Lender and/or its designee or

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designees substitute notes and security instruments and such other documents and instruments as may be required by Lender, in each case subject to the terms of Article IX of the Loan Agreement.

Section 5.5 REPLACEMENT DOCUMENTS. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other Loan Document, Borrower will issue, in lieu thereof, a replacement Note or other Loan Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Document in the same principal amount thereof and otherwise identical to the original Note or other Loan Document, except as may be required to reflect that such document is a replacement.

Section 5.6 NO OFFSETS OR COUNTERCLAIMS. Borrower represents and warrants as of the date hereof that there are no offsets, counterclaims or defenses against the Debt, this Security Instrument or the Note, that Borrower has the requisite power, authority and legal right to execute this Security Instrument and to keep and observe all of the terms and provisions of this Security Instrument on Borrower's part to be observed or performed and that the Note and this Security Instrument constitute valid and binding obligations of Borrower.

## Article 6 - DUE ON SALE/ENCUMBRANCE

Section 6.1 LENDER RELIANCE. Borrower acknowledges that Lender has examined and relied on the experience of Borrower and its general partners, members, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the Other Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Debt or the performance of the Other Obligations, Lender can recover the Debt by a sale of the Property.

Section 6.2 NO TRANSFER. Borrower shall not Transfer the Property or any part thereof or any interest therein other than as expressly permitted pursuant to the terms of the Loan Agreement.

## Article 7 - RIGHTS AND REMEDIES UPON DEFAULT

Section 7.1 REMEDIES. Upon the occurrence and during the continuance of any Event of Default, Borrower agrees that Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

- (a) declare the entire unpaid Debt to be immediately due and payable;

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(b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;

(c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable Legal Requirements, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority;

(d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof, all as may be required or permitted by law; and, without limiting the foregoing:

- i) In connection with any sale or sales hereunder, Lender shall be entitled to elect to treat any of the Property which consists of (x) a right in action, or (y) property that can be severed from the Real Property covered hereby, or (z) any improvements (without causing structural damage thereto), as if the same were personal property, and dispose of the same in accordance with applicable Legal Requirements, separate and apart from the sale of the Real Property. Where the Property consists of the Real Property, the Personal Property, the Equipment or the Fixtures, whether or not such Personal Property or Equipment is located on or within the Real Property, Lender shall be entitled to elect to exercise its rights and remedies against any or all of the Real Property, the Personal Property, the Equipment and the Fixtures in such order and manner as is now or hereafter permitted by applicable Legal Requirements;
- ii) Lender shall be entitled to elect to proceed against any or all of the Real Property, Personal Property, Equipment and Fixtures in any manner permitted under applicable Legal Requirements; and if Lender so elects pursuant to applicable Legal Requirements, the power of sale herein granted shall, to the fullest extent permitted by applicable Legal Requirements, be exercisable with respect to all or any of the Real Property, Personal Property, Equipment and Fixtures covered hereby, as designated by Lender and Lender is hereby authorized and empowered to conduct any such sale of any Real Property, Personal Property, Equipment and Fixtures in accordance with the procedures applicable to Real Property;
- iii) Should Lender elect to sell any portion of the Property which is Real Property or which is Personal Property, Equipment or Fixtures that the Lender has elected under applicable Legal Requirements to sell together with Real Property in accordance with the laws governing a sale of the Real Property, Lender shall give such notice of the occurrence of an Event of Default, if any, and its election to sell such Property, each as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be

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required by law, subject to the terms hereof and of the other Loan Documents, and without the necessity of any demand on Borrower or Lender at the time and place specified in the notice of sale, shall sell such Real Property or part thereof at public auction to the highest bidder for cash in lawful money of the United States. Lender may from time to time postpone any sale hereunder by public announcement thereof at the time and place noticed for any such sale; and

- iv) If the Property consists of several lots, parcels or items of property, Lender shall, subject to applicable Legal Requirements, (A) designate the order in which such lots, parcels or items shall be offered for sale or sold, or (B) elect to sell such lots, parcels or items through a single sale, or through two or more successive sales, or in any other manner Lender designates in Lender's sole discretion. Any Person, including Borrower or Lender, may purchase at any sale hereunder. Should Lender desire that more than one sale or other disposition of the Property be conducted, Lender shall, subject to applicable Legal Requirements, cause such sales or dispositions to be conducted simultaneously, or successively, on the same day, or at such different days or times and in such order as Lender may designate, and no such sale shall terminate or otherwise affect the lien of this Security Instrument on any part of the Property not sold until all the Obligations have been satisfied in full. In the event Lender elects to dispose of the Property through more than one sale, except as otherwise provided by applicable Legal Requirements, Borrower agrees to pay the costs and expenses of each such sale and of any judicial proceedings wherein such sale may be made;
- (e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, the Loan Agreement or in the other Loan Documents;
- (f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents;
- (g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower, any guarantor, indemnitor with respect to the Loan or of any Person liable for the payment of the Debt;
- (h) the License granted to Borrower under Section 1.2 hereof shall automatically be revoked, and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect



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to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (vi) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees with respect to the Loan and/or the Property. Upon Borrower's written request, Lender will confirm whether the License granted to Borrower under Section 1.2 hereof remains in effect or if it has been revoked;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Fixtures, the Equipment and the Personal Property, or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Fixtures, the Equipment and the Personal Property, and (ii) request Borrower at its expense to assemble the Fixtures, the Equipment and the Personal Property and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Fixtures, the Equipment and/or the Personal Property sent to Borrower in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Borrower;

(j) apply any sums then deposited or held in escrow or otherwise by or on behalf of Lender in accordance with the terms of the Loan Agreement, this Security Instrument or any other Loan Document to the payment of the following items in any order in its sole discretion:

- (i) Property Taxes and Other Charges;
- (ii) Insurance Premiums;
- (iii) Interest on the unpaid principal balance of the Note;
- (iv) Amortization of the unpaid principal balance of the Note;
- (v) All other sums payable pursuant to the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, including without limitation the Spread Maintenance Premium and advances made by Lender pursuant to the terms of this Security Instrument;

(k) pursue such other remedies as Lender may have under applicable Legal Requirements; or

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(l) apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Lender shall deem to be appropriate in its discretion.

In the event of a sale, by foreclosure, power of sale or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority.

Section 7.2 APPLICATION OF PROCEEDS. The purchase money, proceeds and avails of any disposition of the Property, and or any part thereof, or any other sums collected by Lender pursuant to the Note, this Security Instrument or the other Loan Documents, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper, to the extent consistent with Legal Requirements.

Section 7.3 RIGHT TO CURE DEFAULTS. Upon the occurrence and during the continuance of any Event of Default or if Borrower fails to make any payment or to do any act as herein provided (beyond applicable notice and cure periods), Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make or do the same in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the cost and expense thereof (including reasonable out-of-pocket attorneys' fees to the extent permitted by law), with interest as provided in this Section 7.3, shall constitute a portion of the Debt and shall be due and payable to Lender within ten (10) Business Days following receipt of written demand therefor. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period beginning on the first day after notice from Lender that such cost or expense was incurred and continuing until the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable within ten (10) Business Days following receipt of written demand by Lender therefor.

Section 7.4 ACTIONS AND PROCEEDINGS. Upon the occurrence and during the continuance of an Event of Default, Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its discretion, decides should be brought to protect its interest in the Property.

Section 7.5 RECOVERY OF SUMS REQUIRED TO BE PAID. Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

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Section 7.6 EXAMINATION OF BOOKS AND RECORDS. Upon the occurrence and during the continuance of an Event of Default, at reasonable times and upon reasonable notice, Lender, its agents, accountants and attorneys shall have the right to examine the records, books, management and other papers of Borrower which reflect upon its financial condition, at the Property or at any office regularly maintained by Borrower where the books and records are located. Lender and its agents shall have the right to make copies and extracts from the foregoing records and other papers.

Section 7.7 OTHER RIGHTS, ETC.

(a) The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Borrower or any guarantor or indemnitor with respect to the Loan to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Borrower, and Lender shall have no liability whatsoever for decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Lender shall not be deemed an election of judicial relief if any such possession is requested or obtained with respect to any Property or collateral not in Lender's possession.

(c) Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Security Instrument. The rights of Lender under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

Section 7.8 RIGHT TO RELEASE ANY PORTION OF THE PROPERTY. Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

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## Section 7.9 INTENTIONALLY OMITTED.

Section 7.10 RECOURSE AND CHOICE OF REMEDIES. Notwithstanding any other provision of this Security Instrument or the Loan Agreement, subject to Section 11.22 of the Loan Agreement, Lender and other Indemnified Parties (as hereinafter defined) are entitled to enforce the obligations of Borrower, any guarantor and indemnitor contained in Section 11.22 of the Loan Agreement without first resorting to or exhausting any security or collateral and without first having recourse to the Note or any of the Property, through foreclosure or acceptance of a deed in lieu of foreclosure or otherwise, and in the event Lender commences a foreclosure action against the Property, Lender is entitled to pursue a deficiency judgment with respect to such obligations against Borrower. Notwithstanding the foregoing, nothing herein shall inhibit or prevent Lender from foreclosing or exercising any other rights and remedies pursuant to the Loan Agreement, the Note, this Security Instrument and the other Loan Documents, whether simultaneously with foreclosure proceedings or in any other sequence. A separate action or actions may be brought and prosecuted against Borrower pursuant to Section 11.22 of the Loan Agreement, whether or not action is brought against any other Person or whether or not any other Person is joined in the action or actions.

Section 7.11 RIGHT OF ENTRY. Subject to and in accordance with the terms of Section 4.1.4 of the Loan Agreement, Lender and its agents shall have the right to enter and inspect the Property.

## Section 7.12 BANKRUPTCY.

(a) Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right, and Borrower hereby assigns to Lender its right and irrevocably constitutes and appoints Lender its attorney-in-fact, coupled with an interest, to proceed in its own name or in the name of Borrower in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Borrower, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code.

(b) If there shall be filed by or against Borrower a petition under the Bankruptcy Code and Borrower, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Borrower shall give Lender not less than ten (10) days' prior notice of the date on which Borrower shall apply to the bankruptcy court for authority to reject the Lease. Lender shall have the right, but not the obligation, to serve upon Borrower within such ten (10) day period a notice stating that (i) Lender demands that Borrower assume and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code and (ii) Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Lender serves upon Borrower the notice described in the preceding sentence, Borrower shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Lender of the covenant provided for in clause (ii) of the preceding sentence.

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## Article 8 - INTENTIONALLY OMITTED

## Article 9 - INDEMNIFICATION

The provisions of Section 11.13 of the Loan Agreement are hereby incorporated by reference into this Security Instrument to the same extent and with the same force as if fully set forth herein.

## Article 10 - WAIVERS

Section 10.1 WAIVER OF COUNTERCLAIM. To the extent permitted by applicable Legal Requirements, Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with this Security Instrument, the Loan Agreement, the Note, any of the other Loan Documents, or the Obligations; provided that nothing contained herein shall be deemed to prohibit Borrower from raising, in good faith, any defense, setoff, counterclaim or cross claim of any nature whatsoever against Lender in a separate action or proceeding.

Section 10.2 MARSHALLING AND OTHER MATTERS. To the extent permitted by applicable Legal Requirements, Borrower hereby waives the benefit of all appraisement, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Borrower, and on behalf of each and every Person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument.

Section 10.3 WAIVER OF NOTICE. To the extent permitted by applicable Legal Requirements, Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Security Instrument or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Lender is required by applicable Legal Requirements to give notice, and Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Security Instrument, the Loan Agreement or any of the other Loan Documents does not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 10.4 WAIVER OF STATUTE OF LIMITATIONS. To the extent permitted by applicable Legal Requirements, Borrower hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Debt or performance of its Other Obligations.

Section 10.5 WAIVER OF TRIAL BY JURY. EACH OF BORROWER AND LENDER, BY ITS ACCEPTANCE OF THIS SECURITY INSTRUMENT, HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND FOREVER WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LEGAL REQUIREMENTS, ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST, WITH REGARD TO THE

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LOAN AGREEMENT, THE NOTE, THIS SECURITY INSTRUMENT OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION HERewith AND/OR THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER AND LENDER AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. BORROWER AND LENDER ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY EACH PARTY.

## Article 11 - EXCULPATION

The provisions of Section 11.22 of the Loan Agreement are hereby incorporated by reference into this Security Instrument to the same extent and with the same force as if fully set forth herein.

## Article 12 - NOTICES

All notices or other written communications hereunder shall be delivered in accordance with Section 11.6 of the Loan Agreement.

## Article 13 - APPLICABLE LAW

Section 13.1 **GOVERNING LAW.** THIS SECURITY INSTRUMENT SHALL IN ALL RESPECTS BE GOVERNED BY, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

Section 13.2 **USURY LAWS.** Notwithstanding anything to the contrary contained herein, (a) all agreements and communications between Borrower and Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest, the interest contracted for, charged or received by Lender shall never exceed the Maximum Legal Rate, (b) in calculating whether any interest exceeds the Maximum Legal Rate, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Borrower to Lender, and (c) if through any contingency or event, Lender receives or is deemed to receive interest in excess of the Maximum Legal Rate, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Borrower to Lender, or if there is no such indebtedness, shall immediately be returned to Borrower.

Section 13.3 **PROVISIONS SUBJECT TO APPLICABLE LEGAL REQUIREMENTS.** All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable Legal Requirements. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

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## Article 14 - DEFINITIONS

All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "**Borrower**" shall mean "Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "**Lender**" shall mean "Lender and any subsequent holder of the Note," the word "**Note**" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument," the word "**Property**" shall include any portion of the Property and any interest therein, and the phrases "**attorneys' fees**", "**legal fees**" and "**counsel fees**" shall include any and all attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

## Article 15 - MISCELLANEOUS PROVISIONS

Section 15.1 NO ORAL CHANGE. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by Lender and Borrower.

Section 15.2 SUCCESSORS AND ASSIGNS. This Security Instrument shall be binding upon and shall inure to the benefit of Borrower and Lender and their respective successors and assigns, as set forth in the Loan Agreement. Lender shall have the right to assign or transfer its rights under this Security Instrument in connection with any assignment of the Loan and the Loan Documents pursuant to and in accordance with the terms of the Loan Agreement. Any such permitted assignee or transferee of Lender shall be entitled to all the benefits afforded to Lender under this Security Instrument. Borrower shall not have the right to assign or transfer its rights or obligations under this Security Instrument without the prior written consent of Lender, as provided in the Loan Agreement, and any attempted assignment without such consent shall be null and void.

Section 15.3 INAPPLICABLE PROVISIONS. If any term, covenant or condition of the Loan Agreement, the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Loan Agreement, the Note and this Security Instrument shall be construed without such provision.

Section 15.4 HEADINGS, ETC. The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 15.5 NUMBER AND GENDER. 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.

Section 15.6 SUBROGATION. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to

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the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of Borrower's obligations hereunder, under the Loan Agreement, the Note and the other Loan Documents and the performance and discharge of the Other Obligations.

Section 15.7 ENTIRE AGREEMENT. The Note, the Loan Agreement, this Security Instrument and the other Loan Documents constitute the entire understanding and agreement between Borrower and Lender with respect to the transactions arising in connection with the Debt and supersede all prior written or oral understandings and agreements between Borrower and Lender with respect thereto. Borrower hereby acknowledges that, except as incorporated in writing in the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, there are not, and were not, and no Persons are or were authorized by Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Note, the Loan Agreement, this Security Instrument and the other Loan Documents.

Section 15.8 LIMITATION ON LENDER'S RESPONSIBILITY. No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession," unless Lender actually elects in writing to become as a "mortgagee in possession." Notwithstanding anything to the contrary contained herein, in no event shall Borrower be responsible for (i) any Losses caused by the gross negligence or willful misconduct of Lender or any of its employees, agents, contractors or subcontractors, in each case acting at the direction of Lender or (ii) acts or omissions of Lender or any other Person (other than Borrower, Guarantor or any of their respective Affiliates) with respect to the Property following the completion of a foreclosure (or acceptance of a deed-in-lieu thereof) of this Security Instrument.

Section 15.9 INTENTIONALLY OMITTED.

Section 15.10 COUNTERPARTS. This Security Instrument may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Security Instrument may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which shall constitute a single agreement. The failure of any party hereto to execute this Security Instrument, or any counterpart thereof, shall not relieve the other signatories from their obligations hereunder.



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## Article 16 - STATE-SPECIFIC PROVISIONS

Section 16.1 PRINCIPLES OF CONSTRUCTION. In the event of any inconsistencies between the terms and conditions of this Article 16 and the other terms and conditions of this Security Instrument, the terms and conditions of this Article 16 shall control and be binding.

Section 16.2 MAXIMUM AMOUNT SECURED. Borrower acknowledges and agrees that this Security Instrument secures the entire amount of the Loan and interest accrued thereon, regardless of whether any or all of the loan proceeds are disbursed on or after the date hereof, and regardless of whether the Debt is repaid in whole or part or Advances are made at a later date, any and all litigation and other expenses and any other amounts as provided herein or in any of the other Loan Documents, including, without limitation, the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or paid or incurred by Lender in connection with the Loan, all in accordance with the Loan Agreement and other Loan Documents. Under no circumstances, however, shall the total Debt secured hereby exceed two hundred percent (200%) of the aggregate, original principal amount of the Loan. It is agreed that any Advances made by Lender for the benefit of Borrower from time to time under this Security Instrument or the other Loan Documents and whether or not such Advances are obligatory or are made at the option of Lender, and all interest accruing thereon, shall be equally secured by this Security Instrument and shall have the same priority as all amounts, if any, advanced as of the date hereof and shall be subject to all of the terms and provisions of this Security Instrument. This Security Instrument shall be valid and have priority to the extent of the full amount of the Debt secured hereby over all subsequent Liens and encumbrances, including statutory Liens, excepting solely taxes and assessments levied on the Property given priority by law.

Section 16.3 IN REM PROCEEDINGS. Supplementing Section 7.1 hereof, mortgage foreclosures and other *In Rem* proceedings against Borrower may be brought in Cook County, Illinois or any federal court of competent jurisdiction in Illinois

Section 16.4 ILLINOIS MORTGAGE FORECLOSURE. Borrower hereby waives, to the extent now or hereafter permitted by law, all rights of redemption and reinstatement of this Security Instrument pursuant to the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et seq. ("IMFL"), including without limitation Section 15-1601(b) of IMFL, on behalf of itself and all those taking by, through or under Borrower. Borrower acknowledges that the Property does not constitute "agricultural real estate," as such term is defined in Section 15-1201 of IMFL or "residential real estate," as such term is defined in Section 15-1219 of IMFL. In the event that any provision of this Security Instrument shall be inconsistent with any provision of IMFL, the provisions of IMFL shall take precedence over the provisions of this Security Instrument, but shall not invalidate or render unenforceable any other provision of this Security Instrument that can be construed in a manner consistent with IMFL. If any provision of this Security Instrument shall grant to Lender any rights or remedies upon any Event of Default by Borrower which are more limited than the rights that would otherwise be vested in Lender under IMFL in the absence of said provision, Lender shall be vested with the rights granted in IMFL to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Lender to the extent reimbursable under IMFL, whether incurred before or after any decree or

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judgment of foreclosure, and whether or not enumerated in this Security Instrument, shall be added to the Loan secured by this Security Instrument or by the judgment of foreclosure.

Section 16.5 INTENTIONALLY OMITTED.

Section 16.6 FINANCING STATEMENT.

(a) This Security Instrument also constitutes a financing statement for the purpose of Section 9-502 of the Illinois Uniform Commercial Code, 810 ILCS 5/9-502, and shall constitute a "fixture filing" under such statute and shall be filed in the real estate records of Cook County, Illinois. The addresses of Borrower (Debtor) and Lender (Secured Party) are set forth below. This Security Instrument is to be filed for recording with the Recorder of Deeds of the county or the counties where the Property is located. For this purpose, the following information is set forth.

Name of Debtor:	One South Halsted, LLC
Debtor's Mailing Address:	5005 Touhy Avenue, Suite 200 Skokie, Illinois 60077 Attention: David Friedman and Linda Nagle
Address of Property:	727 W Madison Street Chicago, Illinois 60661
Name of Secured Party:	KREF Capital TRS LLC
Address of Secured Party:	9 West 57th Street, Suite 4200 New York, New York 10019
Organizational ID:	6061720

(b) Some of the above goods are or are to become fixtures on the Property described herein. Borrower is the record owner of the Property described herein upon which the foregoing fixtures and other items and types of property are located.

(c) Debtor agrees that:

(i) Where Property is in possession of a third party, Borrower will join with Lender in notifying the third party of Lender's interest and obtaining an acknowledgment from the third party that it is holding the Property for the benefit of Lender;

(ii) Borrower will cooperate with Lender in obtaining control with respect to Property consisting of: deposit accounts, investment property, letter of credit rights and electronic chattel paper; and

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(iii) Until the Debt is paid in full, Borrower will not change the state where it is located or change its company name except in accordance with the Loan Agreement.

Section 16.7 BUSINESS LOAN. Borrower covenants and agrees that all of the proceeds of the Loan secured by this Security Instrument will be used solely for business purposes and in furtherance of the regular business affairs of Borrower, and the entire principal obligation secured hereby constitutes: (i) a “business loan,” as that term is used in, and for all purposes of, the Illinois Interest Act, 815 ILCS 205/0.01 et seq., including Section 4(1)(c) thereof; and (ii) a “loan secured by a mortgage on real estate” within the purview and operation of Section 205/4(1)(l) thereof.

Section 16.8 USURY. All agreements between Borrower and Lender (including, without limitation, those contained in this Security Instrument, the Note and any other Loan Documents) are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid to Lender exceed the highest lawful rate of interest permissible under the laws of the State of Illinois. If, from any circumstances whatsoever, fulfillment of any provision hereof or of the Note or any other documents securing the Loan, at the time performance of such provision shall be due, shall involve the payment of interest exceeding the highest rate of interest permitted by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the highest lawful rate of interest permissible under the laws of the State of Illinois; and if for any reason whatsoever, Lender shall ever receive as interest an amount which would be deemed unlawful, such interest shall be applied to the payment of the last maturing installment or installments of the Loan secured hereby (whether or not then due and payable) and not to the payment of interest.

Section 16.9 INSURANCE. Wherever provision is made in this Security Instrument or the Loan Agreement for insurance policies to bear mortgagee clauses or other loss payable clauses or endorsements in favor of Lender, or to confer authority upon Lender to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure all such rights and powers of Lender shall continue in Lender as judgment creditor or mortgagee until confirmation of sale. Pursuant to the terms of the Collateral Protection Act, 815 ILCS 180/1 et seq., Borrower is hereby notified that unless Borrower provides Lender with evidence of the insurance coverage required by the Loan Agreement, Lender may purchase insurance at Borrower’s expense to protect Lender’s interests in the Property, which insurance may, but need not, protect the interests of Borrower. The coverage purchased by Lender may not pay any claim made by Borrower or any claim made against Borrower in connection with the Property. Borrower may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Borrower has obtained the insurance as required hereunder. If Lender purchases insurance for the Property, Borrower will be responsible for the costs of such insurance, including interest and any other charges imposed in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Secured Obligations secured hereby. The costs of such insurance may be greater than the cost of insurance Borrower may be able to obtain for itself.

Section 16.10 PROTECTIVE ADVANCES.

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(a) All advances, disbursements and expenditures made by Lender before and during a foreclosure of this Security Instrument, and before and after judgment of foreclosure therein, and at any time prior to sale of the Property, and, where applicable, after sale of the Property, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Security Instrument or the Loan Agreement or by IMFL (collectively "**Protective Advances**") shall have the benefit of all applicable provisions of IMFL, including those provisions of IMFL hereinbelow referred to.

(i) all advances by Lender in accordance with the terms of this Security Instrument to: (1) preserve or maintain, repair, restore or rebuild the Improvements upon the Property; (2) preserve the lien of this Security Instrument or the priority thereof; or (3) enforce this Security Instrument, as referred to in Subsection (b)(5) of Section 15-1302 of IMFL;

(ii) payments by Lender of: (1) when due installments of principal, interest or other obligations in accordance with the terms of any prior lien or encumbrance; (2) when due installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Property or any part thereof; (3) other obligations authorized by Lender; or (4) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of IMFL;

(iii) advances by Lender in settlement or compromise of any claims asserted by claimants under any prior liens;

(iv) attorneys' fees and other costs incurred: (1) in connection with the foreclosure of this Security Instrument as referred to in Sections 15-1504(d)(2) and 15-1510 of IMFL; (2) in connection with any action, suit or proceeding brought by or against Lender for the enforcement of this Security Instrument or arising from the interest of Lender hereunder; or (3) in the preparation for the commencement or defense of any such foreclosure or other action related to this Security Instrument or the Property;

(v) Lender's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 15-1508 of IMFL;

(vi) expenses deductible from proceeds of sale as referred to in subsections (a) and (b) of Section 15-1512 of IMFL;

(vii) expenses incurred and expenditures made by Lender for any one or more of the following: (1) premiums for casualty and liability insurance paid by Lender whether or not Lender or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the

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limitation to maintaining of existing insurance in effect at the time any receiver or Lender takes possession of the Property imposed by Subsection (c)(1) of Section 15-1704 of IMFL; (2) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (3) payments required or deemed by Lender to be for the benefit of the Property or required to be made by the owner of the Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; (4) shared or common expense assessments payable to any association or corporation in which the owner of the Property is a member in any way affecting the Property; and (5) pursuant to any lease or other agreement for occupancy of the Improvements for amounts required to be paid by Borrower.

(b) All Protective Advances shall be additional Debt secured by this Security Instrument, and shall become immediately due and payable without notice and with interest thereon from the date of the advance thereof until paid at the rate due and payable after an Event of Default under the terms of the Note and the Loan Agreement.

(c) This Security Instrument shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Security Instrument is recorded pursuant to Subsection (b) of Section 15-1302 of IMFL.

(d) All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of IMFL, apply to and be included in:

(i) determination of the amount of Debt secured by this Security Instrument at any time;

(ii) the Debt found due and owing pursuant to this Security Instrument in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional Debt becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

(iii) if right of redemption has not been waived by Borrower in this Security Instrument, computation of amount required to redeem, pursuant to Subsections (d)(2) and (e) of Section 15-1603 of IMFL;

(iv) determination of the amount deductible from sale proceeds pursuant to Section 15-1512 of IMFL;

(v) application of income in the hands of any receiver or mortgagee in possession; and

(vi) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Section 15-1508 and Section 15-1511 of IMFL.

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(e) In addition to any provision of this Security Instrument authorizing Lender to take or be placed in possession of the Property, or for the appointment of a receiver, Lender shall have the right, in accordance with Sections 15-1701 and 15-1702 of IMFL, to be placed in possession of the Property or at its request to have a receiver appointed, and such receiver, or Lender, if and when placed in possession, shall have, in addition to any other powers provided in this Security Instrument, all powers, immunities, and duties as provided for in Sections 15-1701 and 15-1703 of IMFL.

Section 16.11 ADJUSTABLE INTEREST RATE. The Note which this Security Instrument secures is an adjustable note on which the interest rate may be adjusted from time to time in accordance with the terms and provisions set forth in the Note.

Section 16.12 WAIVER OF REDEMPTION APPRAISEMENT AND VALUATION. To the full extent Borrower may do so under applicable law, Borrower agrees that Borrower will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisement, valuation, stay, extension or redemption, and Borrower, for Borrower and Borrower's representatives, successors and assigns, and for any and all persons ever claiming any interest in the Property, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisement, stay of execution, notice of intention to mature or declare due the whole or any part of the obligations, notice of election to mature or declare due the whole or any part of the obligations and all rights to a marshaling of the assets of Borrower, including the Property, or to a sale in inverse order of alienation in the event of foreclosure of the liens and security interests hereby created. Borrower shall not have or assert any right under any statute or rule of law pertaining to the marshaling of assets, sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents or other matters whatever to defeat, reduce or affect the right of Lender under the terms of this Security Instrument to a sale of the Property for the collection of the Obligations without any prior or different resort for collection, or the right of Lender under the terms of this Security Instrument to the payment of such indebtedness out of the proceeds of sale of the Property in preference to every other claimant whatever. If any law referred to in this Section 16.12 and currently in force, of which Borrower or Borrower's representatives, successors and assigns and such other persons claiming any interest in the Property might take advantage despite this Section 16.12, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section 16.12.

Section 16.13 TRANSFER FEES.

(a) In the event of any sale or transfer of the Real Property, or any part thereof, including any sale or transfer by reason of foreclosure of this Security Instrument or any prior or subordinate mortgage or deed of trust or by deed in lieu of any such foreclosure, Borrower shall timely and duly complete, execute and deliver to Lender all forms and supporting documentation required by any taxing authority to estimate and fix any other taxes or fees payable by reason of such sale or transfer or recording of the deed evidencing such sale or transfer or otherwise (individually, a "*Transfer Fee*" and collectively, "*Transfer Fees*").

(b) Borrower shall pay all Transfer Fees that may hereafter become due and payable with respect to any sale or transfer of the Real Property described in this Section 15.10, and in

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default of such payment Lender may pay the same and the amount of such payment shall be added to the Obligations secured hereby and, unless incurred in connection with a foreclosure of this Security Instrument or deed in lieu of such foreclosure, shall be secured by this Security Instrument.

(c) Borrower hereby irrevocably constitutes and appoints Lender its lawful attorney-in-fact, coupled with an interest, to prepare and deliver any questionnaire, statement, affidavit or tax return in connection with any Transfer Fee applicable to any foreclosure or deed in lieu of foreclosure described in this Section 16.13, if Borrower shall, after receipt of a written request from Lender therefor, fail or refuse within ten (10) days after receipt of such request, to prepare and deliver the same. Lender is authorized to utilize the information furnished to it by Borrower and any other information that Lender reasonably believes to be correct in the preparation of any such questionnaire, statement, affidavit or tax return.

(d) In the event that Borrower fails or refuses to pay any Transfer Fees payable by Borrower with respect to a sale or transfer by reason of a foreclosure of this Security Instrument in accordance with this Section 16.13, the amount of such unpaid Transfer Fees and any interest or penalty applicable thereto may, at the sole option of Lender, be paid as an expense of the sale out of the proceeds of the foreclosure sale.

(e) The provisions of this Section 16.13 shall survive any transfer and the delivery of the deed affecting such transfer. Nothing in this Section 16.13 shall be deemed to grant to Borrower any greater rights to permit or suffer any Transfer than are expressly provided in the Loan Agreement or this Security Instrument nor to deprive Lender of any right to refuse to consent to any transaction referred to in this Section 16.13 which may be expressly provided in the Loan Agreement or this Security Instrument.

Section 16.14 Rights of Tenants. Lender shall have the right and option to commence a civil action to foreclose this Security Instrument and to obtain a decree of foreclosure and sale subject to the rights of any Tenant or Tenants of the Property having an interest in the Property prior to that of Lender. The failure to join any such Tenant or Tenants of the Property as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not be asserted by Borrower as a defense in any civil action instituted to collect the Debt, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Property, any statute or rule of law at any time existing to the contrary notwithstanding.

Section 16.15 Remedies Against Other Collateral. Borrower hereby acknowledges that certain Loan Documents other than this Security Instrument create liens on collateral located in counties and states other than the counties and state in which the Land is located. Borrower further acknowledges that this Security Agreement and the other Loan Documents are cross-defaulted and the Loan secured hereby is also secured by the other Loan Documents. Borrower agrees that Lender may proceed, at the same or at different times, to foreclose any or all liens against such collateral (or sell such collateral under power of sale) by any proceedings appropriate in the county and state where such collateral lies, and that no event of enforcement taking place in any county or state pursuant to any of the Loan Documents shall preclude or bar enforcement in the State of Illinois or any other county or state. Any foreclosure or other

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appropriate remedy brought in any county or state in which collateral is located may be brought and prosecuted as to any part of such collateral without regard to the fact that foreclosure proceedings or other appropriate remedies have or have not been instituted elsewhere on any other part of the collateral for the Loan.

[NO FURTHER TEXT ON THIS PAGE]

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IN WITNESS WHEREOF, THIS SECURITY INSTRUMENT has been executed by Borrower as of the day and year first above written.

**BORROWER:**

**ONE SOUTH HALSTED, LLC,**  
a Delaware limited liability company

By: 

Name: David M. Friedman  
Title: Authorized Signatory

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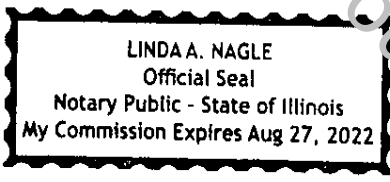
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## ACKNOWLEDGMENT

STATE OF Illinois :  
:SS  
COUNTY OF Cook

On the 4<sup>th</sup> day of June, 2019, before me, the undersigned, personally appeared DAVID M. FRIEDMAN, the AUTHORIZED SIGNATORY of One South Halsted, LLC, a Delaware limited liability company, personally known to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) and that by his/her/their signature(s) on the instrument, the individual(s), or their person upon behalf of which the individual(s) acted executed the instrument.

Linda A. Nagle  
Notary Public



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## EXHIBIT A

### LEGAL DESCRIPTION

#### PARCEL 1:

THAT PART OF THE SUBDIVISION OF BLOCK 1 OF SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 23, 1880 AS DOCUMENT NUMBER 294287 IN BOOK 15 OF PLATS PAGE 44 DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE NORTH LINE OF LOT 1 OF SAID SUBDIVISION, 1.78 FEET EAST OF THE NORTHWEST CORNER OF SAID LOT; THENCE WEST ALONG THE NORTH LINE OF LOTS 1 TO 9 IN SAID SUBDIVISION TO THE NORTHWEST CORNER OF SAID LOT 9; THENCE SOUTH ALONG THE WEST LINE AND SAID WEST LINE EXTENDED OF SAID LOT 9, AND ALONG THE WEST LINE OF LOTS 10 TO 13 IN SAID SUBDIVISION, 210.52 FEET TO THE SOUTHWEST CORNER OF SAID LOT 13; THENCE EAST ALONG THE SOUTH LINE AND SAID SOUTH LINE EXTENDED OF SAID LOT 13, A DISTANCE OF 200.12 FEET TO A POINT ON THE WEST LINE OF THE EAST 204.78 FEET OF LOT 21 IN THE SUBDIVISION OF BLOCK 1 AFORESAID; THENCE NORTH ALONG SAID WEST LINE OF THE EAST 204.78 FEET OF LOT 21 AFORESAID, A DISTANCE OF 2.33 FEET TO A POINT ON THE NORTH LINE THEREOF; THENCE WEST ALONG THE NORTH LINE OF SAID LOT 21, A DISTANCE OF 0.063 FEET TO A POINT ON THE SOUTHERLY EXTENSION OF THE WEST LINE OF LOT 1 AFORESAID; THENCE NORTH ALONG SAID EXTENDED LINE AND ALONG THE WEST LINE OF SAID LOT 1, A DISTANCE OF 128.195 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH 80 FEET OF SAID LOT 1; THENCE EAST ALONG SAID SOUTH LINE, 1.78 FEET; THENCE NORTH ALONG THE EAST LINE OF THE WEST 1.78 FEET OF SAID LOT 1, A DISTANCE OF 80.00 FEET TO THE PLACE OF BEGINNING.

ALL IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

EASEMENT APPURTENANT FOR THE BENEFIT OF PARCEL 1 CREATED PURSUANT TO PARAGRAPH 6 OF FIRST AMENDMENT TO SUBLEASE AND THIRD AMENDMENT TO GROUND LEASE, BIFURCATION AND CROSS EASEMENTS DATED JANUARY 20, 2015 AND RECORDED JANUARY 21, 2015 AS DOCUMENT 1502134099.

#### PARCEL 3:

EASEMENT APPURTENANT FOR THE BENEFIT OF PARCEL 1 CREATED PURSUANT TO EASEMENT AGREEMENT ENTERED INTO BY ONE SOUTH HALSTED, LLC AND MID CITY PLAZA OWNER, L.L.C. DATED JANUARY 9, 2017 AND RECORDED JANUARY 11, 2017 AS DOCUMENT 1701134063, AND AS AMENDED BY FIRST AMENDMENT TO EASEMENT AGREEMENT DATED JANUARY 23, 2017 AND RECORDED JANUARY 23, 2017 AS DOCUMENT 1702344047.

Property Address: 727 W. Madison St., Chicago, IL  
PIN: 17-16-100-049-0000