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RESTRICTIVE COVENANT AND REGULATORY AND LAND USE RESTRICTION AGREEMENT

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THIS INSTRUMENT WAS PREPARED
BY AND AFTER RECORDING RETURN
TO: Thomas M. Jenkins
Illinois Housing Development
Authority
401 N. Michigan Ave.
Chicago, Illinois 60611

RESTRICTIVE COVENANT AND REGULATORY AND LAND USE RESTRICTION AGREEMENT

THIS RESTRICTIVE COVENANT AND REGULATORY AND LAND USE
RESTRICTION AGREEMENT (this "Agreement"), made and entered into as of this
^{19th} day of April 2007, by and between WALLY AIYASH, CHICAGO TITLE LAND
TRUST COMPANY, AS TRUSTEE UNDER A TRUST AGREEMENT DATED APRIL 4,
2007 AND KNOWN AS TRUST No. 8002348475, and ESSEX KING APARTMENTS LLC
(collectively referred to herein as the "Owner"), and the ILLINOIS HOUSING
DEVELOPMENT AUTHORITY (the "Authority"), a body politic and corporate established
pursuant to the Illinois Housing Development Act, 20 ILCS 3805/1 *et seq.*, as amended from
time to time (the "Act"), having its principal office at 401 N. Michigan Ave., Chicago, Illinois
60611;

WITNESSETH:

WHEREAS, Owner is the fee owner of certain real property upon which a housing
development consisting of eighty-three (83) units (the "Units") has been constructed, legally
described in **Exhibit A** attached to and made a part of this Agreement (the "Real Estate"),
located in Chicago, Illinois. The Real Estate and the improvements constructed on it are
collectively referred to in this Agreement as the "Development"; and

WHEREAS, the Authority is the program administrator of the Illinois Affordable
Housing Program, as that program is authorized by the Illinois Affordable Housing Act, 310
ILCS 65/1 *et seq.*, as amended from time to time (the "Trust Fund Act"), and the rules
promulgated thereunder (the "Rules"). All capitalized terms used in this Agreement and not
otherwise defined shall have the meanings established in the Trust Fund Act or, if not so
established, in the Rules; and

WHEREAS, the Authority has agreed to assign ("Assignment") the Certificate of Sale to
the Development to the Owner; and

WHEREAS, as additional consideration to induce to the Authority to make the
Assignment, Owner has agreed to enter into this Agreement and consent to be regulated and
restricted by the Authority as provided herein, and as provided for in the Trust Fund Act, the
Rules, the Act and the rules, regulations, policies and procedures of the Authority promulgated

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under the Act, all as they may be amended and supplemented from time to time, as applicable; and

WHEREAS, in addition to the regulations and restrictions contained herein, the Owner has also agreed as additional consideration for the Assignment to cause to be performed certain rehabilitation ("Rehabilitation") to the Development as stated herein; and

WHEREAS, the agreements, obligations and covenants of Owner contained herein are a material inducement to the Authority to make the Assignment and the Authority would not make the Assignment without the agreements, obligations and covenants of the Owner contained herein.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:

1. **Incorporation** The foregoing recitals are incorporated in this Agreement by this reference.
2. **Act and Rules**. Owner agrees that at all times its acts regarding the Development shall be in conformance with the applicable provisions of the Trust Fund Act, the Rules, the Act and the rules, regulations, policies and procedures of the Authority promulgated under the Act, all as they may be amended and supplemented from time to time.
3. **Representations and Agreements**. Owner further represents and agrees that:
 - a. At least forty-two (42) of the Units shall be occupied by Tenants (as defined in **Paragraph 10** hereof) whose income, at the time of initial occupancy, does not exceed the income limits for Very Low Income Tenants (as defined in **Paragraph 10** hereof), and the remaining forty-one (41) Units shall be occupied by Tenants whose income, at the time of initial occupancy, does not exceed the income limit for Low Income Tenants (as defined in **Paragraph 10** hereof);
 - b. In the advertising, marketing, and rental of Units and the selection of Tenants, Owner agrees to abide by the terms and conditions of the Tenant Selection Plan executed by Owner, approved by the Authority, as it may be amended from time to time with the prior written consent of the Authority;
 - c. In the management and operation of the Development, Owner agrees to abide by the terms and conditions of the Affirmative Fair Housing Marketing Plan as approved by the Authority, as such document may be amended from time to time with the prior written approval of the Authority. Owner shall be responsible for ensuring the management agent's compliance with applicable provisions of the Trust Fund Act, the Rules and all applicable ordinances, regulations and statutes and the rules, procedures and requirements of the Authority.

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d. On forms approved by the Authority, Owner shall obtain from each prospective Very Low Income Tenant and Low Income Tenant prior to his or her admission to the Development, a certification of income (the "Certification"). Owner shall submit such Certifications to the Authority in the manner prescribed by the Authority;

e. In the manner prescribed by the Authority, Owner shall obtain written evidence substantiating the information given on such Certifications and shall retain such evidence in its files at the Development for three (3) years after the year to which such evidence pertains. Within thirty (30) days after the end of each calendar year, Owner shall certify to the Authority that, at the time of such certification and during the preceding calendar year, Owner was in compliance with the requirements of this **Paragraph 7**, or, if Owner is not or has not been in compliance with such requirements, Owner shall give notice to the Authority of its failure to comply and the corrective action Owner is taking or has taken;

f. Owner shall comply with the rent limitations contained in Section 360.904(c) of the Rules; Owner shall annually submit a schedule of rents for the Development for the Authority's approval, and shall not change the rent schedule for the Development without the Authority's approval.

g. Owner shall require all Tenants to execute a lease (the "Lease") in a form approved by the Authority;

h. Owner shall obtain all federal, state and local governmental approvals required by law for its acquisition, Rehabilitation, ownership and operation of the Development;

i. Owner shall not evict any Tenant from the Development without good cause; and

j. Owner shall design and rehabilitate the Development in conformity (i) with applicable federal, state and local statutes, regulations, ordinances, standards and codes (except as otherwise approved by the Authority) and (ii) with all applicable rules, contracts, agreements, procedures, guides and other requirements of the Authority provided to Owner in writing.

4. **Acts Requiring Authority Approval.** Owner shall not, without the prior written approval of the Authority, which may be given or withheld in the Authority's sole discretion:

a. Initially rent any Unit for a period other than one (1) year, and after such initial one (1) year period, rent any Unit for less than six (6) months or more than one (1) year;

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b. Require, as a condition of the occupancy or leasing of any Unit in the Development, any consideration or deposit other than the prepayment of the first month's rent plus a security deposit in an amount not to exceed one (1) month's rent to guarantee the performance by the Tenant of the covenants of the Lease. Any funds collected by Owner as security deposits shall be kept separate and apart from all other funds of the Development.

5. **Owner Duties.** In addition to, but not by way of limitation of, the other duties of Owner set forth in this Agreement, Owner shall comply with the following:

a. **Maintenance.** Upon completion of the Rehabilitation, Owner shall maintain the Development and the grounds and equipment appurtenant to it in a decent, safe and sanitary condition, and in a rentable and tenantable state of repair, and in compliance with all applicable federal, state and local statutes, regulations, ordinances, standards and codes.

b. **Audit.** The Development and the equipment, buildings, plans, specifications, offices, apparatus, devices, books, contracts, records, documents and other papers relating to it, and the books and records relating to Owner, shall at all times be maintained in reasonable condition for proper audit, and shall be subject to examination, inspection and copying by the Authority or its agent or representative upon reasonable prior notice during normal business hours, as the Authority reasonably requires.

c. **Financial and Expense Reports.** Within ninety (90) days following the end of the Owner's fiscal year, in a manner prescribed by the Authority in writing, Owner shall furnish the Authority with a complete annual financial report for the Development based upon an examination of the books and records of the Development, prepared at Owner's expense in accordance with the written requirements of the Authority, and certified to Owner by an Illinois licensed certified public accountant.

d. **Furnishing Information.** At the request of the Authority, Owner shall furnish such reports, projections, certifications, budgets, operating reports, tax returns and analyses as required pursuant to the statutes, rules and regulations of the Authority and the Trust Fund Act, as amended from time to time, or by other applicable federal or state statutes or requirements, and from time to time shall give specific answers to written questions in connection with Owner's income, assets, liabilities, contracts and operation, all relating to the Development, and the administration, operation, maintenance, occupancy, financial soundness and physical condition of the Development.

e. **Relocation Plan.** Any temporary relocation or permanent displacement of Tenants of the Development shall occur only in accordance with the relocation plan as submitted by Owner to, and approved by, the Authority (the "Relocation Plan"). Owner shall be responsible for ensuring compliance with all provisions of the Relocation Plan.

f. **Compliance with Certain Laws.** Owner shall comply with the provisions

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of the Environmental Barriers Act (410 ILCS 25/1 *et seq.*, as amended from time to time), the Illinois Accessibility Code (71 Ill. Adm. Code 400), 47 Ill. Adm. Code 310, Subpart I, as amended from time to time, except as otherwise approved by the Authority, and the Americans With Disabilities Act, 42 U.S.C. 12101 *et seq.*, as amended, if applicable, and IHDA's property standards for rehabilitated housing, if applicable. .

6. **Rehabilitation.** Owner agrees to cause the Rehabilitation to be performed on the Development pursuant to plans and specifications and a budget subject to review and approval of the Authority. The Rehabilitation and all matters relating thereto shall be subject to the Authority's approval in its reasonable discretion, including without limitation, if applicable, budgets, schedules, plans and specifications, and permits. The Authority's representative shall be permitted access to the Development to inspect the Rehabilitation. The Owner shall not make any material changes to the Rehabilitation without the consent of the Authority. The funds expended for the Rehabilitation shall be not less than \$1,295,000.00, which shall include \$10,000 per Unit for the two properties located on Martin Luther King Drive and \$25,000 per Unit for the property located on Essex Street. Owner agrees that the Rehabilitation will be completed on or before the date which is six (6) months from the date of this Agreement.

7. **Non-Discrimination in Housing.**

a. Owner shall not, in the selection of Tenants, in the provision of services, or in any other manner unlawfully discriminate against any person on the grounds of race, color, creed, religion, sex, age, unfavorable military discharge, ancestry, handicap, national origin, marital status, familial status or because the prospective Tenant is receiving governmental rental assistance.

b. Owner shall comply with all of the provisions of Paragraph 3805/13 of the Act, Paragraph 65/10(a) of the Trust Fund Act and all other provisions of federal, state and local law relating to non-discrimination.

8. **Violation of Agreement by Owner.** Upon violation of any of the provisions of this Agreement by Owner, the Authority may give notice of such violation to Owner as provided in **Exhibit B** attached to and made a part hereof. If such violation is not corrected to the satisfaction of the Authority within thirty (30) days after such notice, the Authority may declare a default under this Agreement; however if such condition is not reasonably curable within thirty (30) days despite Owner's reasonable efforts to cure it, Owner shall have one hundred twenty (120) additional days to cure such default, so long as (i) that cure is commenced within such thirty (30) day period and (ii) Owner continues to diligently pursue such cure in good faith; after the expiration of such one hundred fifty (150) day period, the Authority may declare a default under this Agreement, effective on the date of notice of such declaration of default to Owner, and upon such default, and so long as such default is continuing, the Authority may do the following:

a. Take possession of the Development, bring any action necessary to enforce any rights of Owner growing out of the operation of the Development and operate the Development in accordance with the terms of this Agreement until such time as the

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Authority, in its sole discretion, determines that Owner is again in a position to operate the Development in accordance with the terms of this Agreement and in compliance with the requirements of the Note;

b. Collect all rents and charges in connection with the operation of the Development and use such collections to pay Owner's obligations under this Agreement and such other obligations of Owner in connection with the Development and the necessary expenses of preserving and operating it;

c. Apply to any court, state or federal, for specific performance of this Agreement, for an injunction against any violation of this Agreement, for the appointment of a receiver to take over and operate the Development in accordance with the terms of this Agreement, or for such other relief as may be appropriate. Because the injury to the Authority arising from a default under any of the terms of this Agreement would be irreparable and the amount of damages would be difficult to ascertain, Owner acknowledges and agrees that the Authority's remedies at law, in the event of a violation of this Agreement, would be inadequate to assure the Authority's public purpose under the Trust Fund Act; or

d. Exercise such other rights or remedies as may be available to the Authority under this Agreement, at law or in equity.

The Authority's remedies are cumulative and the exercise of one shall not be deemed an election of remedies, nor foreclose the exercise of the Authority's other remedies. No waiver by the Authority of any breach of this Agreement shall be deemed to be a waiver of any other or subsequent breach. The failure or delay of the Authority in exercising any of its rights under this Agreement in any one or more instances, or the exercise of less than all of its rights in any one or more instances, shall not be deemed or construed as a waiver of any such rights.

9. **Termination of Liabilities.** In the event of a sale or other transfer of the Development, all of the duties, obligations, undertakings and liabilities of Owner or other transferor (the "Transferor") under the terms of this Agreement shall thereafter cease and terminate as to the Transferor, except as to any acts or omissions or obligations to be paid or performed by the Transferor that occurred or arose prior to such sale or transfer. As a condition precedent to the termination of the liability of the Transferor under this Agreement, the transferee of the Development (a "New Owner"), as a condition precedent to its admission as a New Owner, shall assume in writing, on the same terms and conditions as apply to the Transferor, all of the duties and obligations of the Transferor arising under this Agreement from and after the date of such sale or transfer. Such assumption shall be in form and substance acceptable to the Authority. Any such New Owner shall not be obligated with respect to matters or events that occur or arise before its admission as a New Owner.

10. **Definitions.**

a. "Very Low Income Tenant". As used in this Agreement, the phrase "Very

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Low Income Tenant” means a single person, family or unrelated persons living together whose adjusted income is less than or equal to sixty percent (60%) of median income of the metropolitan statistical area of Chicago, adjusted for family size, as such adjusted income and median income for the area are determined from time to time by the United States Department of Housing and Urban Development for purposes of Section 8 of the United States Housing Act of 1937 (the “Median Income”).

b. “Low Income Tenant”. As used in this Agreement, the phrase “Low Income Tenant” means a single person, family or unrelated persons living together whose adjusted income is less than or equal to eighty percent (80%) of the Median Income.

c. “Tenant”. As used in this Agreement, the word “Tenant” means a person, family or unrelated persons leasing a Unit in the Development.

11. **Term of Agreement; Covenants Run with Development.** The covenants and agreements set forth in this Agreement shall run with the Real Estate and encumber the Development and be binding and enforceable against the Owner, its successors and assigns and any New Owner and any other future owners of the Development and the holder of any legal, equitable or beneficial interest in it until April 1, 2027.

12. **Amendment of Agreement.** This Agreement shall not be altered or amended without the prior written approval of all of the parties hereto.

13. **Execution of Conflicting Documents.** Owner warrants that it has not executed, and it agrees that it shall not execute, any other agreement with provisions contradictory, or in opposition, to the provisions of this Agreement, and that, in any event, the requirements of this Agreement are and shall be paramount and controlling as to the rights and obligations set forth in such other agreement and supersede any other requirements in conflict with this Agreement.

14. **Partial Invalidity.** If any term, covenant, condition or provision of this Agreement, or its application to any circumstance, shall, at any time or to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of it to circumstances other than those as to which it is held invalid or unenforceable, shall not be affected by such determination and each term, covenant, condition and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

15. **Successors.** Subject to the provisions of **Paragraph 9** hereof, this Agreement shall bind, and the benefits shall inure to, the parties to this Agreement, their legal representatives, executors, administrators, successors in office or interest and assigns; however, Owner may not assign this Agreement, or any of its obligations under this Agreement, without the prior written approval of the Authority.

16. **Indemnification of the Authority.** Owner agrees to defend and indemnify and hold harmless the Authority from and against any and all damages, including, but not limited to,

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any past, present or future claims, actions, causes of action, suits, demands, liens, debts, judgments, losses, costs, liabilities and other expenses, including, but not limited to, reasonable attorneys' fees, costs, disbursements, and other expenses, that the Authority may incur or suffer by reason of or in connection with the Real Estate or the Development. Owner further agrees that the Authority, if it so chooses, shall have the right to select its own counsel with respect to any such claims.

17. **Gender.** The use of the plural in this Agreement shall include the singular; the singular shall include the plural; and the use of any gender shall be deemed to include all genders.

18. **Captions.** The captions used in this Agreement are used only as a matter of convenience and for reference and in no way define, limit or describe its scope or intent.

19. **Notices.** Notices under this Agreement shall be given as provided in **Exhibit B** hereof.

20. **Counterparts.** This Agreement may be executed in counterparts, and each counterpart shall, for all purposes for which an original of this Agreement must be produced or exhibited, be the Agreement, but all such counterparts shall constitute one and the same instrument.

21. **Trustee Exculpation.** This Agreement is executed and delivered by Chicago Title Land Trust Company, not personally, but solely as Trustee under a certain Trust Agreement dated April 4, 2007, and known as Trust No. 8002348475 in the exercise of the power and authority conferred upon and invested in it as such Trustee. It is expressly understood and agreed by each original and successive holder of this Agreement, that no personal liability shall be asserted or be enforceable against the Trustee by the Authority, and each successive holder of this Agreement expressly waives such liability. The Authority accepts this Agreement upon the express condition that no duty shall rest upon the Trustee, either personally or as the Trustee.

(THE REMAINDER OF THIS PAGE IS LEFT BLANK INTENTIONALLY.)

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IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by their authorized representatives.

OWNER:

CHICAGO TITLE LAND TRUST COMPANY,
Not personally, but solely as Trustee as aforesaid

By: *Glenn Richter*
Its **TRUSTEE**

WALLY AIYASH
Wally Aiyash
Printed Name: Wally Aiyash

ESSEX KING APARTMENTS LLC,
An Illinois limited liability company

By: *Wally Aiyash*
Printed name: Wally Aiyash
Its member/manager

AUTHORITY:

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

By: _____
Printed Name: _____
Its _____

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IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by their authorized representatives.

OWNER:

CHICAGO TITLE LAND TRUST COMPANY,
Not personally, but solely as Trustee as aforesaid

By: _____
Its _____

WALLY AIYASH

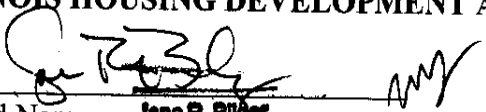
Printed Name: Wally Aiyash

ESSEX KING APARTMENTS LLC,
An Illinois limited liability company

By: _____
Printed name; Wally Aiyash
Its member/manager

AUTHORITY:

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

By:  _____
Printed Name: **Jane R. Bilger**
Its **Assistant Executive Director**

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STATE OF ILLINOIS)
) SS
 COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, certify that Wally Aiyash, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act and deed, for the uses and purposes therein set forth.

Given under my hand and official seal this 18th day of April, 2007.



Angela M. Luna
 Notary Public

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STATE OF ILLINOIS)
) SS
 COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, certify that Wally Aiyash, personally known to me to be the member/manager of Essex King Apartments LLC, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument in his capacity as member/manager of Essex King Apartments LLC as his free and voluntary act and deed and as the free and voluntary act and deed of the Essex King Apartments LLC for the uses and purposes therein set forth.

Given under my hand and official seal this 18th day of April, 2007.



Angela M. Luna
 Notary Public

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EXHIBIT B

NOTICE PROVISIONS

Any notice, demand, request or other communication that any party may desire or may be required to give to any other party under this document shall be given in writing, at the addresses set forth below, by any of the following means: (a) personal service; (b) overnight courier; or (c) registered or certified United States mail, postage prepaid, return receipt requested.

If to the Authority:

Illinois Housing Development Authority
401 North Michigan Avenue, Suite 700
Chicago, Illinois 60611
Attention: Assistant to the Executive Director for Multifamily Programs

with a copy to:

Illinois Housing Development Authority
401 North Michigan Avenue, Suite 700
Chicago, Illinois 60611
Attention: General Counsel

If to Owner:

Wally Aiyash
3756 Monarch
Naperville, Illinois 60563

Such addresses may be changed by notice to the other party given in the same manner as provided in this Exhibit. Any notice, demand, request or other communication sent pursuant to subparagraph (a) shall be served and effective upon such personal service. Any notice, demand, request or other communication sent pursuant to subparagraph (b) shall be served and effective one (1) business day after deposit with the overnight courier. Any notice, demand, request or other communication sent pursuant to subparagraph (c) shall be served and effective three (3) business days after proper deposit with the United States Postal Service.

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EXHIBIT A

LEGAL DESCRIPTION:

LOTS 1, 2 AND 3 IN BLOCK 6 IN SOUTH SHORE PARK, BEING A SUBDIVISION OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 30, TOWNSHIP 38 NORTH, RANGE 15 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

Property Index Number: 21-30-308-015-0000

Commonly known as: 7600-10 S. Essex / 2447 E. 76th Street, Chicago, Illinois

LEGAL DESCRIPTION:

LOTS 1 TO 4, INCLUSIVE IN COLLINS AND MORRIS SUBDIVISION OF THE EAST 180 FEET OF THE SOUTH 200 FEET OF BLOCK 1 IN JENNINGS AND MOFFATS SUBDIVISION OF THE SOUTH 60 ACRES OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 10, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY ILLINOIS.

**Property Index Numbers: 20-10-306-045-0000; 20-10-306-046-0000;
20-10-306-047-0000; 20-10-306-048-0000**

**Commonly know as: 5248-58 Martin Luther King Drive/ 362-68 E. 53rd Street,
Chicago, Illinois**

LEGAL DESCRIPTION:

LOTS 17 AND 18 IN SUBDIVISION OF BLOCK 6 (EXCEPT THE SOUTH 300 FEET OF THE EAST 180 FEET OF SAID BLOCK 6) OF JENNINGS AND MOFFATS SUBDIVISION OF THE SOUTH 60 ACRES OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 10, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

Property Index Number: 20-10-313-011-0000

**Commonly known as: 5300-10 Martin Luther Kind Drive/365-71 E/ 53rd Street.
Chicago, Illinois**