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Cook County Recorder of Deeds  
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**SECOND SPECIAL AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR THE STATE RANDOLPH DEVELOPMENT**

01080647-1 of 3 SW N N N

**This document prepared by and  
after recording return to:**

Lawrence M. Gritton  
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Chicago, Illinois 60610

**Street Address:**

151 North State Street  
Chicago, Illinois 60601

**Permanent Index Number:**

17-10-305-007-8001  
17-10-305-007-8002



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## SECOND SPECIAL AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR STATE RANDOLPH DEVELOPMENT

This SECOND SPECIAL AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR THE STATE RANDOLPH DEVELOPMENT ("Special Amendment") is made this \_\_ day of June, 2008, by SMITHFIELD PROPERTIES XX, L.L.C., an Illinois limited liability company ("Declarant").

### RECITALS:

A. Declarant has heretofore recorded with respect to the property legally described on Exhibit A attached hereto that certain Declaration of Covenants, Conditions, Restrictions and Easements for the State Randolph Development with the Recorder of Cook County, Illinois on October 19, 2007 as document number 0729260064, as amended by Special Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for the State Randolph Development recorded on January 9, 2008 as document number 0800939152 (the "**First Special Amendment**"; as so amended, the "**Declaration**") (initially capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Declaration).

B. Pursuant to Section 21.1 of the Declaration, the Declarant now desires to execute a Second Special Amendment to the Declaration to clarify certain provisions of the Declaration required by the acquisition by The Joffrey Ballet ("**Joffrey**") of the Joffrey Portion and the completion of the construction of the Joffrey Improvements.

**NOW, THEREFORE**, the Declarant does hereby amend the Declaration as follows:

1. **Recitals**. The foregoing Recitals are incorporated in this Special Amendment as though fully contained herein.

2. **Modification of Recital C**. Recital C in the Declaration is hereby amended to read as follows to incorporate the modifications in the First Special Amendment:

"C. The Total Parcel is improved with a Building comprised of: (i) the Retail Parcel encompassing substantially all of the first and second floors (excluding the lobbies that are part of the Joffrey Parcel and the Condominium Parcel); (ii) the Joffrey Parcel encompassing the third and fourth floors (including a mezzanine to be constructed between the third and fourth floors of the Building as part of the improvements to the Joffrey Portion) and a portion of the first floor (for its lobby) and the North Leg portion of floors numbered 5-7; and (iii) the Condominium Parcel encompassing the basement, a lobby on the first floor and floors numbered 5-7 except the North Leg portion of floors numbered 5-7 and 9-33 (there are no floors numbered 8 and 13)."

3. **Definition of Joffrey Parcel**. The definition of the Joffrey Parcel in Article 2, Section (xxxiii) of the Declaration is hereby deleted and following is hereby substituted in lieu thereof:

"(xxxiii) "**Joffrey Parcel**" shall mean that portion of the Total Parcel legally described on Exhibit C-2 attached hereto, including the lobby portion on the first floor of the Building, the North Leg portion of floors numbered 5-7, and the Joffrey Passenger Elevator."

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4. **Definition of Allocation Percentage.** The first sentence of the definition of the Allocation Percentage in Article 2, Section (iii) of the Declaration is hereby deleted and the following is hereby substituted in lieu thereof:

“**Allocation Percentage** means the percentage of a particular operating cost allocated to the Owners as set forth on the Allocation Schedule, which percentages are only subject to adjustment to the extent provided in the Allocation Schedule attached hereto as **Exhibit D.**”

5. **Allocation Schedule.** The Allocation Schedule attached to the Declaration as **Exhibit D** is hereby deleted and the Revised Allocation Schedule attached hereto as **Revised Exhibit D** is hereby substituted in lieu thereof.

6. **Additional Specified Easements.** The following specific Easements in favor of the Joffrey Parcel are hereby granted as reasonably necessary to carry out the intent of the Declaration and to provide the necessary services and other items referred to therein, as provided in Sections 3.2(j) and 3.3(j), and are subject to the general provisions applicable to all Easements as set forth in Article 4 of the Declaration:

“(a) a non-exclusive Easement for access to and to permit the maintenance, repair and replacement of the portion of the Chilled Water System of the Building allocated to the Joffrey Portion and located in the Basement of the Building;

(b) a non-exclusive Easement to and over portions of the roof over the fourth floor of the Building for access to and to permit the installation, maintenance, repair and replacement of the air conditioning equipment to be located on said roof and to exclusively serve the Joffrey Portion, provided that in no event shall the Owner of the Joffrey Portion take any action in connection with such access or work to void any warranties relating to the roof; and

(c) a non-exclusive Easement for ingress and egress to the roof area over the fourth floor of the Building for access to the stairways of the Building by means of the doors located in the north and south legs of the fifth floor of the Building for emergency purposes only; and to permit such emergency ingress and egress such doors located in the north and south legs of the fifth floor of the Building shall remain unlocked from the exterior roof side thereof.”

7. **Utilities.** Section 5.1(d) of the Declaration is hereby deleted and the following is hereby substituted in lieu thereof:

“(d)(i) Maintenance of all heating, ventilating and air conditioning systems and utilities located in the Total Parcel except for any such systems and utilities exclusively servicing the Retail Parcel or the Joffrey Parcel, as applicable. To the extent utilities are shared by the Owners, such services shall be separately metered or submetered and each party shall be solely responsible for the cost of such utility service, except that separate metering or submetering for domestic water will not be provided. The parties agree that, except as otherwise provided herein, each Owner shall pay its Applicable Percentage of the costs of hot water, sewer and gas. The Owners of the Condominium Parcel shall receive the billing from the service provider for any such utilities which require apportionment and shall timely submit invoices to the Owners of the Retail Parcel and the Joffrey Parcel, as applicable, for the share attributable to the Retail Parcel and the Joffrey Parcel, as applicable. The Owners of the Retail Parcel and

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the Joffrey Parcel shall each pay its Applicable Percentage of any such apportioned utilities to the Owners of the Condominium Parcel. The Owners of the Condominium Parcel shall be primarily responsible for payment of any such apportioned utility bills.

(ii) Notwithstanding the foregoing, the Joffrey Parcel shall be supplied with hot water for heating from the Building's boilers, which are owned by the Owners of the Condominium Parcel. There are British Thermal Unit ("BTU") meters located on the third floor, third floor mezzanine, and the fourth floors of the Joffrey Parcel, where the Joffrey Parcel is connected to the Building's main heat riser. Such BTU meters will read the supply water temperature and the return water temperature and calculate the number of BTUs used by the Joffrey Parcel. The meters are calibrated with a number that must be multiplied by 10,000 to obtain the BTU count. The number derived is then divided by .8 to account for the fact that the boilers are not 100% efficient. Gas is sold by the therm. A therm is 100,000 BTUs. The BTU usage is then divided by 100,000 to give the therm use by the Joffrey Parcel. The Owners of the Condominium Parcel will use such therm calculation to determine the amount to bill the Owner of the Joffrey Parcel monthly using the rates and categories of charges set forth on the gas bill it receives from its gas supplier for that month. Exhibit F attached hereto, which is for illustration purposes only, shows an example of the method of calculating the monthly bill, it being understood that the actual bills from the gas supplier may show rates and categories of charges that may differ from what is shown on Exhibit F attached hereto. Once each month, a representative of the Owner of the Joffrey Parcel and the Owners of the Condominium Parcel shall, together, read the BTU meters in the Joffrey Parcel and make the calculations described herein.

(iii) Notwithstanding the foregoing, the Owners of the Condominium Parcel also shall supply the Joffrey Parcel with (i) hot water for heating the first floor lobby of the Joffrey Parcel, (ii) gas for the Joffrey Parcel's domestic hot water, and (iii) hot water for heating the portion of the Joffrey Parcel consisting of the spaces in the north leg on floors 5, 6 and 7 of the Building. These services are not separately metered or submetered for the Joffrey Parcel. The Owner of the Joffrey Parcel shall pay to the Owners of the Condominium Parcel \$795 per month (the "Joffrey Utility Payment") on the first day of each month for these services.

On January 1st of each year, starting on January 1, 2010, the amount of the Joffrey Utility Payment shall be subject to adjustment as follows:

the base for computing the adjustment is the Consumer Price Index for all Urban Consumers, All Items, Chicago-Gary-Kenosha, IL-IN-WI (1982-84= 100), published by the United States Department of Labor, Bureau of Labor Statistics ("Index"), which is in effect for the month of December, 2008 ("**Beginning Index**"). The Index published for the month of December proceeding the calendar year for which the adjustment is to be made ("**Current Index**") is to be used in determining the amount of the adjustment. If the Current Index has increased over the Beginning Index, the Joffrey Utility Payment for each month of the following year shall be set by multiplying the Joffrey Utility Payment by an amount equal to 100% of a fraction, the numerator of which is the Current Index and the denominator of which is the Beginning Index. If the Index is changed so that the base year differs from that described above, the Index shall be converted

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in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

The Owner of the Joffrey Parcel or the Owners of the Condominium Parcel may, at its cost, install meters or submeters to calculate the utility costs of these services to the Joffrey Parcel. A professional heating engineer as appropriate must certify such meters or submeters for such use and show that they calculate the energy cost from third parties to the Owners of the Condominium Parcel. If such meters or submeters are installed, the payment by the Owner of the Joffrey Parcel to the Owners of the Condominium Parcel shall be based on the readings of these meters and the cost of the energy required calculated as illustrated in subparagraph (ii) of this Section 5.1(d)."

8. **Landscaping and Green Roof.** Section 5.1(i) is hereby amended by deleting same in its entirety and substituting the following in lieu thereof:

"(i) **Landscaping.** Maintenance of the green roof above the fourth floor of the Building (meaning the planters, trees, flowers, shrubs, ground cover and other landscaping and planting materials located on said roof from time to time, except that each Owner shall be responsible for its Applicable Percentage of such costs, payable as provided in **Section 5.5** hereof. Notwithstanding the foregoing, the reference herein to maintenance of the green roof shall not mean or refer to the maintenance of the roof itself located above the fourth floor of the Building, the maintenance and repair of which is covered under **Section 6.5** hereof."

9. **Section 6.5.** Section 6.5 is hereby amended by deleting same in its entirety and substituting the following in lieu thereof:

"6.5 Except as provided in **Section 5.1(h)**, **Section 5.2(k)**, and **Section 5.3(h)**, the Owner of the Condominium Parcel shall maintain the exterior and the roof over the fourth floor of the Building and roof over the top floor of the Building in a good condition as part of Ownership Services as set forth in **Article 5** hereof; provided, however, that each Owner shall be responsible for its Applicable Percentage of the costs of maintaining and repairing the roof over the fourth floor of the Building. Each Owner may maintain signs and Building directories in the locations which exist for Building signage and directories as of the date of this Declaration. In the event of disputes as to the plans, specifications or location of any signs, the disputed issues shall be submitted to the Architect for determination as provided in **Article 15** hereof. The roof over the fourth floor of the Building and the roof over the top floor of the Building, shall be owned by the Owner of the Condominium Parcel and shall be subject to the Easements granted in favor of the Owners of the Retail and Joffrey Parcels set forth in **Article 4** hereof. Each Owner shall own a portion of the air rights above the land on which the Building is situated as follows: (i) the Owner of the Condominium Parcel shall own the air rights at and above the elevation of the roof of the fourth floor of the Building, together with a portion of the air rights between the lower and upper elevations of the portion of the Condominium Parcel consisting of the lobby located on the first floor of the Building, except as otherwise described in Clause (ii) hereof; (ii) the Owner of the Joffrey Parcel shall own the air rights between the lower and upper elevations of the portion of the Joffrey Parcel comprising the third and fourth floors of the Building, together with a portion of the air rights between the lower and upper elevations of

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floors numbered 5-7 with respect to the portion of the Joffrey Parcel consisting of the North Leg portion of floors numbered 5-7 and a portion of the air rights between the upper and lower elevations of the first floor of the Building with respect to the portion of the Joffrey Parcel consisting of the lobby located on the first floor of the Building; and (iii) the Owner of the Retail Parcel shall own the air rights between the lower and upper elevations of the Retail Parcel comprising the first and second floors of the Building, except for the portions thereof described in Clauses (i) and (ii) hereof. The ownership of such air rights shall be subject to the Easements granted in favor of the Owners set forth in **Article 4** hereof.”

10. **Section 6.6.** Section 6.6 is hereby amended by deleting same in its entirety and substituting the following in lieu thereof:

“6.6 The Building shall be named “The Joffrey Tower” and the Condominium Property shall be named “The Residences at The Joffrey Tower Condominium” (collectively, the “**Project Names**”). Appropriate signage and banners will be made available to identify the Building and the Condominium Property as such Project Names, at the sole cost and expense of the Owner of the Joffrey Parcel. By way of illustration and not as a limitation, the Owner of the Joffrey Parcel shall be entitled to have a professionally designed vertical blade sign comparable to the combined height of the third and fourth floors of the Building and a sign to be located above the entrance lobby to the Joffrey Improvements, substantially as depicted on **Exhibit E-2** attached hereto and made a part hereof, as well as professionally designed silk screen, backlit signs applied to the inside of the glass windows of the Joffrey Improvements. The signage for the Joffrey Parcel as set forth in said **Exhibit F-2** attached hereto is hereby deemed approved by the Owners of the Retail Parcel, the Joffrey Parcel and the Condominium Parcel. Declarant, at its sole cost and expense, shall be permitted to affix vertical canvass banners containing the names of any retailers occupying the Retail Improvements to the first and second floors of the Retail Parcel; provided, however, no such banners or any other signs containing the names of any retailers occupying the Retail Improvements shall be hung out from the exterior wall of the Building on Randolph Street west of Column Line 4 or on State Street south of Column Line E as such column lines are depicted on **Exhibit E-3** attached hereto. The foregoing covenants (the “**Project Name Covenants**”) providing for the use of the Project Names shall be applicable for so long as The Joffrey Ballet is the primary occupant of the Joffrey Improvements; provided, however, the Owner of the Joffrey Parcel acknowledges and understands the Condominium Property has been marketed to the public as “**MoMo**” without reference to the Project Names. In the event the Owner of the Condominium Parcel objects to the Project Name “The Residences at The Joffrey Tower Condominium” for the Condominium Property, Declarant shall have the right to allow the Owner of the Condominium Parcel to adopt a legal name for the Condominium other than the Project Name “The Residences at The Joffrey Tower Condominium,” but such other name shall not be displayed on the exterior of the Building.”

11. **Exhibit E-2.** **Exhibit E-2** to the Declaration is hereby deleted and **Exhibit E-2** attached hereto is hereby substituted in lieu thereof.

12. **Inconsistencies.** Except as expressly set forth herein, the Declaration shall remain in full force and effect in accordance with its terms. Any inconsistencies between the Declaration and this Special Amendment shall be resolved in favor of the provisions contained in this Special Amendment.

[Signature on next page]

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**IN WITNESS WHEREOF**, the Declarant has executed this Special Amendment on the day and year first above written.

**SMITHFIELD PROPERTIES XX,  
L.L.C.**, an limited liability company

By: Harris Management, Ltd., its  
Manager

By:   
Its: President

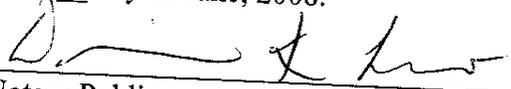
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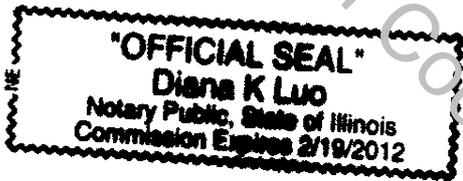
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STATE OF ILLINOIS     )  
                                   )  
 COUNTY OF COOK        )     SS.

The undersigned, a Notary Public in and for the County, in the State aforesaid, do hereby certify that **W. Harris Smith**, as President of **Harris Management, Ltd.**, Manager of **Smithfield Properties XX, L.L.C.**, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President of the Manager of said limited liability company, appeared before me this day in person and acknowledged that he signed and delivered said instrument has his free and voluntary act and as the free and voluntary act of said limited liability company for the uses and purposes therein set forth.

Given under my hand and notarial seal this 27<sup>th</sup> day of June, 2008.

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



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## CONSENT OF CURRENT OWNERS

Inasmuch as title to the Retail Parcel has been conveyed by Declarant to Smithfield Properties XLIV LLC by Quitclaim Deed recorded on October 19, 2007 as document number 0729260065, and title to the Joffrey Parcel and title to the Condo Parcel have been conveyed by Declarant to Smithfield Properties XL, L.L.C. by Quitclaim Deed recorded on October 19, 2007 as document number 0729260066, the undersigned owners hereby confirm and consent to the foregoing Special Amendment.

Dated: June 25, 2008

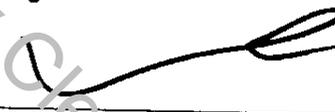
**SMITHFIELD PROPERTIES XL,  
L.L.C., an limited liability company**

By: Harris Management, Ltd., its  
Manager

By:   
Its: President

**SMITHFIELD PROPERTIES XLIV  
LLC., an limited liability company**

By: Harris Management, Ltd., its  
Manager

By:   
Its: President

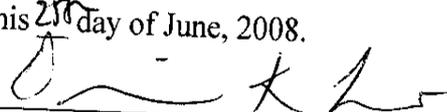
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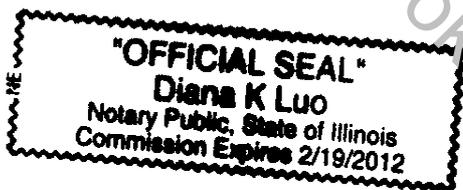
STATE OF ILLINOIS     )  
                                   )  
 COUNTY OF COOK        )     SS.

The undersigned, a Notary Public in and for the County, in the State aforesaid, do hereby certify that **W. Harris Smith**, as President of **Harris Management, Ltd.**, Manager of **Smithfield Properties XL, L.L.C.** and **Smithfield Properties XLIV LLC**, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President of the Manager of said limited liability companies, appeared before me this day in person and acknowledged that he signed and delivered said instrument has his free and voluntary act and as the free and voluntary act of said limited liability companies for the uses and purposes therein set forth.

Given under my hand and notarial seal this 21<sup>st</sup> day of June, 2008.



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



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## EXHIBIT A

### Legal Description of the Total Parcel

Lots 25 to 31, inclusive, in Block 9 in Fort Dearborn Addition to Chicago in the Southwest Fractional Quarter of Section 10, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

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**Common Address:** 151 North State Street, Chicago, Illinois 60601  
**PIN:** 17-10-305-007-8001

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## REVISED EXHIBIT D

### ALLOCATION SCHEDULE

THE RESIDENCES AT THE JOFFREY TOWER  
PROPOSED OPERATING BUDGET

	Condo	Retail	Joffrey	
Plumbing Repairs/Supplies	X	9.5%	13.0%	Allocation based on gross square footage. See line item break down of cost in Condo Budget.
Extermination (1)	X	9.5%	13.0%	Allocation based on gross square footage. See line item break down of cost in Condo Budget.
Gas	X	9.5%	13.0%	Allocation based on gross square footage. See line item break down of cost in Condo Budget.
Water/Sewer (1)	X	12.0%	N/A	Allocation based on approximate usage. Retail Parcel will pay, very little heating gas and potable hot water. Joffrey will pay for gas. (a) for heat to floors 3, 3M and 4 based on BTU metering. (b) a sum based on heat for the Joffrey Lobby, for north leg spaces on floors 5, 6, 7 heated to the system design point of 45 degrees and (c) for potable hot water on approximate usage for ordinary office plus the presence of the professional dance company in residence for half the year.
Sidewalk Maintenance	X	9.5%	13.0%	Allocation based on gross square footage. See line item break down of cost in Condo Budget.
Loading Dock Maintenance and Repair	X	82.9%	7.9%	Sidewalk has total linear feet of approximately 2,107 (168' on State and 112' on Hancock). 26 (9.2%) is entrance to condo. 27 (7.9%) is entrance to Joffrey. Estimate cost is \$11.35 per foot, based on actual expense from 20 N. State (\$2,700/year inflated to 2008 \$ on 238'), or 2.07 for total of \$3,200 per year.
Emergency Stair Maintenance and Emergency Lighting	X	20.0%	20.0%	Allocation based on approximate usage. Estimated at \$8,200/year.
Trash Room Deodorizer	X	9.5%	13.0%	Allocation based on gross square footage. Estimated at \$100/month, or \$1,200 per year.
Freight Elevator Maintenance	X	9.5%	13.0%	Allocation based on gross square footage. Estimated cost of \$175/month, or \$2,100/year.
Inspection/License/Fees	X	6.0%	9.0%	Allocation based on percentage of floors in each portion - 33 total floors, including 3rd floor mezzanine in Joffrey Portion. Cost of \$520/month, or \$6,240/year.
Fire Panel Monitoring	X	9.5%	13.0%	Allocation based on gross square footage. Estimated at \$40,935/year broken down into Building Inspection - \$360, Facade Inspection - \$4,000, Sidewalk Inspection - \$150, Underground Vault - \$96,125, and Ducts - \$300.
Fire Safety Supplies/Expenses	X	9.5%	13.0%	Allocation based on gross square footage. Estimated at \$775/quarter, or \$3,100/year.
Landscaping on Roof Over 4th Floor (Sec 6.1(f))	X	9.5%	13.0%	Allocation based on gross square footage. Estimated at \$4,400/year broken down into Annual Expense - \$3,600 and Fire Expense - \$800.
Maintenance/Repair of Roof Over 4th Floor (Sec 6.5)	X	9.5%	13.0%	Allocation based on gross square footage. Estimated at \$3,500 per year.
Insurance	X	9.5%	13.0%	Allocation based on gross square footage.
	X	15.0%	5.0%	Based on approximate cost allocation. Estimated at total of \$80,000/year for general, property, mechanical, and umbrella insurance. Workmen's Comp and Directors and Officers insurance is 100% chargeable to Condo and paid directly by the Condo.

(1) In the event there is ever a food service tenant in the Retail Portion, these items will be reallocated by mutual agreement of the owners of each Portion in the Building.

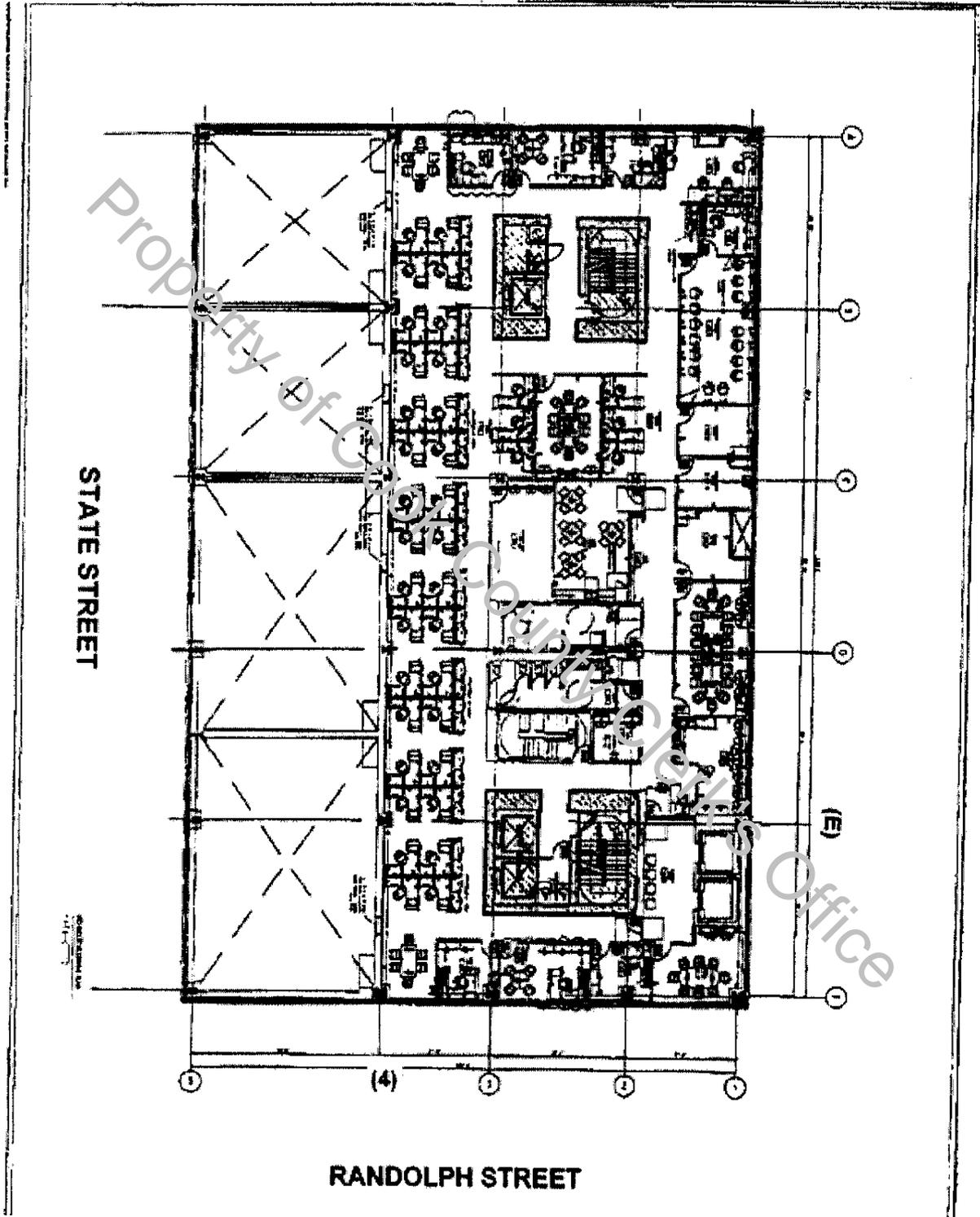




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## EXHIBIT E-3

### COLUMN LINE DEPICTION



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## EXHIBIT F

### ILLUSTRATIONS OF CALCULATION OF JOFFREY'S COST OF HOT WATER FOR HEATING

The following illustrates how the gas cost for heating the Joffrey Parcel on floors 3, 3 mezzanine and 4 will be calculated:

Formula: Meter totals multiplied by 10,000 to get BTU/.8/100,000=therms used.

Example:

Meter one reads 10,000, Meter 2 reads 10,000, Meter 3 reads 20,800 for a total of 40,800.

The 40,800 total is then multiplied by 10,000 to get 408,000,000 BTUs and divided by .8 for a total of 510,000,000, which is then divided by 100,000 for a total of 5100 therms.

The next page illustrates the cost calculation based on a typical gas bill.

The amount charged by the Owners of the Condominium Parcel to the Owner of the Joffrey Parcel will be based on the rates charged that month by the gas supplier to the Owners of the Condominium parcel.

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## How to Calculate Your Monthly Gas Bill

Steps for calculating your bill			
Therms consumed:	5,100.00		
<b>Delivery Charges</b>			
1	<b>Customer Charge</b>		\$64.50
2	<b>Distribution Charge</b>		
	First 100 Therms	$\$0.35445 \times 100.00$ Therms =	\$35.45
	Next 4,900 Therms	$\$0.13976 \times 4,900.00$ Therms =	\$684.82
	Over 5,000 Therms	$\$0.07433 \times 100.00$ Therms =	\$7.43
3	<b>Gas Charge</b> (Assumes \$0.80000 per therm)	$\$0.80000 \times 5,100.00$ Therms =	\$4,080.00
4	<b>Efficiency Program</b> (Assumes \$2.28 per month)		\$2.28
5	<b>Environmental Charge</b> (Assumes \$0.03280 per therm)	$\$0.03280 \times 5,100.00$ Therms =	\$167.28
6	<b>Volume Balancing Adjustment</b> (Assumes \$0.00033 credit per therm)	$\$0.00033 \times 5,100.00$ Therms =	\$1.68
7	Total of steps 1 through 6		\$5,043.44
<b>Taxes</b>			
8	Chicago Municipal Tax	$\$5,043.44 \times 0.2\%$	= \$415.58
9	State Tax	$\$5,043.44 \times 0.10\%$	= \$5.04
10	State Gas Revenue Tax*	$\$0.024 \times 5,100.00$ Therms =	\$122.40
11	<b>Total Current Charges</b>	Total of steps 7 through 10	\$5,576.46
*The billing illustration reflects the 2.4 cents per therm charge. (See State Gas Revenue Tax.)			