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Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 01/06/2011 10:25 AM Pg: 1 of 15

This document was prepared
by and after recording, return
to: Thomas M. Jenkins
Illinois Housing Development Authority
401 N. Michigan Avenue
Chicago, Illinois 60611
Permanent Tax
Identification No.:
See Exhibit A
Property Address:
188 W. Randolph Street
Chicago, Illinois

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IHDA REGULATORY AGREEMENT

THIS REGULATORY AGREEMENT (this "Agreement") is made and entered into as of this 22nd day of December, 2010, by and between **RANDOLPH TOWER CITY APARTMENTS, LLC** ("Tower") and **RANDOLPH TOWER AFFORDABLE CITY APARTMENTS, LLC** ("Affordable Tower") (Tower and Affordable Tower shall collectively be referred to herein as the "the Borrower") and the **ILLINOIS HOUSING DEVELOPMENT AUTHORITY** ("IHDA"), 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"), whose principal office is located at 401 North Michigan Avenue, Chicago, Illinois 60611.

RECITALS:

WHEREAS, the Borrower is the owner of certain real estate located at and commonly known as Randolph Tower City Apartments, legally described on **Exhibit A** attached to and made a part of this Agreement, and all easements and similar rights and privileges appurtenant to and in favor of such real estate (such real estate, easements, rights and privileges are collectively referred to in this Agreement as the "Real Estate"); and

WHEREAS, IHDA is issuing its Multifamily Housing Revenue Bonds (Randolph Tower City Apartments) Series 2010 (the "Bonds") to provide financing for a multifamily housing development located on the Real Estate containing three hundred ten (310) units; and

WHEREAS, IHDA is using the proceeds of the Bonds to make a loan (the "Loan") to the Borrower, which will immediately be assigned to The Bank of New York Mellon Trust Company, National Association as "Trustee" (the "Bank"); the Loan is evidenced, secured and governed by, among other things: (a) the Financing Agreement of even date herewith (the "Financing Agreement") executed by the Borrower, the Trustee and IHDA, (b) a mortgage securing the Loan (the "Mortgage") and (c) this Agreement. The Financing Agreement and all

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other documents executed by the Borrower that evidence, govern or secure the Loan are sometimes collectively referred to in this Agreement as the "Loan Documents;" and

WHEREAS, as an inducement to IHDA to issue the Bonds to provide financing for the Loan, the Borrower has agreed to enter into this Agreement and consents to be regulated and restricted by IHDA as provided in this Agreement, and those provisions of the Act and the Rules that govern Distributions (as defined below) and non-discrimination.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions set forth in this Agreement, the parties hereto agree as follows:

1. **Recitals**. The foregoing recitals are made a part of this Agreement.
2. **Definitions**. The following terms used in this Agreement shall have the following definitions:
 - a. "Administrative Expenses" shall mean expenses of managing and administering the Development, including, but not limited to, expenses for office services and supplies; postage and telephone; legal, accounting, advertising and auditing services; management fees; the management agent's fidelity bond fees; and salaries and payroll expenses for any management agent's on-site employees. Administrative Expenses shall not include any expenses not directly related to the Development; these excluded expenses include, but are not limited to, costs of (i) accounting work and attorneys' fees and other legal expenses in connection with acquiring the Development or any property made a part of it, (ii) defending or prosecuting litigation by or against IHDA or for services relating to bankruptcy or similar debtor protection laws (iii) forming, syndicating, registering and maintaining any person or entity, (iv) any fees paid to the Borrower for managing the Development, (v) repayment of loans or advances made by the Borrower or its principals to the Development and (vi) any other expenses not approved by IHDA as Administrative Expenses.
 - b. "Closing Date" shall mean the date on which the Loan proceeds are made available to the Borrower.
 - c. "Cost of the Development" shall mean costs and expenses of the Development, including, without limitation, acquisition costs, construction costs, job overhead, a developer's fee, architectural, engineering, legal and accounting costs, organizational expenses, any fees payable to IHDA, interest paid during construction or rehabilitation, and the cost of landscaping, whether or not such costs have been paid in cash or in a form other than cash.
 - d. "Development" shall mean the Real Estate and all of the improvements constructed on it.

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e. "Development Funds" shall mean all cash, rent subsidies, gross Development income, bank accounts, certificates of deposit, trust funds, reserves, escrows, accounts receivable, and other similar assets of the Development, but excluding security deposits that, pursuant to contract or law, the Borrower is, or may be, required to return to a Tenant.

f. "Distribution" shall mean any withdrawal or taking of Surplus Cash and/or Residual Receipts, including (i) segregation of amounts of Surplus Cash and/or Residual Receipts for subsequent withdrawal for payment to or on behalf of the Borrower pursuant to IHDA's written authorization, (ii) any transfer of Development property to or on behalf of the Borrower and (iii) payment from Development funds of any obligation of the Borrower or its shareholders.

g. "Equity" shall mean the amount of funds provided by the Borrower for the acquisition and rehabilitation of the Development (including, without limitation funds from the sale of historic tax credits and low income housing tax credits), which shall be equal to the difference between the total Cost of the Development and the sum of the amount of the Loan plus the amount of any permitted subordinate financing.

h. "Maintenance Expenses" shall mean the expenses of maintaining the Development, including, but not limited to, security services, grounds maintenance services and supplies, elevator maintenance and repairs, painting and decorating, equipment repairs, and minor or routine repairs to Units.

i. "Operating Expenses" shall mean the costs of operating the Development, including, but not limited to, non-capital expenses for water and sewer, electricity, gas and other utilities not paid for directly by Tenants; janitorial services and supplies; exterminating; trash removal; real estate taxes; assessments; and insurance premiums. Operating Expenses shall not include capital expenditures; expenses of readying the Development for initial occupancy; or reimbursements to the Borrower for capital contributions..

j. "Residual Receipts" shall mean any Surplus Cash remaining as of the end of a calendar year after the deduction of (i) the amount of any repayment of any subordinate loans, if any, evidenced by a note to be repaid from Surplus Cash and (ii) all Distributions.

k. "Residual Receipts Account" shall mean the account into which Residual Receipts from the Development are deposited.

l. "Rules" means the rules promulgated by IHDA under the Act.

m. "Surplus Cash" shall mean that part of the gross operating income (including rent insurance proceeds, but not including fire or other insurance proceeds, condemnation proceeds, loan proceeds and any contributions or advances from

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members or partners of the Borrower) of the Development, determined on an accrual basis (a security deposit shall not be deemed part of the gross operating income unless and until it unequivocally becomes the property of the Borrower, free of any claim of any person claiming as or through the Tenant who had deposited such security), remaining as of the end of each calendar year after payment of, or the reservation of funds for the payment of, the following (but only to the extent payable from such gross operating income):

- i. Operating Expenses, Maintenance Expenses and Administrative Expenses;
- ii. All other costs, whether or not capitalized, pertaining to the operation of the Development during such calendar year, including, but not limited to, reasonable costs of renting, managing, repairing, maintaining and improving the Development;
- iii. All losses on any investment of funds deposited in any reserve account;
- iv. All sums required to be deposited during such calendar year in any reserve account of the Development (other than the Residual Receipts Account), whether or not in fact deposited;
- v. All sums due, whether or not currently required to be paid during such calendar year, under the terms of the Loan Documents; and
- vi. All sums due under any permitted secondary financing that are permitted to be paid from gross operating income; and

all as reflected on audited financial statements for the Development (including the income statements and balance sheets) for each such calendar year. The actual amount of Surplus Cash shall be determined by IHDA, in its sole discretion.

n. "Tenant" shall mean a person, family or unrelated persons leasing a Unit.

o. "Unit" shall mean a dwelling unit in the Development.

3. **Act and Regulations.** The Borrower agrees that at all times its acts regarding the Development shall be in conformance with the Act and the Rules as they apply to Distributions and non-discrimination.

4. **Residual Receipts Account.** The Borrower shall establish and maintain, a Residual Receipts Account with IHDA. The Borrower shall deposit all Residual Receipts into the Residual Receipts Account within ten (10) business days of the determination of the

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amount of Residual Receipts for the calendar year. The Borrower shall be entitled to receive such permissible Distributions from the Residual Receipts Account only to the extent that (i) any sums remain in the Residual Receipts Account at the end of each calendar year and (ii) to the extent that the Borrower has not made Distributions on a cumulative basis equal to the maximum permissible Distributions under **Paragraph 6** hereof.

5. Additional Borrower Covenants. The Borrower further agrees that:

a. At least sixty-three (63) of the Units shall be occupied by Tenants whose family income is fifty percent (50%) or less of the median income of the Chicago metropolitan statistical area, 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;

b. The Borrower has previously submitted to IHDA a Tenant Selection Plan. In the advertising, marketing and rental of Units, the Borrower agrees to abide by the terms and conditions of its Tenant Selection Plan, as approved by IHDA;

c. The Borrower shall obtain from each prospective Tenant prior to admission to the Development, a certification of income (the "Certification"), and thereafter on an annual basis, a recertification of income (the "Recertification");

d. The Borrower shall obtain written evidence substantiating the information given on the Certifications and Recertifications and shall retain that evidence in its files for three (3) calendar years after the year to which such evidence of income pertains. Within thirty (30) days following the end of each calendar year, the Borrower shall certify to IHDA that, at the time of such certification and during the preceding calendar year, the Borrower was in compliance with the requirements of this **Paragraph 5**; and

e. The Borrower shall not permit the use of the Units for any purpose except residential use.

6. Distributions. The Borrower shall not make, receive or retain any Distribution except as permitted in this Agreement, and then only on the following conditions:

a. Any Distribution shall be made only after (i) IHDA receives and approves the audited financial statements of the Development for calendar years to which the Distribution relates; and (ii) the Borrower receives IHDA's written approval of the amount and nature of the Distribution in accordance with IHDA's guidelines, policies and the Rules;

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b. Any Distribution shall be limited in any one (1) calendar year to Surplus Cash, as calculated and approved by IHDA, so as not to exceed 7.562% of the Borrower's Equity ("Limited Distribution"); and

c. The right to Limited Distributions shall cumulate from the Closing Date. To the extent that the Borrower does not receive a Limited Distribution in any calendar year, it may be paid out of Surplus Cash or Residual Receipts, if any, available in subsequent years.

7. **Authority Power.** The Borrower agrees that the Chairman of IHDA, acting with the prior approval of IHDA, shall have the power, if he determines that the Loan is in jeopardy of not being repaid, or that the Development is in jeopardy of not being rehabilitated and operated, or the Borrower is otherwise in violation of the Act or the rules and regulations promulgated by IHDA, to appoint to the general partner of the Borrower a partner who, solely and without interference from the other Partners, shall have the power to conduct the entire affairs of the Borrower, notwithstanding any other provisions of the partnership agreement of the Borrower or any other provisions of law.

8. **Borrower's Duties.** In addition to, but not by way of limiting, the other duties of the Borrower set forth in this Agreement or any of the other Loan Documents, the Borrower shall comply with the following:

a. **Audit.** The Development and all equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents and other papers relating to it shall at all times be maintained in reasonable condition for proper inspection and audit, and shall be subject to examination, inspection and copying at any reasonable time, and from time to time, by IHDA or its agents or representatives.

b. **Books and Records.** The books and records of the Borrower and of the operations of the Development shall be kept in accordance with generally accepted accounting principles. The Borrower shall, upon reasonable notice from IHDA and during normal business hours, allow access to the records and books of account related to the operation of the Development, including any supporting or related vouchers or papers, kept by or on behalf of the Borrower and their representatives or agents; such access shall include the right to make extracts or copies of them.

c. **Financial Statement.** Within ninety (90) days following the end of each calendar year, the Borrower shall furnish to IHDA a complete audited financial statement report for the Development based upon an examination of the books and records of the Borrower, prepared at the Borrower's expense in accordance with generally accepted accounting principles, and certified to the Borrower by an Illinois licensed certified public accountant, or other person acceptable to IHDA.

d. **Furnishing Information.** At the request of IHDA, the Borrower shall furnish such reports, projections and analyses as required pursuant to the Rules, policies

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and procedures of IHDA, as amended and supplemented from time to time, and shall give specific answers to questions upon which information is desired from time to time relative to the Development's condition, income, assets, liabilities, contracts and operation.

9. Non-Discrimination in Housing.

a. The Borrower shall not, in the selection of Tenants, in the provision of services or in any other matter relating to the construction or operation of the Development discriminate against any person on the grounds of race, color, creed, religion, sex, age, handicap, national origin, ancestry, unfavorable military discharge or familial or marital status, or because the Tenant is receiving governmental assistance.

b. The Borrower shall comply with all of the provisions of Paragraph 13 of the Act and all other provisions of applicable federal, state and local law relative to non-discrimination.

10. Violation of Agreement by Borrower. Upon violation of any of the provisions of this Agreement by the Borrower, IHDA may give written notice of such violation to the Borrower, and the Borrower shall then have thirty (30) days to correct or cure it; provided, however, that if such violation cannot be reasonably cured within such thirty (30) day period, Borrower shall have such time as may be reasonably necessary to cure it provided that Borrower commences to cure it within such thirty (30) day period and diligently prosecutes such cure to completion. If such violation is not corrected within thirty (30) days after the date of such notice, or within such further time as IHDA in its sole discretion permits, then without further notice IHDA may declare a default under this Agreement, effective on the date of such declaration, and upon such default, IHDA may exercise any and all remedies that it may have, at law or in equity. IHDA's remedies are cumulative and the exercise of one shall not be deemed an election of remedies, nor foreclose the exercise of IHDA's other remedies.

Notwithstanding anything to the contrary contained herein, IHDA agrees that any cure of any default made or tendered by one of Borrower's limited partners shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower.

11. Development Funds and Development Property. The Development and Development Funds are referred to in this Agreement as "Development Property." Development Funds shall be expended only for (i) payment of Operating Expenses, Maintenance Expenses and Administrative Expenses; (ii) payments into any tax and insurance reserve account; (iii) payments of amounts due under the Financing Agreement, including principal, interest, late charges and other amounts payable under it; (iv) payments into any replacement reserve account; (v) payments of amounts due under any permitted subordinate financing; and (vi) subject to any amounts required to be paid into the Residual Receipts Account pursuant to **Paragraph 4** hereof, or by reason of the limitations of **Paragraph 6** hereof, payments to the Borrower as a Distribution.

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12. **Termination of Liabilities.** In the event of a sale or other transfer of the Development, all of the duties, obligations, undertakings and liabilities of the Borrower and/or such transferor under the terms of this Agreement shall thereafter cease and terminate as to the Borrower and/or such owner-transferor, except as to any acts or omissions or obligations to be paid or performed by the Borrower and/or transferor that occurred prior to such sale or transfer. However, as a condition precedent to the termination of the liability of the Borrower or owner-transferor under this Agreement, the owner-transferee shall assume, on the same terms and conditions as apply under this Agreement to the owner-transferor, all of the duties and obligations of such owner-transferor arising under this Agreement from and after such sale or transfer.

13. **Term of Agreement/Covenants Running with Land.** The covenants set forth in this Agreement shall be deemed to run with and bind and burden the Development, and shall be deemed to bind any future owners of the Development and any legal, equitable or beneficial interest in it, and shall not be deemed extinguished, satisfied or completed until payment in full of the Loan.

14. **Subordination.** This Agreement is subordinate in each and every respect to any and all rights of any kind created under the Loan Documents, including without limitation the Mortgage, dated as of the date hereof, made by the Borrower to the Bank and that certain mortgage dated as of the date hereof in favor of the Federal Home Loan Mortgage Corporation and that certain mortgage dated as of the date hereof in favor of Citibank N.A. as construction lender.

15. **Miscellaneous.**

a. **Amendment of Regulatory Agreement.** This Agreement shall not be altered or amended except in a writing executed by all of the parties hereto.

b. **Partial Invalidity.** The invalidity of any clause, part or provision of this Agreement shall not affect the validity of its remaining portions.

c. **Binding Successors.** This Agreement shall bind, and the benefits shall inure to, the respective parties to this Agreement, their legal representatives, successors in office or interest and assigns.

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

e. **Recording Agreement.** The Borrower agrees and assumes the obligation to have this Agreement recorded in the appropriate land records in the jurisdiction in which the Development is situated. If the Borrower fails to do so, IHDA may have it recorded at the expense of the Borrower.

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f. **Waiver by IHDA.** No waiver by IHDA of any breach of this Agreement shall be deemed to be a waiver of any other or subsequent breach.

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

h. **Third Parties.** The parties do not intend this Agreement to inure to the benefit of any third party, including, but not limited to, contractors, subcontractors, management and marketing agents and creditors of the Borrower or the Development.

i. **Notices.** Any notice, demand, request or other communication that any party may desire or may be required to give to any other party under this Agreement 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 IHDA:

Illinois Housing Development Authority
401 North Michigan Avenue
Chicago, Illinois 60611

Attention: Assistant to the Executive Director for Multifamily Programs

with a copy to:

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

If to the Borrower:

Randolph Tower Affordable City Apartments, LLC
c/o Lexington Homes, L.L.C.
1731 N. Marcey, Suite 200
Chicago, Illinois 60614
Attention: Wayne Moretti

And

Village Green Companies
30833 Northwestern Highway
Farmington Hills, Michigan 48334
Attention: Jonathan Holtzman

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With a Courtesy Copy to:

Wildman, Harrold, Allen and Dixon LLP
225 W. Wacker Drive, Suite 2800
Chicago, Illinois 60606
Attention: Thomas P. Duffy

Such addresses may be changed by notice to the other party given in the same manner as provided in this **Paragraph 15.i**. Any notice, demand, request or other communication sent pursuant to subsection (a) shall be served and effective upon such personal service. Any notice, demand, request or other communication sent pursuant to subsection (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 subsection (c) shall be served and effective three (3) business days after proper deposit with the United States Postal Service. In connection with the courtesy copy, the Authority will exercise reasonable efforts to provide copies of any notices given to Owner; however, the Authority's failure to furnish copies of such notices shall not limit the Authority's exercise of any of its rights and remedies under any document evidencing, securing or governing the financing, or effect the validity of the notice.

16. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, but all together shall constitute one and the same instrument.

[SIGNATURES ARE ON THE FOLLOWING PAGE]

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

THE BORROWER:

RANDOLPH TOWER CITY APARTMENTS, LLC

By: Holtzman Interests #24, LLC,
Its managing member

By: _____
Jonathan Holtzman, A Manager

RANDOLPH TOWER AFFORDABLE CITY APARTMENTS, LLC,

By: Holtzman Affordable Holdings, LLC
Its managing member

By: Holtzman Interests #24, LLC,
Its managing member

By: _____
Jonathan Holtzman, A Manager

IHDA:

ILLINOIS HOUSING DEVELOPMENT AUTHORITY,
a body politic and corporate

By: _____
Printed Name: _____
Title: _____

Property of Cook County Clerk's Office

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

THE BORROWER:

RANDOLPH TOWER CITY APARTMENTS, LLC

By: Holtzman Interests #24, LLC,
Its managing member

By: _____
A Manager

RANDOLPH TOWER AFFORDABLE CITY APARTMENTS, LLC,

By: Holtzman Affordable Holdings, LLC
Its managing member

By: Holtzman Interests #24, LLC,
Its managing member

By: _____
A Manager

IHDA:

ILLINOIS HOUSING DEVELOPMENT AUTHORITY,
a body politic and corporate

By: _____

Printed Name: John R. Blum

Title: Assistant Executive Director

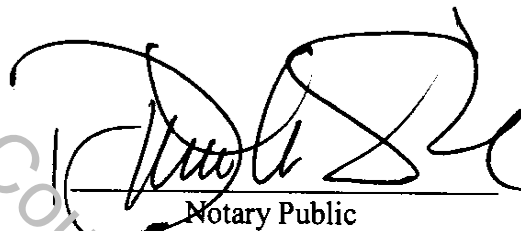
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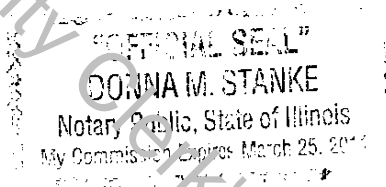
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, certify that Jonathan Holtzman, personally known to me to be a manager of Holtzman Interests #24, 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/she signed and delivered the said instrument in his/her capacity as manager of Holtzman Interests #24, LLC, as his/her free and voluntary act and deed and as the free and voluntary act and deed of Holtzman Interests #24, LLC, for the uses and purposes therein set forth.

Given under my hand and official seal this 17 day of December, 2010.



Notary Public



Notary Public's Office

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the State and County aforesaid, certify that Jane F. Allger, personally known to me to be the Assistant Executive Director of the **ILLINOIS HOUSING DEVELOPMENT AUTHORITY**, who is 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 she signed and delivered the said instrument in her capacity as Assistant Executive Director of the **ILLINOIS HOUSING DEVELOPMENT AUTHORITY**, as her free and voluntary act and deed and as the free and voluntary act and deed of the **ILLINOIS HOUSING DEVELOPMENT AUTHORITY**, for the uses and purposes therein set forth.

Given under my hand and official seal this 17th day of December, 2010.

Ruby Rucker Owens
Notary Public



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EXHIBIT A

LEGAL DESCRIPTION

**UNIT NOS. 1 AND 2 IN THE RANDOLPH TOWER CITY APARTMENTS
CONDOMINIUM AS DELINEATED ON A SURVEY OF THE FOLLOWING
DESCRIBED REAL ESTATE:**

**LOT 5 IN BLOCK 33 IN ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP
39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK
COUNTY ILLINOIS, WHICH SURVEY IS ATTACHED AS EXHIBIT "C" TO THE
DECLARATION OF CONDOMINIUM RECORDED Dec. 20 2010 AS DOCUMENT
NUMBER 1035422069 TOGETHER WITH ITS UNDIVIDED PERCENTAGE
INTEREST IN THE COMMON ELEMENTS, ALL IN COOK COUNTY, ILLINOIS.**

**Commonly Known As: 188 West Randolph Street, Units 1 and 2, Chicago,
Illinois 60601**

Permanent Index Number: 17-09-433-001-0000