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Doc#: 1907018116 Fee: \$76.00
Edward M. Moody
Cook County Recorder of Deeds
Date: 03/11/2019 11:07 AM Pg: 1 of 15

**THIS DOCUMENT
PREPARED BY AND AFTER
RECORDING RETURN TO:**

Katriina S. McGuire
Thompson Coburn LLP
55 East Monroe Street
37th Floor
Chicago, Illinois 60603
Tel: (312)560-2326

This space reserved for Recorder's use only.

ZONING RIGHTS AGREEMENT

THIS ZONING RIGHTS AGREEMENT (this "**Agreement**") is made and entered into as of the 28 day of Feb, 2019 (the "**Effective Date**"), by and between Van Buren Partners LLC, an Illinois limited liability company; 1133 W. Van Buren Series ("**1133 Owner**") and ~~Van Buren Partners, LLC~~, an Illinois limited liability company ("**1125 Owner**") (1133 Owner and 1125 Owner are referred to in the singular as an "**Owner**" and in the plural as "**Owners**").

*1125 Van Buren LLC

RECITALS

A. 1133 Owner owns in fee simple the land and improvements thereon (the "**1133 Parcel Improvements**") located at 1133 West Van Buren Street, Chicago, Illinois, and legally described on Exhibit A attached hereto and made a part hereof (collectively with the 1133 Parcel Improvements, the "**1133 Parcel**").

B. Immediately prior to the execution, delivery and recording of this Agreement, 1125 Owner acquired and owns in fee simple the land located at 1125 West Van Buren Street, Chicago, Illinois, and legally described on Exhibit B attached hereto and made a part hereof (the "**1125 Parcel**"; the 1133 Parcel and the 1125 Parcel are collectively referred to herein as the "**Parcels**"), on which 1125 Owner intends to construct an approximately 23-story mixed-use building with residential units, retail space and accessory uses.

C. The Parcels collectively comprise all land, exclusive of public streets and rights-of-way, located within Residential-Business Planned Development No. _____, approved by the City Council of the City of Chicago (the "**City**") on December 12, 2018 and published in the City Council Journal of Proceedings on pages 93287-93304 as heretofore and hereafter amended and modified from time to time in conformance with this Agreement (the "**PD**").

D. The 1125 Parcel is designated as "**Subarea A**" in the PD, and the 1133 Parcel is designated as "**Subarea B**" in the PD (Subarea A and Subarea B are referred to in the singular as a "**Subarea**" and in the plural as "**Subareas**").

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E. The Owners desire and intend that the Parcels collectively shall at all times during the term of this Agreement be deemed to be a single "zoning lot" as such term is defined in the Chicago Zoning Ordinance, Title 17 of the Municipal Code of the City, in effect as of the Effective Date (the "**Zoning Ordinance**").

F. In furtherance of that certain Agreement for Sale of Development Rights dated June 29, 2018, by and between the Owners, the Owners desire to enter into this Zoning Rights Agreement to designate zoning control parties for purposes of Section 17-8-0400 of the Zoning Ordinance and to set forth certain other agreements regarding the Parcels and the PD and the Parties' rights and obligations relating thereto.

NOW, THEREFORE, in consideration of the foregoing, and for other valuable and mutual consideration, the adequacy and receipt of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation. The foregoing recitals are incorporated herein as if fully set forth in this Section I.

2. Allocation of Floor Area and Floor Area Ratio. 1133 Owner hereby transfers and conveys to 1125 Owner all rights to floor area and floor area ratio (FAR) associated with the 1133 Parcel and not needed for the 1133 Parcel Improvements. The floor area and floor area ratio (FAR) under the PD shall be allocated to the Parcels as follows:

(a) Maximum Permitted Floor Area Ratio (FAR)

Overall: 11.25

Subarea A: 18.11

Subarea B: 1.25

(b) Maximum Permitted Floor Area (square feet)

Overall: 180,090 sq. ft.

Subarea A: 172,389.09 sq. ft.

Subarea B: 7,676.25 sq. ft.

For purposes of this Agreement, the terms "floor area," "floor area ratio" and "FAR" shall have the meanings ascribed to them in the Zoning Ordinance. For purposes of the PD and this Agreement, the Parcels collectively contain an overall net site area of 15,660 square feet, Subarea A (corresponding to the 1125 Parcel) contains a net site area of 9,519 square feet, and Subarea B (corresponding to the 1133 Parcel) contains a net site area of 6,141 square feet.

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3. Allocation of Minimum Lot Area (MLA). 1133 Owner hereby transfers and conveys to 1125 Owner the minimum lot area attributable to the 1133 Parcel for purposes of determining the number of dwelling units that can be developed on the 1125 Parcel under the PD.

4. Other Development Rights. Other development rights and standards not specifically addressed in this Agreement or the PD shall be allocated to the Parcels on an equitable basis and, where appropriate, based on relative net site area, such that neither Owner shall be permitted to develop, establish or use, to the exclusion of the other Owner, zoning rights that would otherwise be available to such other Owner were the Parcels to constitute separate "zoning lots" (as that term is defined in the Zoning Ordinance).

5. Permitted Use of Parcels; Permits. Each Owner shall have the right, without further consent or authorization from any other Owner, to occupy, use, operate, maintain, renovate, repair, demolish, develop and redevelop its Parcel and the improvements located thereon from time to time, and to seek and obtain any and all permits, licenses, authorizations and approvals for the same, provided, however, neither Owner shall take or permit any action on or related to its Parcel or Subarea in which such Parcel is located which is prohibited by this Agreement.

6. Compliance with Zoning; Violations. Neither Owner shall cause (or permit on its Parcel) any condition or circumstance that would violate or be inconsistent with the PD or the Zoning Ordinance or would result in a Material Adverse Effect, as defined below. Any Owner causing any such condition or circumstance shall promptly take such action as may be necessary to cause such condition or circumstance to be cured, corrected, removed or resolved within ninety (90) days of the date such Owner becomes aware of such condition or circumstance of non-compliance. Upon receipt of any correspondence from any government entity which relates in any way to the PD or the Zoning Ordinance or the Parties' or Parcels' compliance therewith, the Owner receiving such correspondence shall promptly provide a copy to the other Owner.

7. Designated Zoning Control Parties; Zoning Changes.

(a) As contemplated by Section 17-8-0400 of the Zoning Ordinance, each Owner is hereby designated as the sole zoning control party with respect to its own Parcel and the Subarea in which such Parcel is located (each Owner, for these purposes, a "Zoning Control Party").

(b) Subject to the limitations set forth in this Section 7 and elsewhere in this Agreement, each Zoning Control Party (for purposes of this Section 6, a "Requesting Owner") is authorized by this Agreement, without further consent from the other Owners, and on behalf of the other Owners, to take action on any matter regarding the PD (including, without limitation, making application for a Zoning Change, as defined below), but only if such action will not have a Material Adverse Effect, as defined below. For purposes of this Agreement, a "Zoning Change" means any approvals required by the PD or the Zoning Ordinance, including without limitation site plan approvals and so-called Part II approvals, any change to the PD, including

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without limitation administrative “minor” changes or amendments to the PD requiring approval by the City Council, and advisory opinions, interpretations and determinations by the City or any agency thereof.

(c) The other Owners shall reasonably cooperate with the Requesting Owner, at no cost to such other Owner, in obtaining Zoning Changes which will not result in a Material Adverse Effect. The Requesting Owner shall furnish the other Owner with a copy of all application and supporting documentation prior to filing or processing, and during any review or approval process. All costs related to preparation, filing and processing of such application shall be solely borne by the Requesting Owner. The other Owner, within fifteen (15) business days after written request to do so by the Requesting Owner, shall execute such instruments, agreements, writings, documents or applications as may be legally required or reasonably necessary to seek or obtain a Zoning Change authorized by this Agreement. No Owner shall have any obligation to execute any documents or instruments that are in violation of, or not in accordance with, the terms of this Agreement.

8. Material Adverse Effect. For purposes of this Agreement, a “Material Adverse Effect” means:

(a) any limitation, restriction or diminution of allowable uses, floor area ratio, floor area, density, height, or other development rights allocated to another Subarea under this Agreement, the PD or the Zoning Ordinance;

(b) any limitation, restriction or diminution of access to another Subarea under this Agreement, the PD or the Zoning Ordinance;

(c) any increase in existing minimum requirements, including net site area, setbacks, required off-street parking spaces (or parking ratios), required bicycle parking spaces, loading areas, or other development requirements allocated to another Subarea under this Agreement, the PD or the Zoning Ordinance;

(d) the imposition of increased or additional obligations, conditions, requirements, liabilities or costs upon another Subarea;

(e) another Subarea or the improvements thereon becoming non-conforming under the PD or the Zoning Ordinance;

(f) through a Zoning Change or otherwise, use of another Subarea’s net site area for purposes of increasing floor area, dwelling units or other development rights, such that future potential development rights available to such other subarea are diminished, considering the limitations of the Zoning Ordinance and the underlying zoning district;

(g) any PD boundary modification, except as provided in Section 9 below; or

(h) the introduction, commencement or threat of administrative, legislative or judicial action or proceedings that, if concluded, could result in any of the foregoing.

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9. Planned Development Boundary Modifications. Notwithstanding any other provision in this Agreement:

(a) Neither Owner may apply for or obtain an amendment to the PD that would cause the interior Subarea boundaries of the PD to be amended or modified unless the other Owner has first executed a written consent to such change and an amendment to this Agreement that will define any changes in zoning rights and relationships between the Parcels.

(b) Neither Owner may apply for or obtain an amendment to the PD that would cause the exterior boundaries of the PD to be amended or modified in a manner that would enlarge the land area within the PD unless the other Owners have first executed an amendment to this Agreement that will subject the enlarged area to the terms and conditions of this Agreement and identify the extent to which such enlarged area is located within any Parcels or constitutes a new Parcel hereunder.

(c) Neither Owner may apply for or obtain an amendment to the PD that would cause the exterior boundaries of the PD to be amended or modified in a manner that would reduce the land area within the PD unless the other Owners have first executed an amendment to this Agreement that will release the land thereby removed from the PD from the terms and conditions of this Agreement and identify the extent to which such reduced area is located within any Parcel or Parcels.

10. Owner Actions. Neither Owner shall take any action, or fail to take any action, that would cause any Parcel or portion of a Parcel to be in violation of this Agreement, the PD or the Zoning Ordinance, including without limitation any action that would have a Material Adverse Effect on the other Owner's Parcel or non-compliance with legal requirements or failure to comply with conditions or requirements of governmental approvals that will or could: (i) subject the other Owner to civil or criminal liability, (ii) jeopardize any governmental approval benefitting the other Owner, or (iii) jeopardize any right of the other Owner to occupy, use or otherwise enjoy their respective Parcel.

11. Enforcement of Agreement. The terms of this Agreement are special and unique, and damages may not be adequate compensation in the event of any breach or default by an Owner. Accordingly, in the event of any actual or threatened breach by an Owner of any of the agreements or restrictions contained herein, the other Owner shall be entitled to injunctive, specific performance, or other appropriate relief compelling performance of the terms hereof or restraining any action in violation of the terms hereof, provided that nothing contained herein shall be construed as prohibiting the non-breaching Owner from pursuing any other available remedies, including the recovery of damages, and all such rights are herein expressly reserved, excluding, however, consequential, special or punitive damages or lost profits. In any suit, action or proceeding initiated under or by reason of this Agreement, the prevailing Owner therein shall be entitled to reimbursement from the non-prevailing Owner for all costs and expenses, including, without limitation, court costs, expert witness fees and reasonable attorneys' fees and expenses, incurred or sustained by the prevailing Owner in connection with such suit, action or proceeding.

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12. Notices. All notices, demands and requests and other communications which may be given or which are required to be given by either Owner to the other under this Agreement shall be in writing and shall be deemed effective and delivered either: (a) on the date personally delivered to the address of the recipient set forth below, as evidenced by written receipt therefor, whether or not actually received by the person to whom addressed; (b) on the third (3rd) business day after being sent, by certified or registered mail postage prepaid, return receipt requested, addressed to the intended recipient at the address specified below; (c) on the first (1st) business day after being deposited into the custody of a nationally recognized overnight delivery service such as Federal Express Corporation, Airborne Express, or United Parcel Service, addressed to the recipient at the address specified below; or (d) at the time of electronic confirmation of receipt after being sent before 5:00 p.m. local time of recipient on a business day by facsimile to the numbers set forth below for each recipient, provided that a copy is also sent by nationally recognized overnight delivery service. For purposes of this Section 12, the addresses of the Owners for all notices are as follows (unless changed by similar notice in writing given by particular persons whose address is to be changed):

If to 1133 Owner:

Van Buren Partners LLC; 1133 W. Van Buren Series
 1133 West Van Buren Street
 Chicago, Illinois 60607
 Attn: Iven Rosheim
 Facsimile: 312-421-3691

With a copy to:

DLA Piper LLP (US)
 203 North LaSalle Street, Suite 1900
 Chicago, Illinois 60601
 Attn: Mariah F. DiGrino, Esq.
 Facsimile: 312-251-5833

If to 1125 Owner:

Dimitri Nasssis
 c/o Tandem Partners, LLC
 700 North Carpenter Street
 Chicago, IL 60642
 Fax: []

With a copy to:

Thompson Coburn LLP
 Katriina McGuire
 55 E. Monroe Street, 37th Floor

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Chicago, IL 60603
Fax: 312-580-2201

13. Modifications. This Agreement cannot be changed orally, and no agreement to waive, change, modify or discharge this Agreement in whole or in part shall be effective unless such agreement is in writing, signed by the Owners and recorded in the office of the Cook County Recorder of Deeds.

14. Successors and Assigns. This Agreement shall run with the land and shall be appurtenant to each and every portion thereof and shall inure to the benefit of, and be binding upon, the Owners and each of their successors, assigns, tenants and transferees of any portion of the Parcels.

15. Counterparts. This Agreement may be executed in counterpart, and all such executed counterparts shall constitute the same agreement.

16. Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person or entity, by judgment or court order shall in no way affect any of the other provisions hereof, or the application hereof to any other person or entity or circumstances and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonably or grossly inadequate under all of the circumstances or would frustrate the purposes of this Agreement.

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

18. Section Headings. Section titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or any provisions hereof.

19. No Third Party Beneficiaries. No provisions of this Agreement, express or implied, are intended or shall be construed to confer upon or give to any person or entity other than the Owners hereto, any rights, remedies or other benefits under or by reason of this Agreement unless otherwise expressly and specifically provided herein.

20. Relationship of the Owners. This Agreement is not intended to, nor shall it be deemed to, create a partnership, joint venture or agency relationship between the Owners. Neither Owner shall hold itself out as a partner, joint venture, principal or agent of the other Owner under this Agreement except as otherwise expressly and specifically provided herein.

21. Term. This Agreement shall continue in effect until such time, if ever, that the PD is terminated and the Parcels are completely independent from each other for zoning purposes as separate "zoning lots" (as that term is defined in the Zoning Ordinance) and in compliance with the Zoning Ordinance such that the rights, obligations and allocations of this Agreement are rendered obsolete. In such event, the Owners shall mutually execute a termination of this Agreement.

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22. Indemnification. Each Owner (an "Indemnitor") agrees to indemnify, defend and hold harmless the other Owner and its members, managers, officers, and employees from and against any claims, damages, proceedings, losses, liabilities, costs and expenses brought or asserted by any third parties (including reasonable attorneys' fees and litigation costs), excluding, however, consequential, special or punitive damages or lost profits, arising from or in connection with Indemnitor's violation of or failure to comply with the provisions of this Agreement.

23. Limitation of Personal Liability. The enforcement of any rights or obligations contained in this Agreement against any Owner shall be limited to the interest of such Owner in the Parcel owned by such Owner. No judgment against any Owner shall be subject to execution on, or be a lien on, any assets of such Owner other than that Owner's interest in its Parcel.

24. Agreement Shall Continue Notwithstanding Breach. No breach or default by an Owner shall entitle another Owner to cancel, rescind or otherwise terminate this Agreement; however, such limitation shall not affect, in any manner, any other rights or remedies that an Owner may have under this Agreement by reason of any such breach.

25. No Waiver. The failure of an Owner to insist upon strict performance of any of the terms, covenants or conditions of this Agreement shall not be deemed a waiver of any rights or remedies that such Owner may have under this Agreement, whether at law or in equity, and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

26. Estoppel Certificate. Each Owner hereto shall, from time to time, within fifteen (15) days after written request from the other Owner, execute, acknowledge and deliver to the requesting Owner, a certificate (which may be relied upon for estoppel purposes only and shall not create any liability for damages) stating:

- (a) that the terms and provisions of this Agreement are unmodified and are in full force and effect or, if modified, identifying the modification agreements;
- (b) whether the certifying Owner has knowledge of any existing default hereunder by the requesting Owner or other Owner and, if so, specifying the nature and extent of such default;
- (c) the total amount of all liens being asserted hereunder by the certifying Owner against the requesting Owner; and
- (d) such other matters as may be reasonably requested.

An estoppel certificate provided hereunder may be relied upon, for estoppel purposes, by any current or prospective lender, purchaser or transferee of a Parcel or portion thereof.

27. Multiple Titleholders of a Parcel. If title to a Parcel shall be divided, all fee titleholders of such Parcel shall be jointly and severally responsible with the other owners of

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such Parcel for the performance of the obligations of the Owner of such Parcel, under this Agreement, but such fee-titleholders shall only act collectively through a single representative with authority to bind all such fee titleholders in respect of actions, decisions and consents under this Agreement.

28. Recording. 1125 Owner shall, at its cost and expense, record a copy of this Agreement with the Recorder of Deeds of Cook County, Illinois, and promptly thereafter deliver a stamped recorded copy of this Agreement to 1133 Owner.

[SIGNATURE PAGES FOLLOW]

Property of Cook County Clerk's Office

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[SIGNATURE PAGE TO ZONING RIGHTS AGREEMENT]

IN WITNESS WHEREOF, the Owners have hereunto executed this Agreement as of the Effective Date set forth above.

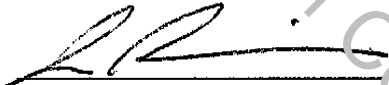
1125 OWNER

TANDEM PARTNERS, LLC, an Illinois limited liability company

By: _____
Name: _____
Title: _____

1133 OWNER

VAN BUREN PARTNERS LLC, an Illinois limited liability company; **1133 W. VAN BUREN SERIES**

By: 
Name: Iven Rosheim
Title: Partner

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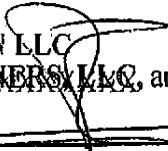
[SIGNATURE PAGE TO ZONING RIGHTS AGREEMENT]

IN WITNESS WHEREOF, the Owners have hereunto executed this Agreement as of the Effective Date set forth above.

1125 OWNER

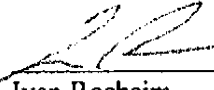
1125 VAN BUREN LLC

~~XANDEM PARTNERS LLC~~, an Illinois limited liability company

By: 
 Name: _____
 Title: _____

1133 OWNER

VAN BUREN PARTNERS LLC, an Illinois limited liability company; **1133 W. VAN BUREN SERIES**

By: 
 Name: Iven Rosheim
 Title: Partner

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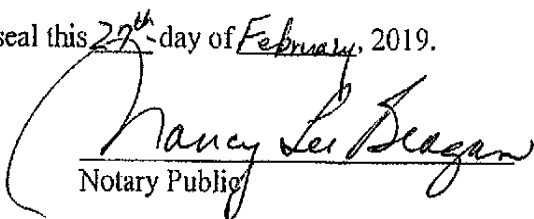
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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

* 1125 Van Buren LLC

I, the undersigned, a Notary Public in and for said County and State, do hereby certify that ~~Stephane~~ ^{Stephane} ~~Rambaud~~, personally known to me to be the ~~Manager~~ ^{Manager} of ~~Tandem Partners, LLC~~*, an Illinois limited liability company, 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, as such, he signed and delivered the said instrument pursuant to authority given by said company as the free and voluntary act and deed of said company, for the uses and purposes therein set forth.

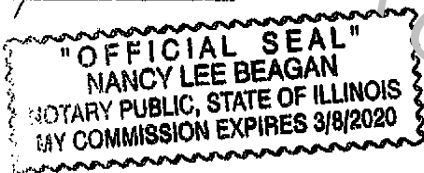
GIVEN under my hand and notarial seal this 29th day of February, 2019.



Notary Public

My Commission Expires:

03/08/2020



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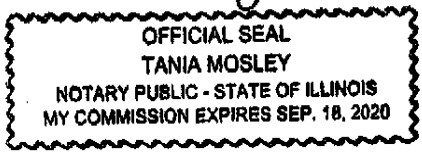
STATE OF ILLINOIS)
)
 COUNTY OF COOK) SS

I, the undersigned, a Notary Public in and for said County and State, do hereby certify that Iven Rosheim, personally known to me to be the PARTNER of Van Buren Partners LLC, an Illinois limited liability company; 1133 W. Van Buren Series, 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, as such, he signed and delivered the said instrument pursuant to authority given by said company as the free and voluntary act and deed of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 22nd day of February, 2019.

Tania Mosley
 Notary Public

My Commission Expires:
Sept. 18, 2020



Property of Cook County Clerk's Office

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EXHIBIT A

LEGAL DESCRIPTION OF THE 1133 PARCEL

THE WEST FOUR FEET OF LOT 10, AND LOTS 11 THROUGH 16 IN C.J. HULL'S SUBDIVISION OF BLOCK 27 IN CANAL TRUSTEES' SUBDIVISION OF THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPT THAT PART OF LOTS 10 THROUGH 16 TAKEN FOR THE CONGRESS EXPRESSWAY DESCRIBED AS FOLLOWS:

BEGINNING AT SOUTHWEST CORNER OF LOT 16, THENCE NORTHERLY ALONG THE WEST LINE OF LOTS 16, A DISTANCE OF 73.20 FEET, THENCE 99 DEGREES 34 MINUTES 34 SECONDS EASTERLY A DISTANCE OF 156.76 FEET TO A POINT 4 FEET EAST OF THE WEST LINE OF LOT 10, THENCE SOUTH FOR A DISTANCE OF 47.26 FEET TO A POINT ON THE SOUTH LINE OF LOTS 10 TO 16, THENCE WESTERLY ALONG SAID SOUTH LINE FOR A DISTANCE OF 154.44 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

PINs: 17-17-229-006-0000
 17-17-229-007-0000
 17-17-229-008-0000
 17-17-229-009-0000
 17-17-229-010-0000
 17-17-229-011-0000
 17-17-229-051-0000

Address: 1133 West Van Buren, Chicago, Illinois 60607

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EXHIBIT B

LEGAL DESCRIPTION OF THE 1125 PARCEL

LOTS 5, 6, 7, 8, 9 AND 10 (EXCEPT THE WEST 4 FEET OF SAID LOT 10), BOTH INCLUSIVE, EXCEPT THAT PART THEREOF TAKEN FOR CONGRESS STREET EXPRESSWAY, IN C.J. HULL'S SUBDIVISION OF BLOCK 27 IN CANAL TRUSTEES SUBDIVISION OF THE WEST ½ OF THE NORTHEAST ¼ OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED IN BOOK 158, PAGE 34 AS DOCUMENT 6751064, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 1125 W. VAN BUREN ST., CHICAGO, ILLINOIS 60607-2907

PIN: 17-17-229-013-0000, 17-17-229-014-0000, 17-17-229-015-0000, 17-17-229-016-0000, 17-17-229-050-0000