

ASSIGNMENT OF RENTS

THIS ASSIGNMENT is made as of the 31st day of July, 1995, by CHICAGO COLONY APARTMENTS ASSOCIATES, an Illinois general partnership (hereinafter referred to as "Assignor"), whose mailing address is c/o Paragon Group Property Services, Inc., 12400 Olive

DEPT-13 TORRENS \$45.00
120013 TRAN 2473 08/01/95 16:35:00
66681 OCT 95-95-905305
COOK COUNTY RECORDER

95505305

Boulevard, Suite 100, St. Louis, Missouri 63141, to JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY, a Massachusetts corporation, having its principal office at John Hancock Place, 200 Clarendon Street, Boston, Massachusetts 02117 (hereinafter, together with its successors and assigns, "Assignee").

WITNESSETH:

A. For value received, Assignor has executed and delivered to Assignee a PROMISSORY NOTE (as it may be extended or amended, "the Note") in the principal amount of Seventeen Million Four Hundred Thousand and No/100 Dollars (\$17,400,000.00) and a MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT (as it may be extended or amended, "the Mortgage"), securing the Note which constitutes a first mortgage lien upon the real property (the "Premises") described in EXHIBIT A attached hereto and made a part hereof.

B. Assignor wishes to further secure Assignee in the indebtedness evidenced by the Note (the "Loan"), now due and to become due to Assignee, secured by the Mortgage or otherwise.

NOW, THEREFORE, in consideration of these presents, the mutual agreements herein contained, and Assignee's making of the Loan to Assignor, and as security for the payment of all sums to be paid pursuant to the Note and the performance of all other obligations set forth in the Note, the Mortgage, and any related loan documents, including without limitation this Assignment (the Note, the Mortgage, and such other related documents, as they may be extended or amended, being "the Loan Documents"),

A. Present and Absolute Assignment. Assignor does hereby presently and absolutely SELL, ASSIGN, TRANSFER, SET OVER, and GRANT to Assignee:

1. All the rents, income, profits, issues, revenues, avails, damages, insurance loss proceeds or refunds or rebates of premiums, proceeds from the taking of the whole or any part of the Premises for public purposes by eminent domain or otherwise, proceeds from the termination, surrender, or

95505305

45505305

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

rejection of any Lease, accounts receivable, and abatements, refunds, or rebates of taxes or assessments, now due and which may hereafter become due under and by virtue of any of the Leases (as hereinafter defined) or otherwise in connection with the Premises (together, "the Rents");

2. The right to the use and possession of the Premises; and
3. The right to the use and possession of and the right to rent, let and/or lease any or all of the furniture, furnishing, fittings, attachments, appliances, and appurtenances of any kind and description now or hereafter available for the use of the tenants and/or the operation of the Premises in or to which Assignor has any right, title, or interest (together, "the Personal Property").

B. Appointment of Assignee as Attorney for Assignor. Upon the occurrence of an Event of Default (as defined in the Mortgage) and following the expiration of any applicable cure period, Assignor hereby irrevocably constitutes and appoints the Assignee its true and lawful attorney in its name and stead to:

1. collect any and all Rents;
2. use such measures, legal or equitable, as in its discretion it may deem necessary or appropriate to enforce the payment of the Rents;
3. secure and maintain the use and/or possession of the Premises, the Personal Property, or any part of either; and
4. fill any and all vacancies and rent, lease and/or let the Premises, the Personal Property, or any part thereof, at its discretion.

Assignor further hereby grants to Assignee full power and authority to make contracts for the care and management of the whole or any part of the Premises and/or the Personal Property in such form and providing for such compensation as may be deemed advisable by Assignee, and, for the performance or execution of any or all of these presents, to constitute, appoint, authorize and, in Assignor's place and stead, put and substitute one attorney or more for Assignor; and as Assignor's attorney or attorneys, in Assignee's discretion, to revoke, and to do, execute, perform and finish for Assignor and in Assignor's name all and singular those things which shall be necessary or advisable, or which said attorney or its substitute or substitutes shall deem necessary or advisable, in and about, for, touching or concerning these presents, the Premises, or the Personal Property, or any of them, as thoroughly, amply, and fully as Assignor, being personally present, could do concerning the same; and whatsoever said attorney or its substitute or substitutes shall do or cause to be done in, about, or concerning these

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

granting to Assignee full power and authority to exercise at any and all times each and every right, privilege, and power herein granted, without notice to Assignor.

C. Actions of Assignor as Landlord. Assignor hereby covenants and agrees as follows:

1. Except in the ordinary course of Assignor's business of leasing apartments, that the terms of any Lease (as hereinafter defined) will not be altered, modified, or amended, nor will the surrender or cancellation of any Lease be accepted, nor will any assignment or sublease of any Lease be allowed or consented to, nor will any proceedings for the dispossession or eviction of any tenant under any Lease be instituted, all without the prior written consent of Assignee; (used herein, the term "Lease" or "Leases" shall mean all leases, license agreements, and other occupancy and use agreements, oral or written, now or hereafter existing, for the Premises or any part thereof, together with all options therefor, options and other rights contained therein, amendments thereto, and renewals, modifications, and guarantees thereof);
2. To observe and perform all of the obligations imposed upon the landlord under the Leases;
3. Not to collect any Rents more than 30 days in advance of the time when the same become due, except security deposits and last month's rent to the extent expressly provided for in the Leases;
4. Not to enter into any new Leases without the prior written consent of Assignee, which consent may be upon such conditions as Assignee in its sole discretion may require, except in the ordinary course of business and on a form or forms that have been approved by Assignee, except that Assignor may make nonmaterial changes to the form of lease without Assignee's approval; and
5. Not to sell, assign, transfer, or set over any of the Rents or the Leases, at any time during the life of these presents.

D. Further Agreements Regarding Assignee. Assignor further hereby expressly covenants and agrees as follows:

1. that Assignee shall not in any way be responsible for failure to do any or all of the things for which rights, interests, power, and/or authority are herein granted it and shall be liable only for such cash as it actually receives under the terms hereof, provided, however, that failure of Assignee to do any of the things or exercise

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

any of the rights, interests, powers, and/or authorities hereunder shall not be construed to be a waiver of any of the rights, interests, powers, or authorities hereby assigned and granted to Assignee;

2. that Assignee shall not be responsible for the control, care, or management of the Premises, or for carrying out any of the terms and conditions of the Leases, or for any waste committed or permitted on the Premises by any tenant, and Assignee shall not be liable by reason of any dangerous or defective condition of the Premises;
3. that Assignor will execute upon the request of Assignee any and all instruments requested by Assignee to carry this Assignment into effect or to accomplish any other purpose deemed by Assignee to be necessary or appropriate in connection with this Assignment, the Premises, or the Personal Property;
4. that during the term of this Assignment and any proceedings brought to enforce the Mortgage, Assignor will not remove or cause to be removed from the Premises any of the Personal Property, except in the ordinary course of business and after replacing what has been removed with personal property of the same or greater value and usefulness, and will not look to Assignee for any damage to the same;
5. that this Assignment shall in no way operate to prevent Assignee from pursuing any remedy which it now or hereafter may have because of any present or future breach of the terms or conditions of the Mortgage, the Note, or any other Loan Document;
6. that Assignee's acceptance of this Assignment shall not constitute Assignee's consent to any Lease, nor its agreement to subordinate the Mortgage to any Lease, nor its agreement that any Lease shall survive foreclosure of the Mortgage; and
7. that notwithstanding any provision in the Note, the Mortgage, or any other Loan Document limiting the liability of Assignor, Assignor shall indemnify Assignee and its officers, employees, and agents, with counsel of Assignee's choice, from all claims, demand, liabilities, losses, damages, judgments, and costs, including attorneys' fees, which are in any way related to any of the Leases (including without limitation any affirmative landlord obligations arising thereunder), to the Premises, or to Assignee's exercise of any of its rights under this Agreement.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

E. Assignor's Representations and Warranties. Assignor represents and warrants to Assignee as follows:

1. That the rent roll or occupancy schedule attached as an exhibit to the Mortgage Commitment Application given by Assignor to Assignee in connection with its application for the Loan ("the Rent Roll") is a true, accurate, and complete list of all Leases or options to lease in effect at the Premises as of the date of said rent roll, that each of the Leases is valid and enforceable; that none of the Leases has been amended or extended except as expressly set forth in the Rent Roll; that no tenant has any right or option to renew, modify, or extend its Lease, or to acquire the Premises or any portion thereof, except as expressly set forth in the Rent Roll; that there exist no uncured defaults by Assignor under any of the Leases; that there are no claims by tenants, or obligations on the part of the landlord, in connection with any of the Leases except as expressly set forth in the Rent Roll; and that no rental concessions or periods of free rent have been given for any period after the date of this Assignment except as expressly set forth in the Rent Roll; and
2. that none of the Rents or the Leases have heretofore been sold, assigned, transferred, or set over by any instrument now in force, and that Assignor has good right to sell, assign, transfer, and set over the same and grant to and confer upon Assignee the rights, interests, powers, and/or authorities herein granted and conferred.

F. Miscellaneous. Assignor, for the consideration aforesaid, hereby ratifies and confirms all that Assignee may have done under any previous assignment of rents, or in connection with the Premises, the Personal Property, the Loan, and/or the Mortgage.

Assignor does further specifically authorize and instruct each and every present and future lessee or tenant of the whole or any part of the Premises to pay all unpaid Rent agreed upon in each tenancy to Assignee upon receipt of demand from Assignee after the occurrence of an Event of Default, and following the expiration of any applicable notice and cure period, to so pay the same.

Assignor agrees, for itself and for all tenants, present and future, under any of the Leases, that no affirmative landlord obligation under or related to any Lease shall be binding upon any purchaser at foreclosure or upon the recipient of a deed in lieu of foreclosure, in both cases including without limitation Assignee.

G. Rights of the Parties. Unless and until there shall occur an Event of Default and until the expiration of any applicable notice and cure period thereafter, Assignor is hereby granted a limited license, as hereinafter set forth, to possess and use the Premises and the Personal Property and to collect and receive the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Rents, and shall have the right to enforce the collection of Rents by any appropriate action or proceeding (subject to section C.1. hereof) brought in the name of Assignor until such time as said limited license is otherwise revoked. To the extent required, the Rents shall be applied to the reduction of the balance of the Loan as and when payments become due under the terms of the Loan Documents.

Upon the occurrence of an Event of Default and after the expiration of any applicable notice and cure period, and without prior notice being given to Assignor or any subsequent owner of the Premises by Assignee in the exercise upon default of its rights hereunder or under any other Loan Document, and without any requirement that a receiver be appointed or that Assignee have taken control of the Premises, said limited license shall, upon prior written notice to Assignee, be revoked and become null and void, and Assignor shall, upon receipt of demand from Assignee, promptly pay over to Assignee all Rents then in Assignor's possession or control and all Rents received after Assignor's receipt of such demand. Assignee, at its option and without further consent thereto by Assignor, may thereupon collect the Rents, may enter in and upon the Premises and take possession thereof and of the Personal Property, and may do every act and thing that Assignor or any subsequent owner of the Premises might or could do. Upon curing all such Events of Default within applicable cure periods, subject to section D.5. hereof, Assignor shall then be entitled under said limited license to collect and receive the Rents and to possess and use the Premises and the Personal Property.

Without limiting the provisions of the preceding paragraph, upon the occurrence of an Event of Default and after the expiration of any applicable notice and cure period, Assignee may enforce this Assignment by any legal or equitable remedy, including an action for damages or for specific performance of this Assignment, and Assignor agrees that its failure to pay over any Rents to Assignee, as set forth in the preceding paragraph, shall constitute conversion of the funds of Assignee.

Upon the recording with the Recorder of Deeds of a discharge of the Mortgage, this Assignment shall terminate (provided that sections D.1., D.2., D.4 (last two lines), and D.7. hereof shall survive such termination); and the Leases shall automatically be reassigned to the then owner in fee of the Premises; or if said owner so directs by written notice, the Leases shall be assigned to such other person or persons as said owner designates.

If any one or more of the provisions of this Assignment are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof.

This Assignment shall be interpreted in accordance with the laws of the State in which the Premises are located.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Except as otherwise provided in Section 9.1 of the Mortgage, no personal liability shall be asserted against Assignor, the General Partners of Assignor, or any of the partners of the General Partners of Assignor, by reason of any of the covenants, statements, representations or warranties herein contained.

This instrument may be executed in counterparts, each of which when taken together shall constitute an original.

IN WITNESS WHEREOF, this agreement is duly executed the day and year first above written.

CHICAGO COLONY APARTMENTS ASSOCIATES, an Illinois general partnership

By: PaineWebber Income Properties Seven, L.P., a Delaware limited partnership, General Partner

By: Seventh Income Properties Fund, Inc., a Delaware corporation, Managing General Partner

By: Rock M. D'Errico
(Print Name) Rock M. D'Errico
Its Vice President

and

By: Chicago Colony Apartments Company, L.P., a Missouri limited partnership, General Partner

By: _____
Lewis A. Levey
Managing General Partner

95505305

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Except as otherwise provided in Section 9.1 of the Mortgage, no personal liability shall be asserted against Assignor, the General Partners of Assignor, or any of the partners of the General Partners of Assignor, by reason of any of the covenants, statements, representations or warranties herein contained.

This instrument may be executed in counterparts, each of which when taken together shall constitute an original.

IN WITNESS WHEREOF, this agreement is duly executed the day and year first above written.

CHICAGO COLONY APARTMENTS ASSOCIATES, an Illinois general partnership

By: PaineWebber Income Properties Seven, L.P., a Delaware limited partnership, General Partner

By: Seventh Income Properties Fund, Inc., a Delaware corporation, Managing General Partner

By: _____
(Print Name) _____
Its _____

and

By: Chicago Colony Apartments Company, L.P., a Missouri limited partnership, General Partner

By: Lewis A. Levey
Lewis A. Levey
Managing General Partner

95505005

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF Massachusetts)
COUNTY OF Suffolk) SS:

The foregoing instrument was acknowledged before me this 27th day of July, 1995 by Mark M. DeLuca, Vice President of Seventh Income Properties Fund, Inc., a Delaware corporation, as Managing General Partner of PaineWebber Income Properties Seven, L.P., a Delaware limited partnership, as General Partner of Chicago Colony Apartments Associates, an Illinois general partnership, on behalf of said partnership.

James J. Macdonald
NOTARY PUBLIC

(Impress Notarial Seal Here)

My commission expires: November 12, 1997

STATE OF _____)
COUNTY OF _____) SS:

The foregoing instrument was acknowledged before me this _____ day of _____, 1995 by Lewis A. Levey, as Managing General Partner of Chicago Colony Apartments Company, L.P., a Missouri limited partnership, as General Partner of Chicago Colony Apartments Associates, an Illinois general partnership, on behalf of said partnership.

NOTARY PUBLIC

(Impress Notarial Seal Here)

My commission expires: _____, 19____

95503056

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF _____)
COUNTY OF _____) SS:

The foregoing instrument was acknowledged before me this _____ day of _____, 1995 by _____

_____, _____ President of Seventh Income Properties Fund, Inc., a Delaware corporation, as Managing General Partner of PaineWebber Income Properties Seven, L.P., a Delaware limited partnership, as General Partner of Chicago Colony Apartments Associates, an Illinois general partnership, on behalf of said partnership.

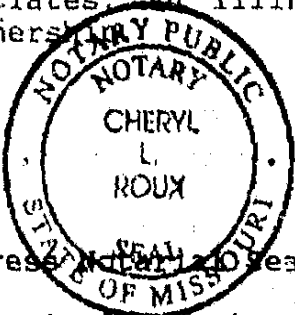
NOTARY PUBLIC

(Impress Notarial Seal Here)

My commission expires: _____, 19____

STATE OF Missouri)
COUNTY OF St. Louis) SS:

The foregoing instrument was acknowledged before me this 28th day of July, 1995 by Lewis A. Levey, as Managing General Partner of Chicago Colony Apartments Company, I.P., a Missouri limited partnership, as General Partner of Chicago Colony Apartments Associates, an Illinois general partnership, on behalf of said partnership.



Cheryl L. Roux
NOTARY PUBLIC

(Impress Notarial Seal Here)

My commission expires: _____, 19____

CHERYL L. ROUX
NOTARY PUBLIC STATE OF MISSOURI
ST. LOUIS COUNTY
MY COMMISSION EXP. APR. 8, 1999

95503105

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

That part of Lot 1 in the Colony (hereinafter described) falling within a tract of land described as follows:

Starting at the intersection of the North line of the South 50 feet of the Southeast quarter (1/4) of the Southeast quarter (1/4) of Section 23, Township 41 North, Range 11 East of the Third Principal Meridian, with a line which is 50 feet West of and parallel with the East line of said Section 23; thence Westerly along said North line a distance of 717.43 feet to the Point of Beginning; thence continuing Westerly along said North line, a distance of 560.00 feet to the Southwest corner of said Lot 1; thence turning an angle of $90^{\circ} 42' 40''$ to the right of the previously described course a distance of 594.986 feet; thence turning an angle of $89^{\circ} 17' 20''$ to the right of the previously described course a distance of 273.237 feet; thence turning an angle of $90^{\circ} 00' 00''$ to the left of the previously described course a distance of 175.06 feet; thence turning an angle of $90^{\circ} 00' 00''$ to the right of the previously described course a distance of 444.379 feet; thence turning an angle of $90^{\circ} 00' 00''$ to the right of the previously described course a distance of 220.00 feet; thence turning an angle of $90^{\circ} 00' 00''$ to the right of the previously described course a distance of 165.00 feet; thence turning an angle of $90^{\circ} 00' 00''$ to the left of the previously described course a distance of 544.00 feet to the Point of Beginning.

In The Colony, being a Subdivision of part of the Southeast quarter (1/4) of the Southeast quarter (1/4) of Section 23, Township 41 North, Range 11 East of the Third Principal Meridian, according to Plat thereof registered in the Office of the Registrar of Titles of Cook County, Illinois, on February 19, 1974 as Document Number 2739801.

PARCEL 2:

That part of Lot 1, in the Colony (hereinafter described) falling within a tract of land described as follows:

Starting at the intersection of the North line of the South 50 feet of the Southeast quarter (1/4) of the Southeast quarter (1/4) of Section 23, Township 41 North, Range 11 East of the Third Principal Meridian, with a line which is 50 feet West of and parallel with the East line of said Section 23; thence North along said line which is 50 feet West of and parallel with the East line of said Section 23; a distance of 514.008 feet to the Point of Beginning; thence continuing North along last described course a distance of 293.232 feet to a Northeast corner of Lot 1 aforesaid; thence turning an angle of $90^{\circ} 42' 07''$ to the left of the previously described course, a distance of 881.35 feet to a corner of Lot 1 aforesaid; thence turning an angle of $90^{\circ} 42' 07''$ to the right of the previously described course a distance of 480.00 feet to the most Northeasterly corner of said Lot 1 aforesaid; thence turning an angle of $90^{\circ} 42' 07''$, to the left of the previously described course a distance of 394.55 feet to the Northwesterly corner of said Lot 1; thence turning an angle of $89^{\circ} 13' 43''$ to the left of the previously described course a

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A LEGAL DESCRIPTION CONTINUED

distance of 690.94 feet to a point on the West line of said Lot 1; 594.986 feet North of the Southwest corner of said Lot 1; thence turning an angle of $90^{\circ} 42' 40''$ to the left of the previously described course a distance of 273.237 feet; thence turning an angle $90^{\circ} 00' 00''$ to the left of the previously described course a distance of 175.06 feet; thence turning an angle of $90^{\circ} 00' 00''$ to the right of the previously described course a distance of 444.379 feet; thence turning an angle of $90^{\circ} 00' 00''$ to the right of the previously described course a distance of 256.00 feet; thence turning an angle of $90^{\circ} 00' 00''$ to the left of the previously described course a distance of 558.20 feet to the Point of Beginning.

In The Colony, being a subdivision of part of the Southeast quarter (1/4) of the Southeast quarter (1/4) of Section 23, Township 41 North, Range 11 East of the Third Principal Meridian, according to the Plat thereof registered in the Office of the Registrar of Titles of Cook County, Illinois, on February 19, 1974 as Document Number 2739801.

PARCEL 3:

That part of Lot 1 in The Colony (hereinafter described) described as follows:

Commencing at the intersection of the North line of the South 50 feet of said Southeast Quarter with a line which is 50 feet West of and parallel with the East line of said Section 23; thence Westerly along said North line, a distance of 367.73 feet to a point of beginning; thence continuing Westerly along said North line, a distance of 349.70 feet; thence turning an angle of 90° to the right of the previously described course, a distance of 544.0 feet; thence turning an angle of 90° to the right of the previously described course a distance of 165.0 feet; thence turning an angle of 90° to the right of the previously described course a distance of 30 feet; thence turning an angle of 90° to the left of the previously described course, a distance of 192.07 feet; thence turning an angle of $90^{\circ} 49' 18''$ to the right of the previously described course, a distance of 514.053 feet to the point of beginning.

In The Colony, being a subdivision of part of the Southeast Quarter of the Southeast Quarter of Section 23, Township 41 North, Range 11, East of the Third Principal Meridian, according to Plat thereof registered in the Office of the Registrar of Titles of Cook County, Illinois on February 19, 1974 as Document Number 2739801.

* * * * *

The above 3 parcels are also described as the following consolidated description:

That part of Lot 1 of The Colony, being a Subdivision of part of the Southeast quarter (1/4) of the Southeast quarter (1/4) of Section 23, Township 41 North, Range 11 East of the Third Principal Meridian taken as a tract and more particularly described as follows:

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A LEGAL DESCRIPTION CONTINUED

Commencing at the Southeast corner of the Southeast quarter (1/4) of aforesaid Section 23; thence North 00° 37' 35" East along the East line of said Southeast quarter (1/4) 50.00 feet; thence South 90° 00' 00" West and parallel to the South line of said Southeast quarter (1/4) 417.75 feet (417.73 feet Deed) to the Point of Beginning; thence continuing South 90° 00' 00" West, 909.78 feet (909.70 feet Deed) to the West line of the East half (1/2) of said Southeast quarter (1/4) of Section 23; thence North 00° 42' 05" East along said West line 1,286.23 feet (1285.94 feet Deed) to the North line of the South half (1/2) of said Southeast quarter (1/4); thence North 89° 56' 44" East along said North line 394.55 feet; thence South 00° 38' 30" West 480.00 feet; thence North 89° 56' 44" East, 881.35 feet to the West right of way line of Elmhurst Road; thence South 00° 37' 35" West along said West line, 293.29 feet (293.232 feet Deed); thence South 90° 00' 00" West 366.13 feet (361.13 feet Deed); thence South 00° 48' 26" West, 514.15 feet (514.053 feet Deed) to the Point of Beginning, said parcel containing 23.6710 acres, more or less, all in Cook County Illinois.

Street Address of Property:

P.I.N.

Colony Apartments
475 Enterprise Drive
Mount Prospect, Illinois 60056

08-23-402-004
08-23-402-005
08-23-402-006
08-23-402-013

This instrument was prepared by, and after recording, registration or filing please return to:

WILSON & McILVAINE
500 West Madison Street, Suite 3700
Chicago, Illinois 60661
Attention: Stephanie B. Shellenback, Esq.

AFTER RECORDING RETURN TO:
Paul N. Yauzas
Commonwealth Land Title Insurance Company
30 N. LaSalle, Suite 3440
Chicago, IL 60602



UNOFFICIAL COPY

Property of Cook County Clerk's Office