

THIS INSTRUMENT PREPARED BY  
AND AFTER RECORDING  
RETURN TO:

Carole K. Towne, Esq.  
Goldberg, Kohn, Bell, Black,  
Rosenbloom & Moritz, Ltd.  
55 East Monroe Street  
Suite 3700  
Chicago, Illinois 60603  
(312) 201-4000

DEF1-01 RECORDING 349.00  
130012 TRAN 0450 05/06/96 11:08:00  
38214 + DT \*--98-34 1344  
COOK COUNTY RECORDER

FIFTH MODIFICATION AGREEMENT

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THIS FIFTH MODIFICATION AGREEMENT (the "Agreement") is dated as of January 31, 1996 is by and between American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated August 1, 1986 and known as Trust No. 068917-09 ("Mortgagor"), and Bank Hapoalim B.M. - Chicago Branch ("Mortgagee").

RECITALS

A. Mortgagee has made a loan to Mortgagor in the original principal amount of \$4,500,000.00 evidenced by a certain Mortgage Note dated as of January 29, 1987 and secured by a certain Mortgage and Security Agreement dated as of January 29, 1987 and recorded with the Cook County Recorder of Deeds on January 29, 1987 as Document No. 87058504. A legal description of the real estate of which a 75% undivided interest therein is encumbered by said Mortgage and Security Agreement is attached hereto as Exhibit A (the "Real Estate").

B. Said Mortgage Note was amended by a certain First Amendment to Mortgage Note dated as of July 31, 1987. Said Mortgage Note and said Mortgage and Security Agreement were then amended by a certain Second Note and Mortgage Modification Agreement dated as of July 28, 1989 and recorded with said Cook County Recorder as Document No. 89358294, a certain Third Amended and Restated Note dated as of July 31, 1990, and a certain Fourth Note and Mortgage Modification Agreement dated as of October 1, 1990 and recorded with said Cook County Recorder as Document No. 91272515. Said Mortgage Note, as so amended, is hereinafter referred to as the "Note." Said Mortgage and Security Agreement, as so amended, is hereinafter referred to as the "Mortgage."

C. The parties hereto now desire to make modifications to the Mortgage as more fully set forth herein.

BOX 333-CTI

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## AGREEMENTS

1. Concurrently with the execution of this Agreement, Mortgagor has paid to Mortgagee the sum of \$199,954.50, which has been applied to reduce the outstanding principal balance of the Note to \$7,300,000.00, and Mortgagor has paid all interest accrued through and including the date hereof.

2. Concurrently with the execution of this Agreement, Mortgagor is executing and delivering to Mortgagee a certain Amended and Restated Note of even date herewith (the "Amended Note") in the principal amount of \$7,300,000.00, which Amended Note amends and restates the Note in its entirety. The form of the Amended Note is attached hereto as Exhibit B. The terms and provisions of the Amended Note are hereby incorporated into the Mortgage.

3. The Mortgage is hereby amended in the following respects:

(a) All references to the "Note" in the Mortgage shall mean the Amended Note.

(b) The following subsections shall be added to Section 12 of the Mortgage, which Section 12 sets forth the events which constitute "Events of Default" under the Mortgage:

(d) The occurrence of a default under any other document or instrument evidencing or securing Mortgagor's Obligations, not cured within the greater of (a) any applicable cure period provided in such document or instrument.

(e) A petition in bankruptcy is filed by the general partner of the beneficiary of Mortgagor, or by any general partner of the general partner of such beneficiary (except for VMS Burnham Park Properties, Inc.), or if a petition in bankruptcy is filed against the general partner of such beneficiary or against any general partner of the general partner of such beneficiary (except for VMS Burnham Park Properties, Inc.) and such petition is not dismissed within 30 days; the making of any assignment for the benefit of creditors by any general partner of such beneficiary or any general partner of the general partner of such beneficiary (except for VMS Burnham Park Properties, Inc.); or if the general partner of such beneficiary or any general partner of the general partner of such beneficiary (except for VMS Burnham Park Properties, Inc.) is adjudged insolvent by any state or federal court of competent jurisdiction.

or (b) ten days following notice from the Lender of the occurrence of such default

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other than the dilution of partnership interests

(f) Any material amendment of any agreement creating Mortgagor, its beneficiary, the general partner of the beneficiary of Mortgagor, or any general partner of the general partner of the beneficiary of Mortgagor (except for VMS Burnham Park Properties, Inc.), without Mortgagee's prior written consent which consent shall not be unreasonably withheld.

(g) Except for ~~Chicago-Wheaton Partners Liquidating Trust, successor to~~ VMS Burnham Park Properties, Inc. the termination or dissolution of Mortgagor, its beneficiary, the general partner of the beneficiary of Mortgagor, any general partner of the general partner of the beneficiary of Mortgagor, or  
USE

(c) Section 24 of the Mortgage is hereby deleted and the following substituted in its place:

"Mortgagor hereby waives any and all rights of redemption. Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et seq.) or residential real estate (as defined in Section 15-1219 of said Law), and to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption as allowed under Section 15-1601 of said Law."

(d) The following Section 33 is hereby added to the Mortgage:

"33. Notwithstanding anything to the contrary in this Mortgage, the maximum amount secured hereby shall not exceed \$50,000,000.00"

(e) The following Section 34 is hereby added to the Mortgage:

"34. All expenses incurred by Lender to the extent reimbursable under Sections 15-1510 and 15-1512 of said Law, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure."

4. To the extent that any provisions of the Mortgage or any other document or instrument securing the Amended Note are inconsistent with the foregoing, the Mortgage or such document or instrument is hereby amended. Except as expressly amended hereby or concurrently herewith, the Mortgage and all other documents and instruments securing the Amended Note shall remain in full force and effect.

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5. This Agreement may be executed in counterparts which, when taken together, shall constitute one instrument.

6. This instrument is executed by American National Bank and Trust Company of Chicago, not personally, but solely as Trustee, as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee. All the terms, provisions, stipulations, covenants and conditions to be performed by American National Bank and Trust Company of Chicago are undertaken by it solely as Trustee, as aforesaid, and not individually and all statements herein made are made on information and belief and are to be construed accordingly, and no personal liability shall be asserted or be enforceable against American National Bank and Trust Company of Chicago by reason of any of the terms, provisions, stipulations, covenants and/or statements contained in this instrument.

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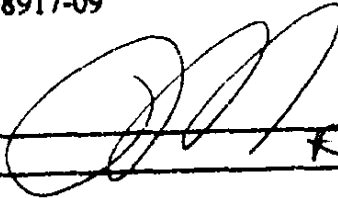
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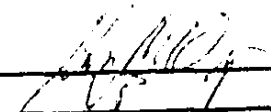
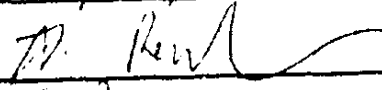
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IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date first above written.

AMERICAN NATIONAL BANK AND TRUST  
COMPANY OF CHICAGO, as Trustee under Trust  
Agreement dated August 1, 1986 and known as Trust  
No. 068917-09

By   
Its Trust VP

BANK HAPOALIM B.M. - CHICAGO BRANCH

By   
Its \_\_\_\_\_  
By   
Its SU

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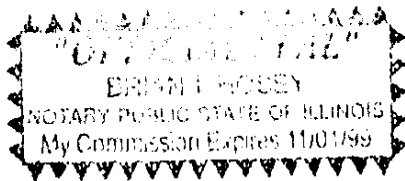
**ACKNOWLEDGMENT**

STATE OF IL )  
COUNTY OF COOK ) SS

I, \_\_\_\_\_, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT GREGORY S. KAPENSKY, the \_\_\_\_\_ of American National Bank and Trust Company of Chicago, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such \_\_\_\_\_ appeared before me this day in person and acknowledged that he signed and delivered said instrument as \_\_\_ own free and voluntary act and as the free and voluntary act of said American National Bank and Trust Company of Chicago for said uses and purposes.

APR 17 1996

GIVEN under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_ 1996.



*Brian T. Hooley*  
Notary Public

My Commission Expires: \_\_\_\_\_

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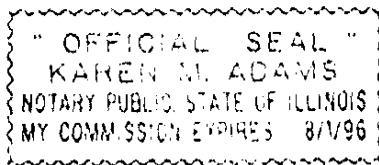
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## ACKNOWLEDGMENT

STATE OF IL )  
 ) SS  
COUNTY OF COOK )

I, Karen M Adams, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT John M. O'Neil and David M. O'Neil, the Vice President and General Manager of Bank Hapoalim B.M. - Chicago Branch, personally known to me to be the same person whose names are subscribed to the foregoing instruments as such Vice President and General Manager appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act and as the free and voluntary act of said bank for said uses and purposes.

GIVEN under my hand and notarial seal this 30th day of April, 1996.



Karen M Adams  
Notary Public

My Commission Expires:

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EXHIBIT A

## LEGAL DESCRIPTION

THAT PART OF THE EAST FRACTION AND THE WEST FRACTION OF THE NORTH EAST 1/4 AND THE SOUTH EAST 1/4 OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, TOGETHER WITH THE SOUTH BRANCH OF THE CHICAGO RIVER (NOW FILLED AND ABANDONED) AS IT EXISTED ON OR PRIOR TO JULY 8, 1926, ALL TAKEN AS A TRACT, BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE ORIGINAL SOUTH LINE OF WEST ROOSEVELT ROAD (SAID ORIGINAL SOUTH LINE BEING PARALLEL WITH AND 33.00 FEET SOUTH OF THE NORTH LINE OF THE EAST FRACTION OF THE NORTH EAST 1/4 OF THE AFORESAID SECTION 21) WITH A STRAIGHT LINE HEREIN REFERRED TO AS LINE -A" (SAID "LINE- A" BEING DESCRIBED AS FOLLOWS: BEGINNING AT A POINT 45 FEET, MEASURED AT RIGHT ANGLES, NORTH OF THE NORTH LINE AND 447.89 FEET, MEASURED PARALLEL WITH THE NORTH LINE OF WEST ROOSEVELT ROAD, EAST OF THE CENTER LINE OF DODGE STREET NOW VACATED PRODUCED NORTHERLY; THENCE SOUTHEASTERLY TO A POINT 760 FEET EAST OF THE CENTER LINE OF DODGE STREET NOW VACATED AND 860 FEET SOUTH OF THE SOUTH LINE OF WEST ROOSEVELT ROAD AS WIDENED, SAID SOUTH LINE AS WIDENED, BEING 85 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE EAST FRACTION OF THE NORTH EAST 1/4 OF THE AFORESAID SECTION 21); THENCE SOUTH 17 DEGREES 04 MINUTES 50 SECONDS EAST ALONG SAID "LINE- A" 92.37 FEET TO THE POINT OF BEGINNING, SAID POINT OF BEGINNING BEING 36.27 FEET SOUTH OF SAID SOUTH LINE OF WEST ROOSEVELT ROAD AS WIDENED; THENCE NORTHERLY 89.81 FEET ALONG THE ARC OF A CIRCLE, CONVEX TO THE SOUTH WEST HAVING A RADIUS OF 1910.08 FEET AND WHOSE CHORD BEARS NORTH 10 DEGREES 27 MINUTES 24 SECONDS WEST TO A POINT ON THE AFORESAID ORIGINAL SOUTH LINE OF WEST ROOSEVELT ROAD, SAID POINT BEING 723.93 FEET WEST OF THE WEST LINE OF SOUTH CLARK STREET AS WIDENED PER ORDER OF THE CITY COUNCIL PASSED MAY 15, 1846, BEING A LINE 20.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF LOTS 1 TO 5, BOTH INCLUSIVE, IN THE ASSESSOR'S SECOND DIVISION OF THE EAST FRACTION OF THE NORTH EAST 1/4 OF THE AFORESAID SECTION 21; THENCE NORTHERLY 7.09 FEET ALONG THE NORTHERLY EXTENSION OF THE AFORESAID ARC, CONVEX TO THE SOUTH WEST HAVING A RADIUS OF 1910.03 FEET AND WHOSE CHORD BEARS NORTH 9 DEGREES 00 MINUTES 13 SECONDS WEST TO A POINT ON A LINE DRAWN 26.00 FEET SOUTH AND PARALLEL WITH THE NORTH LINE OF THE EAST FRACTION OF THE NORTH EAST 1/4 OF THE AFORESAID SECTION 21; THENCE SOUTH 89 DEGREES 57 MINUTES 15 SECONDS EAST ALONG SAID PARALLEL LINE 328.85 FEET; THENCE SOUTH 6 DEGREES 43 MINUTES 06 SECONDS EAST 46.61 FEET; THENCE NORTH 83 DEGREES 16 MINUTES 58 SECONDS EAST 2.50 FEET; THENCE NORTH 6 DEGREES 43 MINUTES 03 SECONDS WEST 10.62 FEET TO A POINT ON THE SOUTH LINE LOT 9 IN BLANCHARD'S SUBDIVISION OF PART OF THE EAST FRACTION OF THE NORTH EAST 1/4 OF THE AFORESAID SECTION 21; THENCE SOUTH 89 DEGREES 57 MINUTES 15 SECONDS EAST ALONG SAID SOUTH LINE OF LOT 9, A DISTANCE OF 29.50 FEET TO THE SOUTH EAST CORNER OF SAID LOT 9; THENCE NORTH 0 DEGREES 01 MINUTES 02 SECONDS WEST 35.44 FEET ALONG THE EAST LINE

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OF SAID LOT 9 TO A POINT ON A LINE DRAWN 26.00 FEET SOUTH OF AND PARALLEL WITH THE EAST FRACTION OF THE NORTH EAST 1/4 OF THE AFORESAID SECTION 21; THENCE SOUTH 89 DEGREES 57 MINUTES 15 SECONDS EAST ALONG SAID PARALLEL LINE 360.05 FEET TO THE POINT OF INTERSECTION WITH A LINE DRAWN FROM A POINT IN THE NORTH LINE OF WEST ROOSEVELT ROAD, SAID POINT BEING 20.00 FEET WEST OF THE EAST LINE OF BLOCK 107 IN SCHOOL SECTION ADDITION TO CHICAGO IN THE SOUTH EAST 1/4 OF SECTION 16, TOWNSHIP AND RANGE AFORESAID TO A POINT IN THE SOUTH LINE OF WEST ROOSEVELT ROAD AS WIDENED, SAID POINT BEING 20.00 FEET WEST OF THE EAST LINE OF LOTS 1 TO 5, BOTH INCLUSIVE, IN BLOCK 2 IN THE AFORESAID ASSESSOR'S SECOND DIVISION, THENCE SOUTH 0 DEGREES 01 MINUTES 52 SECONDS WEST ALONG THE LAST DESCRIBED LINE 59.00 FEET TO THE SOUTH LINE OF WEST ROOSEVELT ROAD AS WIDENED; THENCE SOUTH 0 DEGREES 01 MINUTES 02 SECONDS EAST ALONG THE WEST LINE OF SOUTH CLARK STREET (AND ITS SOUTHERLY EXTENSION) BEING THE EAST LINE OF BLOCKS 2, 3, 13, 14, 15, AND 17 IN THE AFORESAID ASSESSOR'S SECOND DIVISION, AND ALONG THE EAST LINE OF LOTS 49 TO 56, BOTH INCLUSIVE, IN WALKER GREER AND OTHER'S SUBDIVISION OF THE UHLICH TRACT IN THE EAST FRACTION OF THE NORTH EAST 1/4 OF THE AFORESAID SECTION 21 AND ALONG THE EAST LINE OF BLOCKS 27, 27-1/2, 28, 29, 34 AND 35, A DISTANCE OF 2,608.68 FEET TO THE POINT OF INTERSECTION WITH THE SOUTH LINE OF 16TH STREET, SAID SOUTH LINE BEING 33.00 FEET SOUTH OF AND PARALLEL WITH THE SOUTH LINE OF THE EAST FRACTION OF THE NORTH EAST 1/4 OF THE AFORESAID SECTION 21; THENCE NORTH 89 DEGREES 56 MINUTES 32 SECONDS WEST 941.15 FEET ALONG SAID LINE 33.00 FEET SOUTH OF AND PARALLEL WITH THE SOUTH LINE OF THE EAST FRACTION OF THE FRACTIONAL NORTH EAST 1/4 OF SECTION 21 TO THE CENTER THREAD OF THE SOUTH BRANCH OF THE CHICAGO RIVER AS IT EXISTED ON OR PRIOR TO JULY 8, 1926; THENCE NORTH 31 DEGREES 15 MINUTES 32 SECONDS EAST 6.01 FEET ALONG SAID CENTER THREAD TO THE POINT OF INTERSECTION WITH A LINE 33.00 FEET SOUTH OF AND PARALLEL WITH THE SOUTH LINE OF THE WEST FRACTION OF SAID NORTH EAST 1/4 OF SECTION 21; THENCE SOUTH 89 DEGREES 59 MINUTES 58 SECONDS WEST 69.83 FEET ALONG SAID PARALLEL LINE TO THE INTERSECTION WITH THE EAST LINE OF THE NEW CHANNEL OF THE SOUTH BRANCH OF THE CHICAGO RIVER AS ESTABLISHED IN THE ORDINANCE PASSED BY THE CITY COUNCIL OF THE CITY OF CHICAGO ON JULY 8, 1926; THENCE NORTH 0 DEGREES 17 MINUTES 30 SECONDS WEST ALONG SAID EAST LINE 348.00 FEET; THENCE NORTH 89 DEGREES 59 MINUTES 58 SECONDS EAST ALONG A LINE PARALLEL WITH THE SOUTH LINE OF THE WEST FRACTION OF THE NORTH EAST 1/4 OF THE AFORESAID SECTION 21, A DISTANCE OF 230.02 FEET TO THE INTERSECTION WITH THE EASTERLY FACE OF THE WESTERLY DOCK LINE OF THE SOUTH BRANCH OF THE CHICAGO RIVER AS IT EXISTED ON JULY 8, 1926; THENCE NORTH 20 DEGREES 26 MINUTES 28 SECONDS EAST ALONG THE EASTERLY FACE OF SAID WESTERLY DOCK LINE WHICH FORMS AN ANGLE OF 69 DEGREES 33 MINUTES 30 SECONDS TO THE LEFT OF THE EASTERLY EXTENSION OF THE LAST DESCRIBED COURSE 21.47 FEET; THENCE NORTH 54 DEGREES 58 MINUTES 58 SECONDS EAST ALONG A LINE WHICH FORMS AN ANGLE OF 34 DEGREES 32 MINUTES 30 SECONDS TO THE RIGHT OF THE LAST DESCRIBED COURSE EXTENDED NORTHEASTERLY 141.64 FEET TO A POINT ON THE EASTERLY FACE OF THE WESTERLY DOCK LINE OF THE SOUTH BRANCH OF THE CHICAGO RIVER

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AS IT EXISTED ON JULY 8, 1926; THENCE NORTH 44 DEGREES 50 MINUTES 10 SECONDS EAST ALONG THE EASTERLY FACE OF SAID WESTERLY DOCK LINE 92.48 FEET TO A POINT WHICH IS 619.10 FEET EAST OF THE WEST LINE OF THE AFORESAID NEW CHANNEL AND 2088.56 FEET SOUTH OF THE SOUTH LINE OF WEST ROOSEVELT ROAD AS WIDENED (SAID SOUTH LINE BEING 85.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE AFORESAID NORTHEAST 1/4 OF SECTION 21); THENCE NORTHEASTERLY 373.88 FEET ALONG A CURVED LINE, CONVEX TO THE SOUTHEAST HAVING A RADIUS OF 478.34 FEET TO A POINT WHICH IS 760.00 FEET EAST OF THE CENTER LINE OF DODGE STREET, NOW VACATED, PRODUCED SOUTH AND 1751.17 FEET SOUTH OF THE AFORESAID SOUTH LINE OF WEST ROOSEVELT ROAD AS WIDENED; THENCE NORTH 0 DEGREES 07 MINUTES 44 SECONDS WEST 428.22 FEET ALONG A LINE 760.00 FEET EAST OF AND PARALLEL WITH THE SOUTHERLY EXTENSION OF THE CENTER LINE OF VACATED DODGE STREET TO A POINT 1322.95 FEET SOUTH OF THE SOUTH LINE OF WEST ROOSEVELT ROAD AS WIDENED, SAID POINT BEING ALSO 453.99 FEET WEST OF THE WEST LINE OF SOUTH CLARK STREET; THENCE NORTHWESTERLY 274.21 FEET ALONG THE ARC OF A CIRCLE CONVEX TO THE NORTH EAST, HAVING A RADIUS OF 1273.57 FEET AND WHOSE CHORD BEARS NORTH 6 DEGREES 18 MINUTES 54 SECONDS WEST TO A POINT 1050.95 FEET SOUTH OF THE SOUTH LINE OF WEST ROOSEVELT ROAD AS WIDENED AND 483.86 FEET WEST OF THE WEST LINE OF SAID SOUTH CLARK STREET; THENCE NORTH 12 DEGREES 27 MINUTES 09 SECONDS WEST 1020.09 FEET TO A POINT WHICH IS 55.04 FEET SOUTH OF THE SOUTH LINE OF WEST ROOSEVELT ROAD AS WIDENED AND 703.52 FEET WEST OF THE WEST LINE OF THE AFORESAID SOUTH CLARK STREET AS WIDENED PER ORDER OF THE CITY COUNCIL PASSED MAY 15, 1846; THENCE NORTHWESTERLY 19.22 FEET ALONG THE ARC OF A CIRCLE CONVEX TO THE WEST, HAVING A RADIUS OF 1910.08 FEET WHOSE CHORD BEARS NORTH 12 DEGREES 27 MINUTES 42 SECONDS WEST TO THE HEREINABOVE DESIGNATED POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

Address of Property:

Between Roosevelt Road on the North,  
Clark Street on the East, 16th  
Street on the South and east of the  
Chicago River on the West, in  
Chicago, Illinois.

Permanent Tax Identification Numbers:

17-21-210-003-0000  
17-21-210-004-0000  
17-21-210-005-0000  
17-21-210-006-0000  
17-21-210-007-0000  
17-21-210-038-0000  
17-21-210-052-0000  
17-21-210-063-0000  
17-21-210-064-0000  
17-21-210-082-0000  
17-21-210-086-0000

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17-21-203-001-0000  
17-21-208-001-0000  
17-21-208-003-0000  
17-21-209-003-0000  
17-21-505-024-0000  
17-21-210-002-0000

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