

# UNOFFICIAL COPY



99644337

This instrument prepared by  
(and return after recording to):

James A. Winkler  
Foley & Lardner  
330 North Wabash Avenue  
One IBM Plaza, Suite 3300  
Chicago, Illinois 60611

99644337

6145/0013 63 001 Page 1 of 14  
1999-07-06 10:15:29  
Cook County Recorder 47.00

77-34-253 p 2 of 6 (2)

Property of Cook County

LOAN NO. 98204

14m

## ASSIGNMENT OF LEASES AND RENTS

ASSIGNMENT MADE AS OF THE 30<sup>th</sup> day of June 1999 by and between BANK ONE TRUST COMPANY, a Banking corporation, not personally, but as Successor Trustee under an Amended and Restated Trust Agreement dated November 19, 1986 and known as Trust No. R-3309 ("Trustee"), having an office at 8001 Lincoln Avenue, Skokie, Illinois 60077, BELDEN STRATFORD LIMITED PARTNERSHIP ("Beneficiary" and, together with Trustee, "Assignor"), an Illinois limited partnership having an office at 2300 Lincoln Park West, Chicago, Illinois 60614, Attention: Treasurer, in consideration of **TEN (\$10.00) DOLLARS** and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby absolutely, presently and irrevocably assign, transfer and set over unto **MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY**, ("Assignee") a corporation organized under the laws of the Commonwealth of Massachusetts, with its principal place of business in the City of Springfield, County of Hampden, and Commonwealth of Massachusetts, the following:

A. All of the right, title and interest of Assignor in and to those certain lease(s) affecting all or a portion of the real property more particularly described on **Exhibit A** hereto (the "Premises") which lease(s) are listed on **Exhibit B** hereto, and all other and future lease(s) of the Premises, and all modifications, renewals and extensions of the leases listed on **Exhibit B** and of other and future lease(s), and guarantees, if any, of the lessee's obligations under said lease(s) listed on **Exhibit B** and under other and future lease(s). Each of said lease(s) and other and future lease(s) and all

modifications, renewals and extensions and guarantees, if any, relating thereto are hereinafter collectively referred to as the "Lease(s)"; and

B. All rents, issues, income proceeds and profits arising from the Lease(s) and from the use and occupation of the Premises, including, without limitation, all fixed and additional rents, hotel room charges and revenues, cancellation payments, and all sums due and payments made under any guarantee of any of the Lease(s) or any obligations thereunder (collectively "Rents").

C. All rights, powers, privileges, options and other benefits of Assignor under the Leases, including without limitation the immediate and continuing right to make claim for, receive, collect and receipt for all Rents, including the right to make such claim in a proceeding under the Bankruptcy Code (hereinbelow defined), and the right to apply the same to the payment of the Debt (hereinbelow defined).

**THIS ASSIGNMENT** is an absolute, present and irrevocable assignment and is made for the purpose of securing:

A. The payment of all sums and indebtedness now or hereafter due under that certain Promissory Note and any amendments, extensions or renewals thereof, (the Promissory Note together with all amendments, extensions or renewals thereof is hereinafter referred to as the "Note") in the original principal sum of **SIXTEEN MILLION, FIVE HUNDRED THOUSAND DOLLARS (\$16,500,000.00)** made by Assignor to Assignee, and dated as of June 30, 1999, which Note is also secured by a Mortgage and Security Agreement (the "Mortgage and Security Agreement", together with all amendments, extensions or renewals thereof is hereinafter called the "Mortgage") dated as of June 30, 1999, and intended to be duly recorded;

B. The performance and discharge of each and every obligation, covenant and agreement of Assignor under this Assignment, the Note, the Mortgage and any other instruments securing the Note (collectively the "Loan Documents"); and

C. The payment of all sums not and hereafter becoming due and payable under the Loan Documents (hereinafter the "Debt").

**THIS ASSIGNMENT** is made on the following covenants, terms and conditions:

## **SECTION 1. ASSIGNOR'S COVENANTS AND WARRANTIES**

Assignor hereby covenants and warrants to Assignee as follows:

(a) Assignor has not executed any prior assignment of the Leases or Rents, nor has it performed any act or executed any other instrument which might prevent Assignor from fulfilling any of the terms and conditions of this Assignment or which might prevent Assignee from operating under any of the terms and conditions of this Assignment or which would limit Assignee in such operation;

- (b) Assignor has not executed or granted any modification whatsoever of any of the Lease(s), except as indicated on **Exhibit B**; the Lease(s) are in full force and effect; and there are no defaults now existing under the Lease(s), or any conditions which, after notice, passage of time, or both would constitute defaults;
- (c) Assignor will observe and perform all the obligations imposed upon the lessor under any Lease(s) and will not do or permit to be done anything to impair any of the Lease(s);
- (d) Assignor will not collect any of the rents, issues, income, proceeds and profits arising or accruing under the Lease(s) or from the Premises in advance of the time when the same shall become due under the Lease(s) nor execute any other assignment of the Lease(s) or assignment of rents, issues, income, proceeds or profits with respect to the Premises; and
- (e) Except with the prior written consent of the Assignee, or as permitted without consent in Section 2.19 of the Mortgage, Assignor will not alter or modify the terms of the Lease(s), give any consent or exercise any option required or permitted by such terms, accept a surrender thereof, or consent to any assignment of or subletting under the Lease(s), whether or not in accordance with their terms.

## SECTION 2. ABSOLUTE ASSIGNMENT OF LEASE(S)

Assignor and Assignee intend that this Assignment constitute a present, irrevocable and absolute assignment of the Lease(s) and Rents, and not an assignment for additional security only. Subject to the terms of this Section 2, Assignee grants to Assignor a revocable license ("License") to collect and receive the Rents. Assignor hereby agrees that Assignee may authorize and direct the lessee(s) named in the Lease(s), and any other occupants of the Premises, and all lease guarantors, to pay over to Assignee or such other party as Assignee may direct, all Rents, upon receipt from Assignee of written notice to the effect that an Event of Default (defined below) exists, and to continue to do so until the lessees are otherwise notified by Assignee.

## SECTION 3. REVOCATION OF LICENSE

Upon or at any time after the occurrence of an Event of Default as defined in the Note or Mortgage (collectively, an "Event of Default"), the License granted to Assignor in Section 2 of this Assignment shall automatically be revoked without the need of any action by Assignee, and Assignee shall immediately be entitled to receipt and possession of all Rents, whether or not Assignee enters upon or takes control of the Premises.

Upon demand by Assignee following the occurrence of an Event of Default, Assignor shall immediately deliver to Assignee all Rents in the possession of Assignor or its agents, and shall cooperate in instructing Assignor's agents and the lessee(s) under the Leases(s) and all

others in possession of the Premises or any portion thereof to pay directly to Assignee all Rents.

Upon revocation of the License, Assignee may, at its option, without waiving such Event of Default and without notice or regard to the adequacy of the security for the Debt, either in person or by agent, nominee or attorney, or by a receiver appointed by a court, with or without bringing any action or proceeding, dispossess Assignor and its agents and servants from the Premises without liability for trespass, damages or otherwise, and exclude Assignor and its agents from the Premises.

Upon revocation of the License, Assignee may also take possession of the Premises, and all books, records and accounts relating thereto and have, hold, manage, lease and operate the Premises on such terms and for such period of time as Assignee may deem proper. In addition, and with or without taking possession of the Premises, Assignee, in its own name, may demand, sue for or otherwise collect and receive all Rents, including those past due and unpaid and may apply any rents collected in such order of priority as Assignee in its sole discretion deems appropriate, to the payment of:

- (a) all reasonable expenses of managing the Premises, including, without limitation, the salaries, fees and wages of a managing agent and such other persons or entities as Assignee may deem necessary or desirable, and all expenses of operating and maintaining the Premises, including, without limitation, all taxes, claims, assessments, ground rents, water rents, sewer rents and any other liens or charges, and premiums for all insurance which Assignee may deem necessary or desirable, and the cost of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of Premises;
- (b) the Debt; and
- (c) all costs and attorneys' fees incurred in connection with the enforcement of this Assignment and any of the Loan Documents.

#### **SECTION 4. NO LIABILITY OF ASSIGNEE**

This Assignment shall not be construed to bind Lender to the performance of any of the covenants, conditions, or provisions contained in any Lease, or otherwise impose any obligation upon Assignee. Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Premises after an Event of Default, or from any other act or omission of Assignee either in collecting the Rents, or if Assignee shall have taken possession of the Premises, in managing the Premises after an Event of Default, unless such loss is caused by the willful misconduct or bad faith of Assignee.

#### **SECTION 5. NO MORTGAGEE IN POSSESSION**

In the absence of taking of actual possession of the Premises by Assignee, in its own right and person, Assignee (i) shall not be deemed a mortgagee in possession, (ii) shall not be

responsible for the payment of any taxes or assessments with respect to the Premises, (iii) shall not be liable to perform any obligation of the lessor under any Lease(s) or under applicable law, (iv) shall not be liable to any person for any dangerous or defective condition in the Premises nor for any negligence in the management, upkeep, repair, or control of the said Premises resulting in loss or injury or death to any person, and (v) shall not be liable in any manner for the remediation of any environmental impairment.

#### **SECTION 6. BANKRUPTCY**

Assignee shall have the right to proceed in its own name or in the name of Assignor in respect of any claim, suit, action or proceeding, relating to any Lease(s) in a proceeding under the bankruptcy laws of the United States ("Bankruptcy Code") including, without limitation, the right to file and prosecute, all to the exclusion of Assignor, any proofs of claim, complaints, motions, applications, notices and other documents.

If there shall be filed by or against Assignor a petition under the Bankruptcy Code, and Assignor, as lessor under any Lease(s), shall determine to reject any Lease(s) pursuant to Section 365(a) of the Bankruptcy Code, the Assignor shall give Assignee not less than ten (10) days' prior notice of the date on which Assignor shall apply to the bankruptcy court for authority to reject the Lease(s). Assignee shall have the right, but not the obligation, to serve upon Assignor within such ten-day period a notice stating that (i) Assignee demands that Assignor assume and assign the Lease to Assignee pursuant to Section 365 of the Bankruptcy Code and (ii) Assignee covenants to cure or provide adequate assurance of future performance under the Lease(s). If Assignee serves upon Assignor the notice described in the preceding sentence, Assignor shall not seek to reject the Lease(s) and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Assignee of the covenant provided for in clause (ii) of the preceding sentence.

#### **SECTION 7. INDEMNITY OF ASSIGNEE**

Assignor hereby indemnifies Assignee for, and holds Assignee harmless from, any and all liability, loss or damage which may be incurred under said Lease(s) or under or by reason of this Assignment, and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligations or undertakings under any of the Lease(s).

Should Assignee incur any such liability under the Lease(s) or under or by reason of this Assignment or in defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured by the Mortgage and Assignor shall reimburse Assignee therefor, immediately upon demand and upon the failure of Assignor so to do, Assignee, at its option, may declare all sums secured by the Mortgage immediately due and payable.



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## SECTION 8. NO WAIVER OF RIGHTS BY ASSIGNEE

Nothing contained in this Assignment and no act done or omitted by Assignee pursuant to the powers and rights granted it hereunder shall be deemed to be a waiver by Assignee of any of its rights and remedies under the Note, Mortgage or any other instrument securing the Note. This Assignment is made and accepted without prejudice to any of such rights and remedies possessed by Assignee to collect the Debt and to enforce the Loan Documents, and said rights and remedies may be exercised by Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

## SECTION 9. RELEASES OF PARTIES AND SECURITY

Assignee may take or release other security for the payment of the Debt, may release any party primarily or secondarily liable therefor, and may apply any other security held by it to the satisfaction of any portion of the Debt without prejudice to any of its rights under this Assignment.

## SECTION 10. FUTURE ASSURANCES

Assignor agrees that it will, from time to time, upon demand therefor by Assignee, deliver to Assignee an executed copy of each and every Lease. Further, Assignor agrees that it will execute, acknowledge and record such additional assurances and assignments as Assignee may request covering any and all of the Lease(s). Such assignments shall be on forms approved by the Assignee, and Assignor agrees to pay all costs incurred in connection with the examination of the Lease(s) and the preparation, execution and recording of such assignments or any other related documents, including, without limitation, fees of Assignee's local counsel.

## SECTION 11. AMENDMENTS

This Assignment may not be altered or amended except in a writing, intended for that specific purpose, signed by both Assignor and Assignee.

## SECTION 12. HEADINGS AND CAPTIONS

The headings and captions of various sections of this Assignment are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

## SECTION 13. NOTICES

Any notices required or permitted to be given under this Agreement shall be given in writing and shall be effective for all purposes if (a) hand-delivered to the party designated below; or (b) sent by certified or registered mail, postage prepaid, or (c) sent by expedited, prepaid delivery service, commercial or United States Postal Service, with proof of attempted delivery, addressed in either case as follows:

**UNOFFICIAL COPY**Address of Assignor

Bank One Trust Company,  
Trust No. R-3309

8001 Lincoln Avenue  
Skokie, IL 60077

and

Belden Stratford Limited Partnership  
2300 Lincoln Park West  
Chicago, Illinois 60614  
Attn: Treasurer

Address of Assignee

Massachusetts Mutual Life Insurance Company  
1295 State Street  
Springfield, MA 01111

Attn: Senior Vice President  
Real Estate Investment Group

or to such other address and person as shall be designated from time to time by Assignor or Assignee, as the case may be, in a written notice to the other given in the manner provided for in this paragraph. The notice shall be deemed to have been given at the time of delivery if hand delivery, or in the case of registered or certified mail, three (3) business days after deposit in the United States Mail, or if by expedited prepaid delivery, upon first attempted delivery on a business day. A party receiving a notice which does not comply with the technical requirements for notice under this section may elect to waive the deficiencies and treat the notice as having been properly given.

**SECTION 14. GOVERNING LAW**

This instrument shall be governed by the laws of the jurisdiction in which the Premises are located and, upon the occurrence of an Event of Default, Assignee shall have, in addition to the rights and remedies expressly set forth herein, all rights and remedies available to Assignee as the holder of an assignment of leases, rents, issues and profits in that jurisdiction.

**SECTION 15. DISCHARGE**

Until the payment in full of the Debt, this Assignment shall continue in full force and effect, whether or not recorded. Assignor hereby authorizes Assignee to furnish to any person written notice, that this Assignment of Leases and Rents remains in effect and agrees that such person may rely upon and shall be bound by such statement. Upon payment in full of the Debt and the delivery and recording of a satisfaction or discharge of Mortgage duly executed, this Assignment shall be void and of no effect.

**SECTION 16. SEVERABILITY**

If any one or more of the provisions contained in this Assignment shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Assignment but this Assignment shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

## SECTION 17. LIMITATIONS ON LIABILITY

- (a) In any action or proceeding brought on this Assignment, the Note, the Mortgage or on any of the Loan Documents in which a money judgment is sought (subject to paragraphs (b), (c), and (d) below), Lender will look solely to the Mortgaged Property described in the Loan Documents (including, without limitation, the Leases and Rents) for payment of the Indebtedness and, specifically and without limitation, Lender agrees to waive any right to seek or obtain a deficiency judgment against Borrower.
- (b) The provisions of this Section 17 shall not
- (i) constitute a waiver, release or impairment of any obligation evidenced or secured by this Assignment, the Note, the Mortgage or any other Loan Document;
  - (ii) be deemed to be a waiver of any right which Lender may have under Sections 506(a), 506(b), 1111(b) or any other provisions of the U.S. Bankruptcy Code to file a claim for the full amount of the Indebtedness secured by the Mortgage or to require that this Assignment shall continue to secure all of the Indebtedness owing to the Lender in accordance with the Promissory Note, the Mortgage and the other Loan Documents;
  - (iii) impair the right of Lender to name Borrower or any principals of Borrower, or any guarantor of the Promissory Note, as a party or parties defendant in any action or suit for judicial foreclosure and sale under the Mortgage;
  - (iv) affect the validity or enforceability of, or limit recovery under, any indemnity (including, without limitation, any environmental indemnity set forth in the Mortgage or other Loan Document, or any separate environmental indemnity agreement, however designated), guaranty, lease or similar instrument made in connection with this Assignment, the Note, the Mortgage, or the Loan Documents;
  - (v) impair the right of Lender to obtain the appointment of a receiver; or
  - (vi) impair the enforcement of an assignment of leases or an assignment of rents contained in the Mortgage or this Assignment.
- (c) Notwithstanding any provisions of this Section 17 to the contrary, nothing herein shall be deemed to prejudice the right of Lender (which right is specifically reserved) to pursue or obtain personal recourse liability against Belden Stratford Corporation to recover Losses incurred by Lender, arising out of or resulting from:




- (i) fraud or material misrepresentation in connection with any Loan Document, affidavit, certification, warranty or representation given by Borrower or any officer, general partner, principal, member, or authorized agent of Borrower, in connection with the obtaining or making of the loan evidenced by the Note;
  - (ii) the application or appropriation of any condemnation or insurance proceeds in a manner contrary to the terms of the Loan Documents;
  - (iii) the application or appropriation of any tenant security deposits, advance or prepaid rents, cancellation or termination fees or other similar sums paid to or held by Borrower or any other person in connection with the operation of the Premises in a manner contrary to the terms of this Assignment or the other Loan Documents;
  - (iv) the failure to return, or reimburse Lender for, all Equipment taken from the Premises by or on behalf of Borrower and not replaced with Equipment of the same utility and of the same or greater value;
  - (v) any act of arson or malicious destruction or waste (not including any failure to pay real estate taxes) by Borrower, any principal, affiliate or partner thereof, or by any guarantor or indemnitor (including any indemnitor under the environmental indemnity contained in the Mortgage, or in a separate environmental indemnity or similar document executed herewith); or
  - (vi) the failure to apply Rents to payments due under the Loan Documents or to operating expenses of the Premises (including, without limitation, the payment of real estate taxes) thereby resulting in, or contributing materially to, an Event of Default; provided, however, that Borrower shall have no personal liability for Losses based on distributions of Rents or rent loss insurance Proceeds to Borrower, or any general partner, principal, stockholder, or member of or managing agent for Borrower, made in good faith (after determining the sufficiency of Rents and rent loss insurance Proceeds to cover the payments due under the Loan Documents and operating expenses of the Premises) more than ninety (90) days prior to an Event of Default.
- (d) Notwithstanding the foregoing, the agreement of Lender not to pursue personal recourse liability as set forth in this Section 17 above SHALL AUTOMATICALLY BECOME NULL AND VOID and shall be of no further force and effect in the event (i) Borrower, or Belden Stratford Corporation, files, or consents to the filing of, any petition under the U.S. Bankruptcy Code respecting its or their debts or (ii) any such petition shall have been filed against the Borrower, or Belden Stratford Corporation, and the same is not dismissed within ninety (90) days of such filing.

SECTION 18. TRUSTEE EXCULPATION

This instrument is executed by BANK ONE TRUST COMPANY, not personally, but as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said Trustee hereby warrants that it possesses full power and authority to execute this instrument, and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on said Trustee personally to pay any indebtedness accruing hereunder or to perform any covenant either express or implied herein contained (it being understood and agreed that each of the provisions of this Assignment, except this Section 17, shall constitute a condition and not a covenant or agreement regardless of whether the same may be couched in language of a promissory covenant or agreement), all such personal liability, if any, being expressly waived by the Assignee and by every person now or hereafter claiming any right hereunder, and insofar as said Trustee is concerned, the Assignee shall look solely to the Premises and to other security agreements, documents or instruments or guarantees evidencing or securing the secured indebtedness for the payment thereof, by the enforcement of the liens, charges or other rights created by the Loan Documents, in the matter herein and in the Loan Documents provided.

IN WITNESS WHEREOF, the Assignor has duly executed this Assignment as of the date first written above.

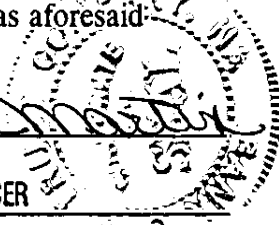
ATTEST:

  
\_\_\_\_\_  
TRUST OFFICER

BORROWER

BANK ONE TRUST COMPANY, not personally but as Trustee as aforesaid

By:   
\_\_\_\_\_  
Its: CLIENT SERVICE OFFICER



This instrument is executed by the undersigned Land Trustee, not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that all the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee are undertaken by it solely in its capacity as Trustee and not personally. No personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this instrument.

4 copies Executed

ATTEST:

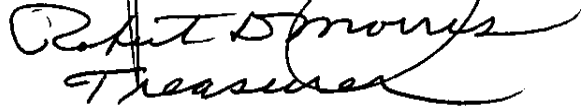
\_\_\_\_\_

BELDEN STRATFORD LIMITED  
PARTNERSHIP, an Illinois limited  
partnership

By: Belden Stratford Corporation, its sole  
general partner



By: \_\_\_\_\_  
(Vice) President

  
Treasurer

Property of Cook County Clerk's Office

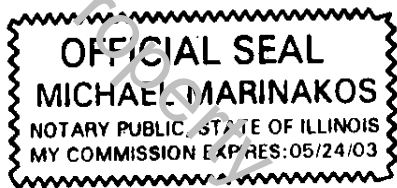
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## ACKNOWLEDGMENT

STATE OF ILLINOIS )  
 ) SS  
 COUNTY OF COOK )

The foregoing instrument was acknowledged before me this 24th day of June, 1999, by CATHERINE MARTIN ~~CLIENT SERVICE OFFICER~~ (Vice) President, and JOSEPH F. SOCHACKI ~~TRUST OFFICER~~ (Assistant) Secretary, of Bank One Trust Company, a Banking corporation, acting as successor trustee under an Amended and Restated Trust Agreement dated November 19, 1986 and known as Trust No. R-3309, on behalf of the corporation acting as trustee as aforesaid



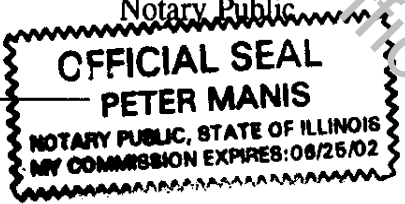
*[Signature]*  
 \_\_\_\_\_  
 Notary Public

My commission expires: 5-24-03

STATE OF ILLINOIS )  
 ) SS  
 COUNTY OF COOK )

The foregoing instrument was acknowledged before me this 25th day of June, 1999, by Jamie B. Greenberg (Vice) President, and Robert D. Morris (Assistant) Secretary, of Belden Stratford Corporation, an Illinois corporation and the general partner of Belden Stratford Limited Partnership, an Illinois limited partnership, on behalf of the corporation and the partnership.

*[Signature]*  
 \_\_\_\_\_  
 Notary Public



My commission expires: \_\_\_\_\_

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## EXHIBIT A PREMISES

The South 51 feet of Lot 4 and all of Lot 5 in Block 1 in Peterboro Terrace Addition to Chicago, being a Subdivision of part of Block 2 of Canal Trustees' Subdivision of Section 33, Township 40 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois

P.I.N. 14-33-201-012-0000

Street Address: 2300 Lincoln Park West  
Chicago, Illinois

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EXHIBIT B  
LEASES

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Property of Cook County Clerk's Office