



Agenda Item Executive Summary

Item Name Renewal of Lease Agreement with Bartlett Park Committee
District at Kent Circle Water Tower or Board Board

BUDGET IMPACT

Amount:	N/A	Budgeted	N/A
List what fund	Water Enterprise Fund		

EXECUTIVE SUMMARY

The Village and Park District have a lease agreement for the area surrounding the Kent Circle Water Tower that expired on December 31, 2022. This renews the lease for ~20 years expiring on December 31, 2042.

We recommend renewing the lease agreement with the Bartlett Park District.

ATTACHMENTS (PLEASE LIST)

Memo, Resolution, Agreement

ACTION REQUESTED

- For Discussion Only
- Resolution
- Ordinance
- Motion

MOTION:

I move the Village Board approve Resolution 2023 - _____, a Resolution Approving of the lease agreement between the Village of Bartlett and Bartlett Park District.

Staff: Dan Dinges, Director of Public Works

Date: 12/11/2021

PUBLIC WORKS MEMO



DATE: December 11, 2023

TO: Paula Schumacher
Village Administrator

FROM: Dan Dinges, PE
Director of Public Works

SUBJECT: Renewal of Lease Agreement with Bartlett Park District at Kent Circle Water Tower

The Village and Park District have a lease agreement for the area surrounding the Kent Circle Water Tower that expired on December 31, 2022. This renews the lease for ~20 years expiring on December 31, 2042.

We recommend renewing the lease agreement with the Bartlett Park District.

MOTION:

I move the Village Board approve Resolution 2023 - _____, a Resolution Approving of the lease agreement between the Village of Bartlett and Bartlett Park District.

RESOLUTION 2023 - _____

**A RESOLUTION APPROVING OF THE LEASE AGREEMENT BETWEEN THE
VILLAGE OF BARTLETT AND BARTLETT PARK DISTRICT**

BE IT RESOLVED by the President and Board of Trustees of the Village of Bartlett, Cook, DuPage and Kane Counties, Illinois, as follows:

SECTION ONE: The Lease Agreement dated December 19, 2023, between the Village of Bartlett and Bartlett Park District (the "Agreement"), a copy of which is appended hereto and expressly incorporated herein by this reference, is hereby approved.

SECTION TWO: That the Village President and the Village Clerk are hereby authorized and directed to sign and attest, respectively, the Agreement on behalf of the Village of Bartlett.

SECTION THREE: SEVERABILITY. The various provisions of this Resolution are to be considered as severable, and of any part or portion of this Resolution shall be held invalid by any Court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Resolution.

SECTION FOUR: REPEAL OF PRIOR RESOLUTIONS. All prior Ordinances and Resolutions in conflict or inconsistent herewith are hereby expressly repealed only to the extent of such conflict or inconsistency.

SECTION FIVE: EFFECTIVE DATE. This Resolution shall be in full force and effect upon passage and approval.

ROLL CALL VOTE:

AYES:

NAYS:

ABSENT:

PASSED: December 19, 2023

APPROVED: December 19, 2023

Kevin Wallace, Village President

ATTEST:

Lorna Giles, Village Clerk

CERTIFICATION

I, the undersigned, do hereby certify that I am the Village Clerk of the Village of Bartlett, Cook, DuPage and Kane Counties, Illinois, and that the foregoing is a true, complete and exact copy of Resolution 2023 - _____ enacted on December 19, 2023, and approved on December 19, 2023, as the same appears from the official records of the Village of Bartlett.

Lorna Giles, Village Clerk

LEASE AGREEMENT

This Lease Agreement (the "Agreement" or "Lease") is made and entered at Bartlett, Illinois on this ____ day of _____, 2023, by and between the Village of Bartlett, a home rule municipal corporation organized and existing under the laws of the State of Illinois, 228 South Main Street, Bartlett, Illinois, 60103 ("Landlord" or "Village") and the Bartlett Park District, an Illinois park district organized and existing under the laws of the State of Illinois, 696 West Stearns Road, Bartlett, Illinois, 60103 ("Tenant" or "Park District"). Landlord and Tenant are sometimes individually referred to herein as a "Party" and collectively as the "Parties."

RECITALS:

WHEREAS, the Village and the Park District own adjoining land which is depicted on the Location Map entitled "Kent Circle Water Tower" attached hereto as **Exhibit 1** (the "Location Map"), wherein the Village owns the property outlined in red and designated as "Village Property" thereon, and the Park District owns the property commonly known as Apple Orchard Park which is depicted in light green and designated as "Park District Property" thereon;

WHEREAS, the Village Property is legally described on **Exhibit A**, and the Park District Property is legally described on **Exhibit B**;

WHEREAS, the Village and the Park District heretofore entered a Lease Agreement dated May 18, 2004 with a stated lease term that expired December 31, 2022 (the "Original Lease") but which continues as a month to month tenancy or tenancy at sufferance, whereby Village leases to the Park District that portion of the Village Property depicted on the Location Map with green diagonal hash marks and is designated thereon as the "Lease Area", which is legally described on **Exhibit C** under the heading "Legal Description of Lease Premises" and is referred to herein as the "Lease Premises"; and

WHEREAS, the Parties desire to enter into this new Lease Agreement with a new 20 +/- year term upon the terms and conditions herein.

In consideration of the matters set forth in the Recitals which are expressly incorporated herein, mutual covenants and agreements hereinafter set forth, and for other good and valuable considerations, the receipt and sufficiency of which is irrevocably acknowledged, the Parties do hereby agree as follows:

- 1. PREMISES LEASED; TERM.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Lease Premises, which is legally described on **Exhibit C** and is depicted and designated on the Location Map as the Lease Area, upon the terms and conditions set forth herein, for the term commencing as of December ____, 2023 and expiring December 31, 2042 ("Term").

The Parties shall have the option to renew this Lease for such additional periods of time and upon such terms and conditions as may be mutually agreeable to the Parties. The portion of

the Village Property bounded by the exterior surfaces of the fence surrounding the Village Water Tower and appurtenant facilities, which measures approximately 127 feet by 161 feet and is outlined by blue dashes and designated as the "Tower Site" on the Location Map, is expressly excluded from this Agreement and is not part of the Lease Premises.

Either Party shall have the option to cancel this Lease upon six (6) months prior written notice to the other Party with or without cause except that said termination shall not terminate either Party's Indemnification Obligations (hereinafter defined) for occurrences prior to said termination of either Party's Insurance Obligations (hereinafter defined) with respect to insurance coverage maintained on an "occurrence basis" for the Term through the termination date.

2. **RENT.** Tenant shall pay Landlord as rent for the Lease Premises the sum of TEN DOLLARS (\$10.00) in advance at Landlord's address stated above or such other address as Landlord may designate in writing.
3. **CONDITION AND UPKEEP OF PREMISES.** Tenant will keep the Lease Premises, including the lawn and landscaping in a neat, clean, and healthful condition during the Term of this Agreement at Tenant's expense, and upon the termination of this Agreement for any reason, will yield up the Lease Premises to Landlord in good condition, reasonable wear and tear excepted.
4. **PERMITTED USES, IMPROVEMENTS, TENANT'S RIGHTS UPON TERMINATION.** Tenant will be permitted to use the Lease Premises for its active and passive recreational programs and activities. Tenant will not sublet the Lease Premises or any part thereof, nor assign this Lease without in each case the written consent of the Landlord first had, which consent shall be at the sole and absolute discretion of the Landlord, and Tenant will not permit any transfer by operation of law of its interest in the Lease Premises acquired through this Lease, and will not permit the Lease Premises to be used for any unlawful purpose. Tenant shall have the right to improve the Lease Premises subject to the prior written approval of Landlord, including, without limitation, grading, landscaping and drainage, the installation of walks and picnic tables. Upon termination of this Lease, Tenant shall have the right to remove any picnic tables installed by Tenant. Tenant shall restore the surface of any portion of the Lease Premises from which such equipment is removed in a reasonably good and workmanlike manner at Tenant's sole cost.
5. **INDEMNITY FOR ACCIDENTS.** Tenant covenants and agrees that to the fullest extent permitted by law it will defend, protect, hold and save and keep the Landlord, its Village President and Village Trustees, officials, officers and employees forever harmless and indemnified against and from any penalty or damages or charges imposed for any violation of any laws or ordinances relating to the Lease Premises occasioned by the neglect of Tenant or those holding under Tenant. Tenant will at all times defend, protect, indemnify and hold, save and keep harmless the Landlord, its Village President, Village Trustees, officials, officers and employees against and from any and all loss, cost, damage or expense, arising out of or from any use of the Lease Premises by Tenant or Tenant's elected and appointed officials, employees, agents or volunteers on or about the Lease Premises, causing injury to

any person or property whomsoever or whatsoever except to the extent attributable to a party or parties indemnified hereunder or anyone for whose acts any of them may be liable, and will defend, protect, indemnify and hold, save and keep harmless the Landlord, its Village President, Village Trustees, officials, officers and employees against and from any and all claims and against and from any and all loss, cost, damage or expense arising out of any failure of Tenant in any respect to comply with and perform all the requirements and provisions of this Agreement ("Tenant's Indemnification Obligations"). Notwithstanding the foregoing Tenant's Indemnification Obligations, Tenant shall have no duty to indemnify Landlord and no liability to Landlord or third parties for any loss, damages, claims, causes of action, penalties, damages or charges arising from damage, collapse, failure, repair, maintenance, or disrepair of the Village Water Tower or the other improvements on the Tower Site, unless such damage, collapse, failure, repair, maintenance, or disrepair is attributable to the active negligence of Tenant, its elected or appointed officials, employees, agents or volunteers, or the negligence of any of Tenant's contractors, subcontractors of any tier, and/or agents. Tenant's obligations to indemnify, defend, save, and hold harmless the Landlord shall survive the termination of this Agreement.

6. **INSURANCE.** During the Term of this Agreement and any extension or renewal thereof, Tenant agrees to maintain, at its own cost and expense the following types of insurance policies and the minimum limits of insurance coverage (hereinafter "Tenant's Insurance Obligations"):
 - a) Worker's Compensation and Employer's Liability Insurance, in accordance with all applicable state and federal laws, and endorsed specifically to include the following:
 1. Employer's Liability, including Occupational Disease, subject to a limit of liability of not less than \$1,000,000 per accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.
 - b) Commercial General Liability ("CGL") Insurance, with combined single liability limits for bodily injury and property damage of not less than \$2,000,000.00 per occurrence. Such insurance shall include the following:
 1. Contractual Liability, insuring the indemnity agreements contained in this Agreement.
 2. CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 10 93, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, administration of the work, independent contractors, subcontractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
 - i. Insurance in subparagraph b) shall include Landlord and its officials, officers, and employees as Additional Insureds (the "Additional Insureds") and such coverage shall be primary (as opposed to excess) and non-contributing to all other insurance covering the Additional Insureds, or any of them, and shall not require exhaustion

of any other coverage or tender of any claim or action to any other Insured providing coverage to the Additional Insureds, or any of them.

- ii. Tenant is a member of the Park District Risk Management Agency (PDRMA), a joint risk management pool of park and forest preserve districts and special recreation associations. Landlord acknowledges that PDRMA does not have an A.M. Best rating. Tenant agrees that any insurer providing insurance for any of Tenant's contractors performing any work or operations on the Lease Premises shall have an A.M. Best rating of at least A-VIII and shall maintain such types of coverages in amounts not less than that required by Tenant hereunder.
 - iii. Prior to the execution of this Agreement, Tenant shall furnish a certificate of insurance (or renewal certificate) in a form satisfactory to Landlord, evidencing insurance coverage as indicated above. Tenant will endeavor to include on such certificate or certificates a statement by the insurer that it will give Landlord written notice at least (30) days prior to the termination of, or any reduction in, any of the insurance required by this Agreement, by certified mail, return receipt requested. Tenant agrees that, if Tenant does not keep such insurance in full force and effect, it will not relieve Tenant of the obligations under the terms and conditions of this paragraph.
7. **HOLDING OVER.** Tenant will, at the termination of this Lease by lapse of time or otherwise, yield up immediate possession of the Lease Premises to Landlord.
 8. **FIRE HAZARD.** There shall not be allowed, kept, or used on the Lease Premises any inflammable or explosive liquids or materials, including fireworks, without the Landlord's prior written approval.
 9. **DISCLAIMER.** Tenant expressly acknowledges that Landlord makes no representations or warranties, express or implied, as to the adequacy, fitness or condition of the Lease Premises for the purposes set forth herein, or for any other purpose or use, express or implied, by the Tenant. ALL IMPLIED WARRANTIES OF QUALITY, FITNESS, MERCHANTABILITY AND HABITABILITY ARE HEREBY EXCLUDED. Tenant accepts use of the Lease Premises and the improvements thereon, "AS-IS" and "WITH ALL FAULTS". Tenant acknowledges that it has inspected the Lease Premises and has satisfied itself as to the adequacy, fitness and condition thereof.
 10. **DEFAULT.** In the event of breach or default hereunder, the non-defaulting party shall be entitled to all remedies available at law and/or equity to enforce its rights under this Agreement, including the right to reimbursement for reasonable attorney's fees. Notwithstanding any provision herein to the contrary, in the event Landlord terminates this Agreement in order to use the Lease Premises for municipal purposes, Tenant's sole remedy shall be the return of any pre-paid rent. In no event shall either Party be liable to other Party for any consequential, incidental, special, and/or indirect damages or losses (in contract or tort), including but not limited to any lost revenues or savings in connection with this Agreement and/or any breach and/or default by Tenant hereunder.

11. **REAL ESTATE TAXES.** Tenant acknowledges that the Lease Premises are currently exempt from all taxes, including, but not limited to, real estate taxes. The Parties intend that the Lease Premises remain exempt from real estate and/or leasehold taxes, and that no such taxes should be assessed as a result of the lease granted hereunder. In the event, however, (a) this Agreement or any of the rights granted under this Agreement relative to the Lease Premises, (b) any sub-lease agreement or other grant of use or assignment of the Lease Premises by Tenant and/or (c) the use and/or operations of Tenant on the Lease Premises or any of its sub-lessees and/or assignees, results in a full or partial loss of such real estate tax exemption or in the assessment of real estate taxes and/or a tax on any leasehold and/or sub-leasehold interest, then Tenant agrees to pay Landlord the amount of any such tax, but reserves the right to appeal such assessment, prior to the due date therefor for each tax year this Agreement remains in effect, including any and all extensions and/or renewals thereof. Tenant shall have the right to terminate this Lease upon ten (10) days' prior written notice in the event of a full or partial loss of the real estate tax exemption.
12. **USE OF PREMISES.**
- a) Tenant specifically agrees not to use the Lease Premises, or any part thereof, for any unlawful and/or immoral purpose and/or business.
 - b) Tenant covenants and agrees not to maintain any nuisance in the Lease Premises which shall be in any manner injurious to or endanger the health, safety and comfort of the persons residing or being in the vicinity of the Lease Premises.
 - c) Tenant covenants and agrees to keep the Lease Premises in a clean, safe, and sanitary condition in accordance with all applicable local state, and federal laws, ordinances, statutes, codes and regulations.
 - d) Tenant covenants and agrees that it shall abide by any and all applicable, local, state, and federal laws, ordinances, statutes and regulations which regulate or control the Tenant's use of the Lease Premises.
13. **ACCESS.** Nothing in this Agreement shall restrict access to the Lease Premises by the employees, officers, officials, or agents of Landlord.
14. **SECURITY.** Tenant assumes and exercises full responsibility for the security of the Lease Premises during Tenant activities. Tenant shall provide security for the Lease Premises in the manner and to the extent it deems necessary, at its expense, provided that access by the Landlord is assured and not unreasonably restricted according to the provisions contained herein. This paragraph is inserted solely for the benefit of the contracting parties, and is not intended to establish, impose, or acknowledge any duty to provide security as to third parties. Tenant shall have no responsibility whatsoever for the security of the Tower Site, the fence surrounding the Tower Site, the area inside said fence, or any fixtures or improvements related to the water tower or the Tower Site.
15. **SUPERVISION.** Tenant assumes and exercises full responsibility for the supervision of its employees, invitees, members, volunteers, agents and assigns during the Term of this

Agreement and for activities and uses of the Lease Premises during the Term of this Agreement and any renewal thereof. The Parties agree that Landlord has no duty to supervise any person or activity in connection with Tenant's use of the Lease Premises, and Tenant has no duty to supervise any person or activity in connection with Landlord's use of the Lease Premises. This paragraph is inserted solely for the benefit of the contracting parties, and is not intended to establish, impose, or acknowledge any duty to supervise as to third parties.

16. **NOTICES.** All notices required or permitted to be given under this Agreement must be given by the Parties by: (i) personal delivery; (ii) deposit in the United States mail, enclosed in a sealed envelope with first class postage thereon; or (iii) deposit with a nationally recognized overnight delivery service, addressed as stated in this Section 16. The address of any Party may be changed by written notice to the other Party. Any notice personally delivered will be deemed to have been given on the date of delivery, mailed notice will be deemed to have been given on the third day after same has been deposited in the U.S. mail and any notice given by overnight courier will be deemed to have been given within 24 hours after deposit with such carrier. Notices and communications to the Parties must be addressed to, and delivered at, the following addresses:

Notice to the Park District: Bartlett Park District
696 Stearns Road
Bartlett, Illinois 60053
Attention: Executive Director

Notice to the Village: Village of Bartlett
228 South Main Street
Bartlett, Illinois, 60103
Attention : Village Administrator

17. **NO THIRD PARTY BENEFICIARIES.** This Agreement is entered into solely for the benefit of the contracting parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person or entity who is not a party to this Agreement, or to acknowledge, establish or impose any legal duty to any third party.

18. **MISCELLANEOUS.**

- a) Wherever in this instrument masculine pronouns are used, or words indicating the singular number appear, such words shall be construed as if feminine or neuter pronouns or words indicating the plural number had been used, where the context indicates the propriety of such use.
- b) This Agreement and all covenants and agreements herein contained shall be binding upon, apply, and inure to the benefit of each Party's respective successors, assigns and legal representatives.

- c) The Parties agree that no change or modification to this Agreement, its exhibits or attachments shall be of any force or effect unless such amendment is dated, reduced to writing, executed by both parties, and attached to and made a part of this Agreement.
- d) This Agreement shall be construed, governed, and enforced according to the laws of the State of Illinois and any action to enforce this Agreement may be brought in the Circuit Court of DuPage County, Illinois.
- e) No provision, obligation, term and/or condition herein shall be construed or interpreted in any way as a waiver, express or implied, of any common law and/or statutory privileges and/or immunities of Landlord and/or Tenant, as to any claim, cause and/or cause of action of any kind or nature whatsoever by any person or entity not a party to this Agreement.
- f) This instrument contains the entire agreement between the Parties relating to the rights granted herein and the obligations herein assumed. This Agreement may be modified, amended or annulled only by the written agreement of the Park District and the Village.
- g) Captions and paragraph headings are for convenience only, are not a part of this Agreement, and shall not be used in construing it.
- h) If any clause, phrase, provision or portion of this Agreement or the application thereof, to any person or circumstance, shall be invalid or unenforceable under applicable law, such event shall not affect, impair, or render the remainder of this Agreement invalid or unenforceable, not shall it affect the application of any other clause, phrase, provision or portion hereof to other persons or circumstances.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be executed on the date first above written.

BARTLETT PARK DISTRICT

VILLAGE OF BARTLETT

By: _____

Diana Gunsteen, President
Board of Park Commissioners
Bartlett Park District
Bartlett, Illinois

By: _____

Kevin Wallace, Village President
Village of Bartlett
Bartlett, Illinois

ATTEST:

ATTEST:

Rita Fletcher, Board Secretary
Board of Park Commissioners
Bartlett Park District
Bartlett, Illinois

Lorna Giles, Village Clerk
Village of Bartlett
Bartlett, Illinois

PARK DISTRICT ACKNOWLEDGMENT

STATE OF ILLINOIS)
)
COUNTY OF DUPAGE)

This instrument was acknowledged before me on _____, 2023, by Diana Gunsteen, President of the Bartlett Park District Board of Commissioners and Rita Fletcher, Secretary of the Bartlett Park District Board of Commissioners known to me to be the persons whose names are subscribed to the foregoing instrument and who did acknowledge that the park district executed the above instrument, duly authorized, voluntarily and as their free act and deed as the President and Secretary of the BARTLETT PARK DISTRICT, an Illinois park district.

Signature of Notary

SEAL

My Commission expires:

VILLAGE ACKNOWLEDGEMENT

STATE OF ILLINOIS)
)
COUNTY OF DUPAGE)

This instrument was acknowledged before me on _____, 2023, by Kevin Wallace, Village President, Village of Bartlett, Illinois, and Lorna Giless, Village Clerk, Village of Bartlett, Illinois, known to me to be the persons whose names are subscribed to the foregoing instrument and who did acknowledge that the corporation executed the above instrument, duly authorized, voluntarily and as their free act and deed as the Village President and Village Clerk of the Village of Morton Grove.

Signature of Notary

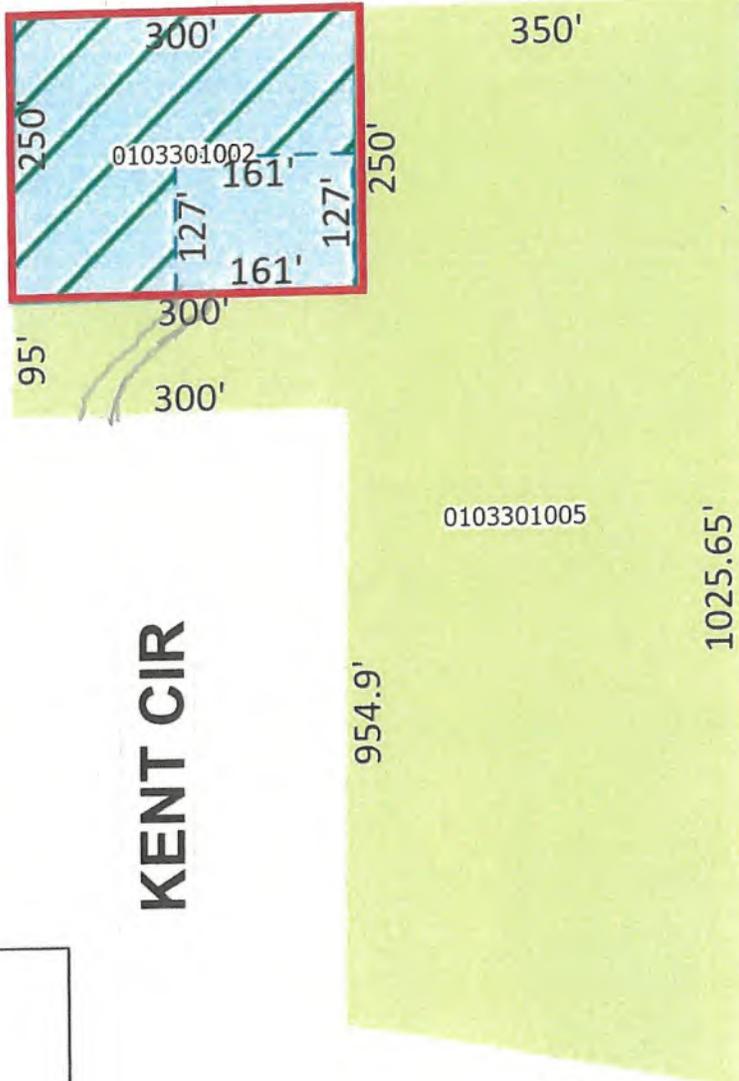
SEAL

My Commission expires:

LEASE AGREEMENT

INDEX OF EXHIBITS

Location Map Kent Circle Water Tower 2023	Exhibit 1
Legal Description of the Village Property	Exhibit A
Legal Description of the Park District Property	Exhibit B
Legal Description of Lease Premises	Exhibit C



Legend

-  Lease Area
-  Tower Site
-  Village Property
-  Park District Property



Location Map

Kent Circle
Water Tower

2023



EXHIBIT

1

tabbles

EXHIBIT A

LEGAL DESCRIPTION OF THE VILLAGE PROPERTY

THE WEST 300 FEET OF THE EAST 650 FEET OF THE NORTH 250 FEET, EXCEPTING THEREFROM THE SOUTH 127 FEET OF THE EAST 161 FEET, OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 40 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS.

EXHIBIT B

LEGAL DESCRIPTION OF THE PARK DISTRICT PROPERTY

THE SOUTH 95.00 FEET OF THE NORTH 345.00 FEET OF THE WEST 300.00 FEET OF THE EAST 650.00 FEET OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 40 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN,

AND

THE EAST 350.00 FEET OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 40 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTH OF THE CENTERLINE OF STEARNS ROAD AS SHOWN ON DOCUMENT NO. 62-27629, ALL SITUATED IN DUPAGE COUNTY, ILLINOIS AND CONTAINING IN ALL 8.59 ACRES MORE OR LESS.

EXHIBIT C

LEGAL DESCRIPTION OF THE LEASE PREMISES

THE WEST 300 FEET OF THE EAST 650 FEET OF THE NORTH 250 FEET, EXCEPTING THEREFROM THE SOUTH 127 FEET OF THE EAST 161 FEET OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 40 NORTH, RANGE 9, EAST TO THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS.