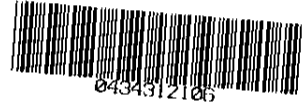


# UNOFFICIAL COPY

2865

This document prepared by,  
and after recording return to:

Sandra L. Waldier  
Bell, Boyd & Lloyd LLC  
70 West Madison Street  
Suite 3300  
Chicago, Illinois 60602



Doc#: 0434312106  
Eugene "Gene" Moore Fee: \$48.50  
Cook County Recorder of Deeds  
Date: 12/08/2004 12:41 PM Pg: 1 of 13

Property of Cook County Clerk's Office

Allstate Life Insurance Company  
Loan No. 121955

## ASSIGNMENT AND ASSUMPTION AGREEMENT

among

INLAND REAL ESTATE - ILLINOIS, LLC, a Delaware limited liability company  
as Assignor

and

IN RETAIL FUND SHOPPES AT MILL CREEK, L.L.C., an Illinois limited liability company,  
as Assignee

and

ALLSTATE LIFE INSURANCE COMPANY, an Illinois insurance corporation

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# UNOFFICIAL COPY

Allstate Life Insurance Company  
Loan No. 121955

## ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("the Assignment") is made and entered into as of December 3, 2004 by and among INLAND REAL ESTATE – ILLINOIS, LLC, a Delaware limited liability company ("Assignor"), as Assignor, IN RETAIL FUND SHOPPES AT MILL CREEK, L.L.C., a Delaware limited liability company ("Assignee"), as Assignee and ALLSTATE LIFE INSURANCE COMPANY, an Illinois insurance corporation ("Lender").

### RECITALS

A. Lender made a loan to Assignor in the original principal amount of \$5,660,000 (the "Loan") evidenced by that certain Mortgage Note dated January 18, 2001, made by Assignor in favor of Lender in the amount of the Loan (as supplemented, amended and/or assigned as described below, the "Note").

B. The Note is secured by, *inter alia*, (i) a Mortgage, Assignment of Leases, Rents and Contracts, Security Agreement and Fixture Filing, of even date with the Note, from Assignor to Lender, recorded with the Cook County Recorder of Deeds (the "Recorder") on February 2, 2001, as Document No. 0010092653 (as supplemented, amended and/or assigned, the "Mortgage"); (ii) an Assignment of Leases and Rents, of even date with the Note, from Assignor to Lender, recorded with the Recorder on February 2, 2001, as Document No. 0010092654 (as supplemented, amended and/or assigned, the "Assignment of Leases"); (iii) UCC Financing Statements (as supplemented, amended and/or assigned, the "Financing Statements"); and (iv) any other assignments, agreements, instruments, certificates and documents executed or delivered by or on behalf of Assignor or Assignee, in connection with and evidencing or securing the Loan, including the Related Agreements, as defined in the Mortgage (as supplemented, amended and/or assigned, hereinafter referred to collectively as the "Loan Documents").

C. The Loan Documents have been amended by that certain Amendment to Loan Documents dated of even date herewith, between Assignor and Lender, which Loan Modification will be recorded with the Recorder.

D. The Mortgage encumbers certain real property lying and situated in Cook County, Illinois, and more particularly described in Exhibit A attached hereto ("Property").

E. Assignor and Assignee have entered into agreements whereby Assignor transferred to Assignee, subject to the Loan Documents, all of its right, title and interest in and to the Property, the improvements and fixtures located thereon, the leases relating to the Property and all personal property relating to the Property (collectively, the "Contribution").

F. Assignor and Assignee have requested Lender's consent to the transfer of such interests to Assignee, and to the assignment to and assumption by Assignee of Assignor's obligations under the Note and Loan Documents, and Lender is willing to consent to said transfers and assumption of said indebtedness in accordance with the terms and conditions of this Assignment.

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G. Assignor and Assignee acknowledge that the execution of this Assignment shall confer a real and substantial benefit upon each of them.

## AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing recitals, the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor, Assignee and Lender hereby agree as follows:

1. Defined Terms. Initially capitalized terms used but not otherwise defined herein have the same meanings given them in the Note and the Loan Documents.

2. Assignment and Assumption of the Loan. Assignor hereby unconditionally assigns to Assignee all of its rights, duties, obligations and liabilities under the Note and the Loan Documents, and Assignee unconditionally assumes all of the rights, duties, obligations and liabilities of Assignor under the Note and the Loan Documents. In connection therewith, without limiting the generality of the foregoing, Assignee agrees to pay the Note at the time, in the manner and in all other respects as therein provided, to perform all of the duties, covenants and obligations provided in the Note and the Loan Documents to be performed after the date of this Assignment by Assignor thereunder at the time, in the manner, and in all other respects as therein provided, and to be bound by all the terms of the Note and Loan Documents as fully and to the same extent as if such Note and Loan Documents were originally made, executed and delivered to Lender by Assignee. Accordingly, the Note and Loan Documents shall include Assignee as an obligee thereunder, including without limitation, the inclusion of Assignee (i) as "Maker" under the Note, (ii) as "Mortgagor" under the Mortgage, and (iii) "Assignor" under the Assignment.

3. No Release of Assignor. Notwithstanding anything in this Assignment to the contrary, (a) Lender hereby releases Assignor from all liability under the Loan Documents for matters arising or occurring after the effective date of this Assignment. The foregoing release shall not pertain to, and Borrower shall continue to be liable for, all of its covenants, obligations, representations and warranties under this Agreement, and Assignor agrees that its liability to Lender for acts or omissions arising out of its duties and obligations under the Note, the Loan Documents and the Related Agreements shall not be impaired, prejudiced or affected in any way whatsoever for matters arising or occurring prior to the effective date of this Assignment, whether known or unknown at this time, and (b) neither Assignor nor the other indemnitors under the Environmental Indemnity Agreement of even date with the Note among Lender and the indemnitors named therein, shall, by virtue of this Assignment, be released of their liabilities under the Environmental Indemnity Agreement except in accordance with its terms.

4. Acknowledgment of Debt. Assignor and Assignee acknowledge by their execution hereof that the indebtedness evidenced by the Note is unconditionally due and owing to Lender as provided in the Note and that as of the date hereof Assignor and Assignee have no actions, defenses, demands and/or claims of set-off or deduction whatsoever relating in any manner whatsoever to the Loan, the Loan Documents or the Property, against: (a) Lender; (b) the indebtedness evidenced by the Note; or (c) the Loan Documents. Furthermore, Assignor and Assignee acknowledge that as of the date hereof, Lender has in no way defaulted or performed

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any act or omission under the Note or the Loan Documents or any other agreements between or among Assignor, Assignee and Lender relating in any manner whatsoever to the Loan, the Loan Documents or the Property, which would or could give rise to any action(s), cause(s) of action, suits, debts, sums of money, damages, claims, costs, expenses and/or demands whatsoever, in law or in equity or otherwise, by Assignor or Assignee against Lender.

5. Ratification of Prior Acts. Except as herein specifically modified hereby, the terms, covenants and conditions of the Note and the Loan Documents shall remain in full force and effect without any further modifications.

6. Lender Consent; No Waiver of Future Consent. Subject to the undertakings and agreements of Assignee set forth herein, Lender hereby consents to the Contribution in its entirety by Assignor to Assignee and acknowledges and agrees that such Contribution will not result in a violation or Event of Default under the Loan Documents. This consent to transfer shall not be a waiver of the right of Lender to require such consent to future or successive transfers, Lender reserving all such rights in the Note and the Loan Documents. Notwithstanding the foregoing, provided that Inland Commercial Property Management, Inc., or such other property manager as is reasonably acceptable to Lender, is the property manager for the Property, Lender hereby acknowledges and agrees that direct or indirect transfers of the Property or membership interests in IN Retail Fund, L.L.C. (the "Fund") to either The New York State Teachers' Retirement System ("NYSTRS") or Inland Real Estate Corporation ("Inland") (each of NYSTRS and Inland, a "Permitted Transferee") pursuant to Section 10.5, 10.6, 10.7, 10.9 or 10.13 of the Operating Agreement of the Fund, dated as of October 8, 2004 shall be permitted under the Loan Documents (each such assignment, a "Permitted Transfer"). The Permitted Transfer shall be further conditioned upon payment by Borrower to Lender of a \$5,000 transfer fee, reimbursement of all of Lender's expenses, including legal fees, incurred in connection with the Permitted Transfer, and in the case of a Permitted Transfer of the Property, satisfaction of the following conditions:

(a) Permitted Transferee assuming, in form and substance satisfactory to Lender, all obligations of Borrower under the Loan Documents, including, without limitation, the Environmental Indemnity Agreement and any nonrecourse exception indemnity agreement, with the same degree of recourse liability as Borrower and subject to the same exculpatory provisions;

(b) Lender's receipt of a title policy, updated to the date of the Permitted Transfer, evidencing that such Permitted Transfer will not adversely affect Lender's first and prior lien on the Property or any other rights or interests granted to Lender under the Loan Documents;

(c) Lender's receipt of opinions of counsel acceptable to Lender that all previous opinions, pertaining to Borrower are true with respect to Permitted Transferee, as the case may be, and Permitted Transferee has duly assumed the Loan Documents, and same are valid and enforceable against Permitted Transferee and the Property; and that Borrower has the requisite power and authority to properly transfer the Property.

7. Further Documentation. Assignee, Inland and the Fund agree to execute, contemporaneously herewith, in favor of Lender, an Environmental Indemnity Agreement and a Guaranty of Recourse Obligations, each in substantially the same form as the Environmental

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Indemnity Agreement and Guaranty of Recourse Obligations executed and delivered by Assignor and Inland in connection with the initial funding of the Loan, as well as any and all other documents reasonably required by Lender to reflect the assignment and assumption of the Loan or to retain its perfected security interest in the Property. Assignee hereby covenants that it will, at any time, upon written request therefore, execute and deliver to Lender any new or confirmatory instruments which Lender may request in order to evidence Assignee's assumption of the Note and the Loan Documents. In addition, Assignor and Assignee shall deliver to Lender (a) on or before the date hereof, opinions of counsel acceptable to Lender to the effect that (i) Assignee has duly assumed the Loan Documents, and the Loan Documents and the Assignment and all other documents executed or delivered by Assignee in connection with the Assignment are valid and enforceable against Assignee, (ii) Assignee has the requisite power and authority to own the Property; (iii) the Assignment and all other documents executed or delivered by Assignor in connection with the Assignment are valid and enforceable against Assignor, (iv) Assignor has the requisite power and authority to properly transfer the Property. The opinions shall also cover such other matters as are reasonably requested by Lender, and (b) on or before March 1, 2005, an endorsement to the loan title policy (including the endorsement thereto) insuring the Mortgage, updated to the date of the recording of this Assignment, evidencing that this Assignment does not adversely affect Lender's first and prior lien on the Property or any other rights or interests granted to Lender under the Loan Documents and that there are no intervening liens or encumbrances.

8. Confirmations under Loan. As of the date hereof, Lender's records reflect that (a) the unpaid principal balance of the Loan is Five Million Six Hundred Sixty Thousand and 00/100 Dollars (\$5,660,000.00), and (b) the next interest payment under the Loan is due on December 1, 2004. The interest is paid in arrears. Lender has not given notice of any default under the Loan Documents that has not been cured as of the date of this Assignment. In addition, to the knowledge of Lender, (1) the Existing Borrower is not in material breach of, or materially in default of, any of the provisions of the Loan Documents, and (2) no matter or condition has occurred or exists which with the giving of notice or the passage of time (or both) would constitute an Event of Default under any of the Loan Documents.

9. Nonrecourse to NYSTRS. The Lender hereby acknowledges and agrees that in no event shall any claims arising under or in connection with the Loan Documents for which Lender may have personal recourse be asserted against NYSTRS, a member of the Fund.

10. Costs. Assignor and Assignee shall pay all costs of the assignment and assumption made pursuant hereto, including without limitation, attorneys' fees and costs, recording fees, Lender's administrative fees and the cost of an endorsement to Lender's mortgage title policy. In the event it is determined that additional costs relating to this transaction are due, Assignor and Assignee agree to pay such costs immediately upon demand. Furthermore, in the event that Lender resorts to litigation to enforce this Assignment, all costs of such trials, appeals and proceedings, including, without limitation any proceedings pursuant to the bankruptcy laws of the United States, shall be paid by Assignor and Assignee; provided, however, that the liability of Assignor with respect to the foregoing shall not extend to the costs or expenses of enforcing the Note, Mortgage or Related Agreements (which, for purposes of this proviso, shall not include this Assignment) for matters arising under the Note, Mortgage or

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Related Agreements after the date hereof. The liability of Assignor and Assignee shall be joint and several with respect to this provision.

11. Related Agreement. This Assignment shall be deemed to be a Related Agreement as defined in the Mortgage.

12. Notices. The address of Assignee for purposes of notices, demands and other communication under the Loan Documents shall be as follows:

IN Retail Fund Shoppes at Mill Creek, L.L.C.  
2901 Butterfield Road  
Oakbrook, Illinois 60523  
Attention: Mark Zalatoris

With copies to:

Piper Radnick LLP  
203 North LaSalle Street  
Suite 1800  
Chicago, Illinois 60601  
Attention: Ross Green, Esq.

and

Levenfeld Pearlstein, LLC  
Two North LaSalle Street  
Suite 1300  
Chicago, Illinois 60602  
Attention: Marc Joseph, Esq.

The Note and the Loan Documents are hereby modified such that the foregoing address shall be deemed to be the address for all notices required to be given to Borrower pursuant to the Note, the Mortgage and the other Loan Documents.

13. Severability. If any one or more of the provisions of this Assignment shall be held invalid or unenforceable, the validity and enforceability of all other provisions of this Assignment shall not be affected.

14. Binding Effect. This Assignment shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, personal representatives, successors and assigns.

15. Captions. The captions and headings in this Assignment are for convenience only and are not to be used to interpret, define or limit the provisions hereof.

16. Multiple Counterparts. This Assignment may be executed in multiple counterparts each of which shall be an original part, but all of which shall constitute one instrument.

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17. Consent of Guarantor/Indemnitor. Inland, as guarantor under any guaranties executed and delivered by it in connection with the Loan or contained in any Loan Document (“Guaranties”) and as indemnitor under any indemnities executed and delivered by it in connection with the Loan or contained in any Loan Document, including any environmental indemnity agreements (“Indemnities”), hereby (a) consents to the terms and provisions of this Assignment, (b) confirms its obligations under the Guaranties and the Indemnities, and (c) agrees that the Guaranties and the Indemnities remain in full force and effect.

18. Representations and Warranties. All of the representations, warranties, covenants, indemnities and agreements of Assignor contained in the Loan Documents, including without limitation the Closing Certificate delivered in connection with the Mortgage, are ratified, confirmed and deemed remade as of the date of this Assignment by Assignor and Assignee, on a joint and several basis.

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IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first set forth above.

ASSIGNOR

INLAND

INLAND REAL ESTATE – ILLINOIS, LLC,  
a Delaware limited liability company

INLAND REAL ESTATE CORPORATION,  
a Maryland corporation,

By: Inland Real Estate Corporation, a  
Maryland corporation, its sole member

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

ASSIGNEE

FUND

IN RETAIL FUND SHOPPES AT MILL CREEK,  
L.L.C., an Illinois limited liability company

IN RETAIL FUND, L.L.C., a Delaware  
limited liability company, its Manager

By: IN Retail Fund, L.L.C., a Delaware  
limited liability company, its Manager

By: IN Retail Manager, L.L.C., a Delaware  
limited liability company, its Manager

By: IN Retail Manager, L.L.C., a  
Delaware limited liability company  
its Manager

By: Inland Real Estate Corporation  
a Maryland corporation, its Manager

By: Inland Real Estate Corporation  
a Maryland corporation, its Manager

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

LENDER

ALLSTATE LIFE INSURANCE COMPANY,  
an Illinois insurance corporation



By: *Kevin J. Miller*

By: *Margaret O'Neare*

Its Authorized Signatories



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IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first set forth above.

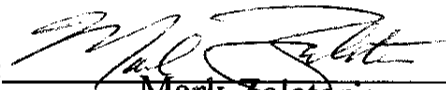
ASSIGNOR

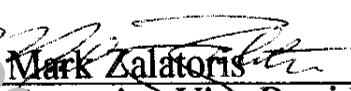
INLAND

INLAND REAL ESTATE – ILLINOIS, LLC,  
a Delaware limited liability company

INLAND REAL ESTATE CORPORATION,  
a Maryland corporation,

By: Inland Real Estate Corporation, a  
Maryland corporation, its sole member

By:   
Its: Mark Zalatoris  
Executive Vice President

By:   
Its: Mark Zalatoris  
Executive Vice President

ASSIGNEE

FUND

IN RETAIL FUND SHOPPES AT MILL CREEK,  
L.L.C., an Illinois limited liability company

IN RETAIL FUND, L.L.C., a Delaware  
limited liability company, its Manager

By: IN Retail Fund, L.L.C., a Delaware  
limited liability company, its Manager

By: IN Retail Manager, L.L.C., a Delaware  
limited liability company, its Manager

By: IN Retail Manager, L.L.C., a  
Delaware limited liability company  
its Manager

By: Inland Real Estate Corporation  
a Maryland corporation, its Manager

By: Inland Real Estate Corporation  
a Maryland corporation, its Manager

By:   
Its: Mark Zalatoris  
Executive Vice President

By:   
Its: Mark Zalatoris  
Executive Vice President

LENDER

ALLSTATE LIFE INSURANCE COMPANY,  
an Illinois insurance corporation

By: \_\_\_\_\_

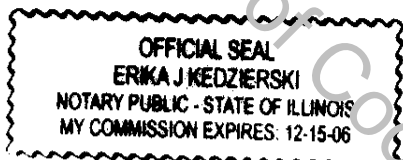
By: \_\_\_\_\_  
Its Authorized Signatories

# UNOFFICIAL COPY

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK        )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that Mark Zalatonis, the Executive V.P. of INLAND REAL ESTATE CORPORATION, a Maryland corporation, the sole member of INLAND REAL ESTATE - ILLINOIS, LLC, a Delaware limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such officer he/she signed and delivered the said instrument as his/her free and voluntary act and deed and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal, this 2nd day of December, 2004  
My commission expires 12-15-06

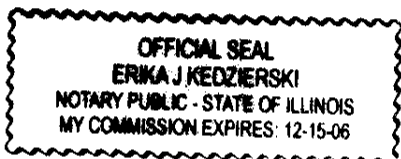


Erika J Kedzierski  
Notary Public

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK        )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that Mark Zalatonis, the Executive VP of INLAND REAL ESTATE CORPORATION, a Maryland corporation, the Manager of IN RETAIL MANAGER, L.L.C., a Delaware limited liability company, the Manager of IN RETAIL FUND, L.L.C., a Delaware limited liability company, the Manager of IN RETAIL FUND SHOPPES AT MILL CREEK, L.L.C., an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such officer he/she signed and delivered the said instrument as his/her free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal, this 2nd day of December, 2004  
My commission expires 12-15-06



Erika J Kedzierski  
Notary Public

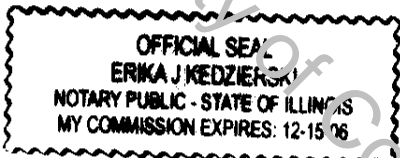
# UNOFFICIAL COPY

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF Cook        )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that Mark Zalatoris, the Executive V.P. of INLAND REAL ESTATE CORPORATION, a Maryland corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such officer he/she signed and delivered the said instrument as his/her free and voluntary act and deed and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal, this 2<sup>nd</sup> day of December, 2004

My commission expires 12-15-06



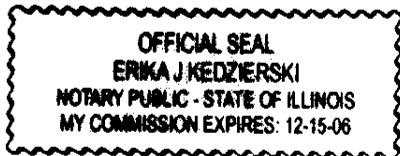
Erika J. Kedzierski  
Notary Public

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF Cook        )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that Mark Zalatoris, the Executive V.P.\* of IN RETAIL FUND, L.L.C., a Delaware limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such officer he/she signed and delivered the said instrument as his/her free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal, this 2<sup>nd</sup> day of December, 2004.

My commission expires 12-15-06



Erika J. Kedzierski  
Notary Public

\* of Inland Real Estate Corporation, a Maryland Corporation, the Manager of IN Retail Manager, L.L.C., a Delaware limited liability company, the Manager of

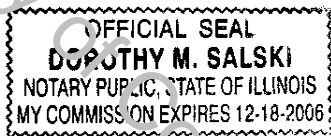
# UNOFFICIAL COPY

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK        )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that ROUSE J. WALLEN and MARY PAT SIMMONS, authorized signatories for ALLSTATE LIFE INSURANCE COMPANY, an Illinois insurance corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such authorized signatories, they signed and delivered the said instrument as their free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal, this 30 day of NOVEMBER, 2007

My commission expires 12-18-2008



Dorothy M. Salski  
Notary Public

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## EXHIBIT A

### LEGAL DESCRIPTION

LOT 2 IN MILL CREEK P.U.D. COMMERCIAL PHASE TWO SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 37 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS.

Commonly known as The Shoppes at Mill Creek, 131<sup>st</sup> & LaGrange Road, Palos Park, IL

P.I.N.: 23-33-201-015-0000  
23-33-201-018-0000

Property of Cook County Clerk's Office