

# UNOFFICIAL COPY



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Cook County Recorder of Deeds  
Date: 01/10/2007 10:28 AM Pg: 1 of 10

RECORDING REQUESTED BY AND WHEN  
RECORDED MAIL TO:  
John N. Oest, Esq.  
Lord, Bissell & Brook  
111 South Wacker Drive  
Chicago, Illinois 60606

(Above Space for Recorder's Use)

## ASSIGNMENT OF LEASES AND RENTS

by

BLACKHAWK/HALSTED LLC, an Illinois limited liability company

as Assignor

and

NATIONAL CITY BANK, as Agent  
a national banking association

as Assignee

Dated as of ~~2006~~ JANUARY 5, 2007

LANDAMERICA / LAWYERS TITLE  
COMMERCIAL SERVICES BOX #11344  
10 S. LA SALLE STREET  
SUITE 2500  
CHICAGO, IL 60603

10933667/11111111  
3 of 5

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## ASSIGNMENT OF LEASES AND RENTS

JANUARY 5, 2006  
 THIS ASSIGNMENT OF LEASES AND RENTS ("Assignment") is made as of ~~November 21, 2006~~, by BLACKHAWK/HALSTED, LLC, an Illinois limited liability company ("Assignor") in favor of NATIONAL CITY BANK, as Agent, a national banking association ("Assignee").

### RECITALS

A. Agent, for itself and other lenders, has agreed to make a loan to Assignor in the amount of SEVENTY MILLION DOLLARS (\$70,000,000) (the "Loan") pursuant to a Loan Agreement ("Loan Agreement") of even date herewith, which loan will be evidenced by notes as described in the Loan Agreement (the "Notes") executed and secured by, among other things, that certain Construction Mortgage, Fixture Filing and Assignment Of Leases and Rents, of even date herewith executed by Assignor in favor of Assignee (the "Mortgage"). This Assignment, the Notes, the Mortgage and all other documents and instruments (including any hazardous waste indemnifications and payment guaranties now or hereafter securing repayment of or otherwise evidencing or relating to the Loan are sometimes referred to herein collectively as the "Loan Documents."

B. The Mortgage encumbers that certain real property in the City of Chicago, Illinois, as more particularly described on Exhibit A attached hereto and made a part thereof, together with the improvements now located or hereafter constructed hereon, and the easements, rights and appurtenances thereunto belonging, which estate, together with all property now or hereafter encumbered by the lien of the Mortgage or any other Loan Document, are referred herein collectively as the "Property."

C. The Property may become subject to leases and other occupancy agreements, and Assignor intends to enter into further such agreements from time to time in the future, all of which agreements together with all guaranties, amendments, extensions and renewals thereof currently or hereafter existing shall hereinafter be referred to as the "Leases."

D. Assignee has required this Assignment as a condition to and as additional consideration for making the Loan to Assignor and Assignor, in order to induce Assignee to make the Loan, has agreed to execute and deliver this Assignment.

NOW, THEREFORE, in consideration of Assignee's making the Loan and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby agrees as follows:

1. **Assignment of Leases and Rents.** Assignor hereby unconditionally and absolutely bargains, sells, transfers, assigns, conveys, sets over and delivers unto Assignee the Leases, together with all rents, profits, revenues, reimbursements, indemnifications, damages, payments under guaranties, and all other payments or income which are now or may hereafter become due thereunder or otherwise on account of any use or occupancy of the Property

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(collectively, "Rents") from or on behalf of any tenant of any part of the Property, its subtenants, assignees or guarantors or any other person (collectively, "Tenants"). This assignment is absolute and unconditional, Assignor intending hereby to establish a complete and present transfer of all Leases and all Rents unto Assignee, with the right, but without the obligation, to collect all Rents which may become due after the date hereof.

2. **Assignor's Covenants.** Assignor hereby represents and warrants to Assignee:

(a) That Assignor has previously delivered to Assignee true and correct copies of all Leases in effect as of the date hereof and that Assignor shall hereafter deliver to Assignee true and correct copies of all Leases within thirty (30) days after entering into the same.

(b) That Assignor shall deposit with Assignee, immediately upon demand, such of the Leases as may from time to time be designated by Assignee.

(c) That Assignor shall perform all of the lessor's obligations under the Leases in accordance with their terms.

(d) That Assignor shall deliver to Assignee, promptly on receipt thereof, copies of any and all demands, claims and notices of default received by it under any Lease.

3. **Approval of Leases.** Assignor agrees that all Leases entered into after the date hereof shall be subject to Assignee's prior written approval; provided, however, that from and after such time as Assignee approves a standard, preprinted form of lease submitted by Assignor, Assignor may enter into subsequent Leases without such consent so long as each such Lease uses such form without material or extensive modification or addition and, further, (a) the rentals provided for therein are not less than the *pro forma* rents required by Assignee or are commercially reasonable in the absence of any such requirement by Assignee; (b) the term of such Leases (including extension options) do not exceed five (5) years; (c) the permitted uses of the leased premises do not violate any law, restrictive covenant, requirement of any other lease, lien or contract; and (d) the Tenant is not permitted to violate any term of the Loan Documents. Assignee's approval of any Lease or form of lease shall not be construed as a modification of any requirement or provision of any Loan Document, all of which shall remain in all events binding upon Assignor and any other person whose interest in the Property is or becomes subject to the Mortgage. Without limiting the generality of the foregoing, nothing herein shall be construed to permit Assignor to, and Assignor hereby expressly agrees not to enter any Lease which so provides, grant any option or right of first refusal to purchase any portion of the Property, subordinate any Lease to any encumbrance not held by Assignee or otherwise adversely affect the value or marketability or financeability of Assignor's interests in the Property or any Tenant's obligations to improve, use, maintain, insure or operate the same. Assignor further agrees that it shall not release any Tenant, modify, cancel or terminate any Lease or accept a surrender thereof or make any further transfers or assignments, or suffer the same, which would result in, directly or indirectly, a merger of the estates and rights of, or a termination or diminution of the obligations of, any Tenant.

4. **Assignee's Authority to Collect Rents.** Assignor hereby appoints Assignee the true and lawful attorney of Assignor with full power of substitution and with power for it and in its name, place and stead, to demand, collect, receipt and give complete acquittances for all

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Rents and, at its discretion, to file any claim or take any other action or proceeding and make any settlement of any claims, either in its own name or in the name of Assignor or otherwise, which Assignee may reasonably deem necessary or desirable in order to collect and enforce the payment of any Rent. Assignor hereby expressly authorizes and directs all Tenants to pay all Rents to Assignee, or such nominee as Assignee may designate in writing to such Tenant and expressly relieves all such Tenants of any duty, liability or obligation to Assignor in respect of all payments so made.

5. **Assignee's Enforcement of Leases.** Assignee is hereby vested with full power to use all measures, legal and equitable, deemed by it to be necessary or proper to enforce this Assignment and all of the lessor's rights under the Leases and to collect the Rents, including, without limitation, the right, in person or by agent, employee or court-appointed receiver, to enter upon and take possession of the Property to the extent necessary to effect the cure of any default on the part of Assignor as lessor in any of the Leases or upon Assignor's default under any Loan Document. Assignor hereby grants to Assignee full power and authority to exercise all rights, privileges and powers herein granted or granted to the lessor under any Lease at any and all times hereafter, without notice to Assignor, including the right to operate and manage the Property, make and amend any Leases and perform any other acts which are reasonably necessary to protect the value of the Property or the Leases or the priority or enforceability of any security for the Note.

6. **Assignee's Liability Under the Leases.** Assignee shall be under no obligation to enforce any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of the lessor under any of the Leases and shall not by accepting this Assignment or performing any act permitted hereunder be deemed to assume any liability in connection with or arising or related to the covenants and agreements of Assignor under the Leases. Assignor covenants and agrees that it will faithfully perform all of the obligations imposed under all Leases and hereby agrees to indemnify Assignee and to hold it harmless from and against any liability, loss or damage (including attorneys' fees) incurred by it under the Leases or by reason of this Assignment or any act Assignee may take hereunder 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 on its part to perform or discharge any of the terms, covenants or agreements contained in any of the Leases, except those resulting solely from the gross negligence or willful misconduct of Assignee after taking possession of the Property. Assignor acknowledges and agrees that this Assignment shall not operate to place responsibility for the control, care, management or repair of the Property upon Assignee nor shall it operate to make Assignee liable for the carrying out of any of the terms and conditions of any of the Leases, or for any waste of the Property by any Tenant or by any other person, or for any dangerous or defective condition of the Property or for any negligence in the management, upkeep, repair or control thereof resulting in loss or injury or death to any Tenant, invitee, licensee, employee or stranger, except as may result solely from the gross negligence or willful misconduct of Assignee after taking possession of the Property hereunder.

7. **Application of Rents.** Assignee may, in its sole discretion, apply any Rents which it collects against any sums which are then due under the Note or any other Loan Document or use such Rents to discharge any amount due from Assignor which relates to any Loan Document or the Property, including, without limitation, Assignee's costs (including

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attorneys' fees) of exercising any remedy under the Loan Documents, all costs of managing and operating the Property, the payment of taxes, special assessments, insurance premiums and damage claims with respect to the Property, all costs of repairing, rebuilding and restoring the improvements on the Property or of making the Property rentable and any principal and interest payments due from Assignor to Assignee under the Note, all in such order as Assignee may determine. Any amounts collected hereunder by Assignee in excess of such amounts shall be paid to Assignor without interest.

8. **Bankruptcy of Tenants.** This Assignment shall include all of the rights which otherwise would inure to the benefit of Assignor in the event any Tenant files or has filed against it any petition in bankruptcy or for reorganization, or undertakes or is subject to any similar action, including, without limitation, the right to seek "adequate protection" of its interests, to compel rejection of any such Lease, and to seek such claims and awards as may be sought or granted in connection with the rejection of any such Lease. Unless otherwise consented to by Assignee in writing, Assignee's exercise of any of the rights provided in this paragraph shall preclude Assignor from the pursuit and benefit thereof without any further action or proceeding of any nature.

9. **Collection Expenses.** Assignor agrees to reimburse Assignee for all reasonable costs, expenses and fees (including, without limitation, reasonable attorneys' fees) that Assignee incurs in connection with the enforcement of any obligation contained in this Assignment or the collection of any Rents assigned herein, with or without litigation, including without limitation any costs, expenses and fees incurred (a) in making demands for and collecting any Rents; (b) in any action against Assignor or any Tenant arising out of a breach by Assignor of its obligations under this Assignment or by any Tenant under the terms of its Lease; (c) on appeal of any judgment or other decision of a court or administrative body in any such action; (d) in any petition for review of any judgment or other decision of a court or administrative body in any such action; (e) in any arbitration or mediation; (f) in any action contesting or seeking to restrain, enjoin, stay or postpone the exercise of any remedy in which Assignee prevails; (g) in any bankruptcy, probate, receivership or other proceeding involving Assignor; and (h) in connection with all negotiations, documentation and other actions relating to any workout, compromise, settlement or satisfaction relating to this Assignment. All such costs, expenses and fees shall be due and payable upon demand, shall bear interest from the date incurred through the date of collection at the Default Rate stated in the Note and shall be secured by the Mortgage and the other Loan Documents.

10. **Notices.** All notices to the Assignor or Assignee under this Assignment shall be given in the manner set forth in the Mortgage.

11. **Release of Assignment.** Upon payment in full of all amounts due under the Loan Documents, this Assignment shall become null and void; otherwise, it shall remain in full force and effect as herein provided and, with the covenants, warranties and power of attorney herein contained, shall inure to the benefit of Assignee and any subsequent holder of the Note, and shall be binding upon Assignor, its heirs, legal representatives, successors and assigns, and any subsequent owner of the Property. In the event any part of the Property is released from the Mortgage, the same shall also be thereby released from the provisions of this Assignment, unless otherwise stated in the releasing document, without further action on the part of the Assignee;

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provided, however, such releases shall in no way affect the terms, covenants and conditions hereof with respect to those portions of the Property not so released.

12. **Assignor's License to Collect Rents.** This Assignment is absolute and effective upon execution by Assignor. Assignee grants to Assignor a revocable license to collect Rents under the Leases to the extent attributable to one (1) month of the unexpired Lease term unless and until Assignor is in default under the Loan Documents beyond the expiration of any applicable cure period specifically provided for therein. All such Rents shall be collected and held in trust for Assignee, but until this license is revoked, shall be used to pay the reasonable expenses of owning, maintaining, repairing, operating and renting the Property. Assignee shall also have the right to revoke such license and collect Rents under any Leases if and so long as Assignee reasonably determines that a default is likely to occur under any of the Loan Documents and such default will result in any Leases or rental obligations becoming modified, released, compromised or impaired or any rentals becoming improperly collected, waived, attached or embezzled.

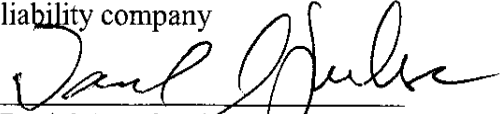
IN WITNESS WHEREOF, Assignor has executed this Assignment on the date first written above.

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ASSIGNOR:

**BLACKHAWK/HALSTED,LLC,** an Illinois  
limited liability company

By:

  
Daniel A. Lukas, Manager

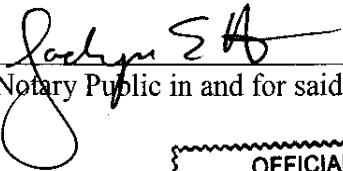
Property of Cook County Clerk's Office

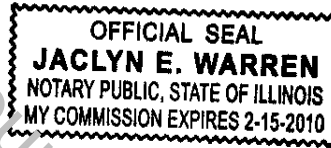
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STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF COOK )

On ~~November~~ <sup>JANUARY</sup> 5, 2008 <sup>7</sup>, before me, the undersigned, a Notary Public in and for said County and State, duly commissioned and sworn, personally appeared Daniel A. Lukas, the member manager of Blackhawk/Halsted, LLC, an Illinois limited liability company, personally, known to me, or proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same in his authorized capacity and that by his signature on the instrument the person, or the entity upon behalf of which the person acted executed the same.

WITNESS my hand and official seal.

  
Notary Public in and for said State

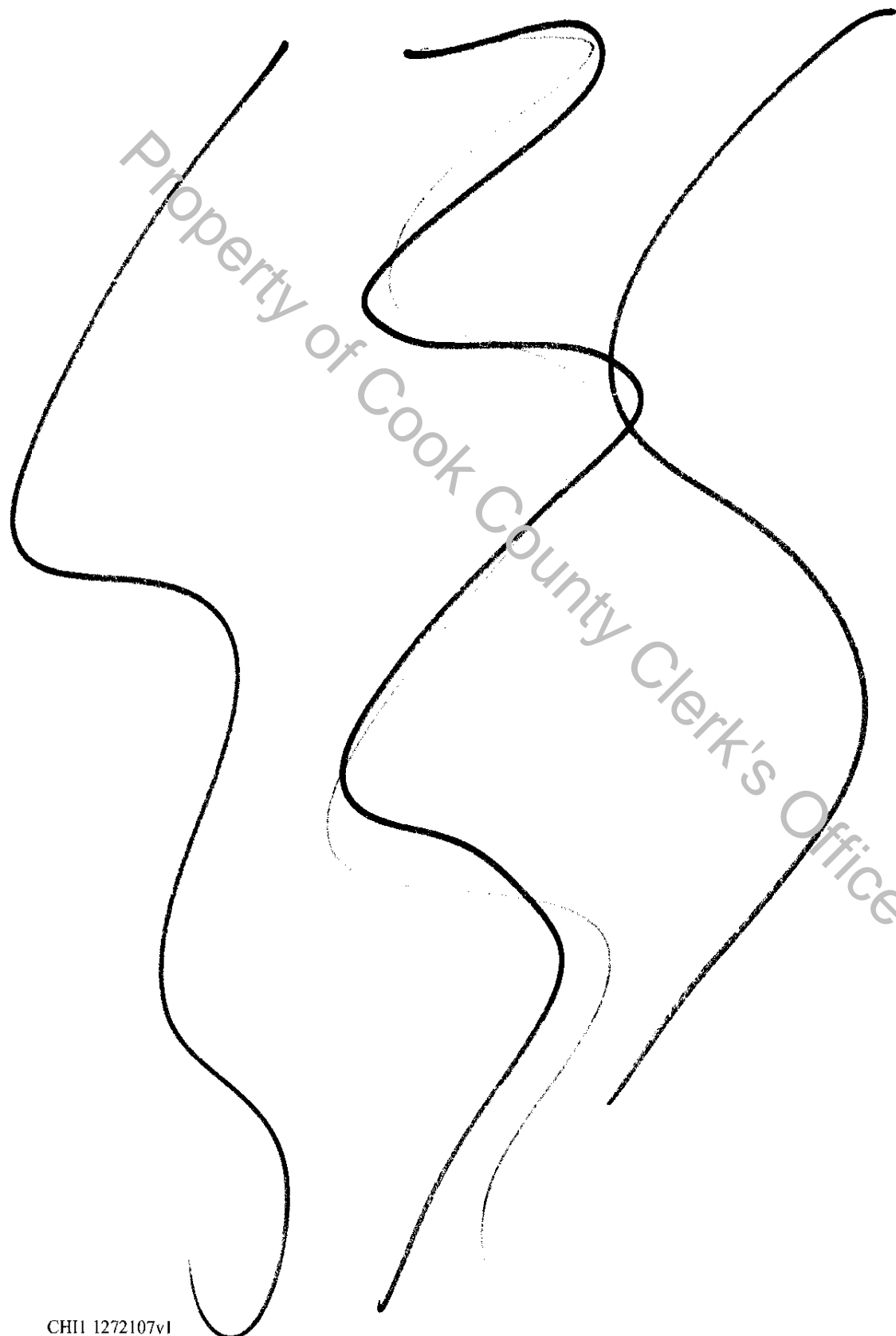




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EXHIBIT A

[Legal Description]



**UNOFFICIAL COPY****LEGAL DESCRIPTION**

## Parcel 1

THE WEST 66 FEET OF LOTS 14 AND 15 (EXCEPT THE SOUTH 2 FEET 6 INCHES OF THE EAST 6 FEET THEREOF); THE WEST 60 FEET OF LOTS 16, 17, 18, 19, 20, 21 AND 22 AND THE NORTH 2 FEET 11 INCHES OF THE WEST 60 FEET OF LOT 23 IN J.A. YALE'S RESUBDIVISION OF BLOCK 59 IN ELSTON'S ADDITION TO CHICAGO (HERETOFORE VACATED) IN THE NORTHEAST  $\frac{1}{4}$  OF SECTION 5, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

## Parcel 2

LOTS 1 TO 8, BOTH INCLUSIVE; THE NORTH  $\frac{1}{2}$  OF LOT 9; THAT PORTION OF THE VACATED ALLEY WEST OF AND ADJOINING SAID LOTS 1 TO 8, BOTH INCLUSIVE, AND THE NORTH  $\frac{1}{2}$  OF LOT 9 AND EAST OF AND ADJOINING LOTS 14 TO 21, BOTH INCLUSIVE, AND THE NORTH  $\frac{1}{2}$  OF LOT 22, LOTS 14 AND 15, EXCEPT THE WEST 66 FEET THEREOF; THE SOUTH 2 FEET 6 INCHES OF THE EAST 6 FEET OF THE WEST 66 FEET OF LOT 15; LOTS 16 TO 21, BOTH INCLUSIVE, EXCEPT THE WEST 60 FEET THEREOF AND THE NORTH  $\frac{1}{2}$  OF LOT 22, EXCEPT THE WEST 60 FEET THEREOF, ALL IN J.A. YALE'S RESUBDIVISION OF BLOCK 59 IN ELSTON'S ADDITION TO CHICAGO (HERETOFORE VACATED AS TO SAID LOTS AND SAID BLOCK 59) IN THE NORTHEAST  $\frac{1}{4}$  OF SECTION 5, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

## Parcel 3

THE SOUTH  $\frac{1}{2}$  OF LOT 9, ALL OF LOTS 10, 11, 12 AND 13, THE SOUTH  $\frac{1}{2}$  OF LOT 22 (EXCEPT THE WEST 60 FEET THEREOF), LOT 23 (EXCEPT THE NORTH 2 FEET 11 INCHES OF THE WEST 60 FEET THEREOF), AND LOTS 24, 25, AND 26, AND THAT PORTION OF THE VACATED ALLEY WEST OF AND ADJOINING SAID LOTS 10 TO 13, BOTH INCLUSIVE, AND THE SOUTH  $\frac{1}{2}$  OF LOT 9, AND EAST OF AND ADJOINING SAID LOTS 23 TO 26, BOTH INCLUSIVE, AND THE SOUTH  $\frac{1}{2}$  OF LOT 22 IN BLOCK 59 IN ELSTON'S ADDITION TO CHICAGO (HERETOFORE VACATED) IN THE NORTHEAST  $\frac{1}{4}$  OF SECTION 5, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 17-05-219-002-0000, 17-05-219-003-0000, 17-05-219-005-0000, 17-05-219-006-0000

*823 W Blackhawk, Chicago, IL*