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Doc#: 0736541065 Fee: \$54.00  
Eugene "Gene" Moore RHSP Fee:\$10.00  
Cook County Recorder of Deeds  
Date: 12/31/2007 10:47 AM Pg: 1 of 16

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Box 400

ASSIGNMENT OF LEASES AND RENTS

Oakwood Chicago Associates, LLC , Elmwood Chicago Associates, LLC, Landings Chicago Associates, LLC, and Walkill Chicago Associates, LLC ,

each a Delaware limited liability company  
(collectively, Borrower)

to

PNC BANK, NATIONAL ASSOCIATION  
(Lender)

Dated: December 28, 2007

Location: ATT Building  
225 West Randolph Street  
Chicago, Cook County, Illinois

Property Identification Number:

- #17-09-443-001-0000
- #17-09-443-002-0000
- #17-09-443-003-0000
- #17-09-443-004-0000
- #17-09-443-005-0000
- #17-09-444-001-0000 (PT)
- #17-09-444-016-0000
- #17-09-444-020-0000

PREPARED BY, RECORD AND RETURN TO:

PNC BANK, NATIONAL ASSOCIATION  
10851 Mastin, Suite 300  
Overland Park, Kansas 66210

Loan No.: 94-0954251

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THIS ASSIGNMENT OF LEASES AND RENTS ("Assignment") is made as of December 28, 2007, by Oakwood Chicago Associates, LLC, Elmwood Chicago Associates, LLC, Landings Chicago Associates, LLC, and Wallkill Chicago Associates, LLC, each a Delaware limited liability company (collectively, "Borrower"), having its principal place of business at c/o Kushner Companies, 18 Columbia Turnpike, Florham Park, New Jersey 07932, to PNC Bank, National Association ("Lender"), having a mailing address at 10851 Mastin, Suite 300, Overland Park, Kansas 66210.

## RECITALS:

THAT Borrower for good and valuable consideration, receipt whereof is hereby acknowledged, hereby grants, transfers and absolutely and unconditionally assigns to Lender Borrower's entire interest (subject to the Excepted Rights and Excepted Payments, as defined in the Security Instrument) in and to all current and future leases, including, without limitation, that certain Lease dated on or about December 27, 2007 between Borrower, as landlord, and AT&T Services, Inc. (the "ATT Tenant"), as tenant (the "ATT Lease"), reciprocal easement agreements and other agreements (together with any extensions or renewals of the same without further or supplemental assignment), now or hereafter made and affecting the use, enjoyment, or occupancy of all or any part of that certain real property more particularly described in Exhibit A attached hereto and made a part hereof, together with the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (hereinafter collectively referred to as the "Mortgaged Property"), all of the same being hereinafter collectively referred to as the "Leases";

TOGETHER WITH all rents (including, without limitation, percentage rents), income, issues, revenues, proceeds and profits arising from the Leases and all rents, income, issues, revenues, proceeds and profits (including, but not limited to, all oil and gas or other mineral royalties and bonuses) from the use, enjoyment and occupancy of the Mortgaged Property (hereinafter collectively referred to as the "Rents").

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

1. Indebtedness Secured. This Assignment is made for the purposes of securing:
  - (a) The payment of the Debt (hereinafter defined), including, without limitation, the principal sum, interest and all other sums evidenced by those certain Promissory Notes (collectively, the "Notes") executed by Borrower contemporaneously with this Assignment and payable to the order of Lender.
  - (b) The performance and discharge of each and every obligation, covenant and agreement of Borrower contained herein, in the Notes, in the Security Instrument (as defined in the Notes) and in any of the Other Security Documents (as defined in the Notes).
2. Borrower's Warranties. Borrower warrants that: (i) Borrower is the sole owner of the entire lessor's interest in the ATT Lease; (ii) the ATT Lease is in all material respects valid and enforceable and has not been altered, modified or amended in any manner since a copy of same was last delivered to Lender; (iii) none of the Rents reserved in the ATT Lease have been assigned (other than to Lender) or otherwise pledged or hypothecated; (iv) none of the Rents

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have been collected for more than one (1) month in advance (except for the Base Rent for January, 2008, which was prepaid to Borrower on the date of the Notes); (v) Borrower has full power and authority to execute and deliver this Assignment and the execution and delivery of this Assignment has been duly authorized and does not conflict with or constitute a default under any law, judicial order or other agreement affecting Borrower or the Mortgaged Property; (vi) the premises demised under the ATT Lease has been completed and the ATT Tenant has accepted the same and has taken possession of the same on a rent-paying basis; (vii) to the best of Borrower's knowledge, there exist no offsets or defenses to the payment of any portion of the Rents; and (viii) a true and correct copy of the ATT Lease was delivered to Lender prior to the execution of this Assignment.

3. Present and Absolute Assignment. Borrower does hereby absolutely and unconditionally assign to Lender all of Borrower's right, title and interest in all current and future Leases and Rents, it being intended by Borrower that this Assignment constitutes a present, absolute and unconditional assignment and not an assignment for additional security only. Nothing herein shall be construed to bind Lender to the performance of any of the covenants, conditions, or provisions contained in any of the Leases or otherwise to impose any obligation upon Lender. Borrower agrees to execute and deliver to Lender such additional instruments, in form and substance satisfactory to Lender, as Lender may hereinafter require to further evidence and confirm this Assignment. Lender is hereby granted the right to enter the Mortgaged Property for the purpose of enforcing Lender's interest in the Leases and the Rents, this Assignment constituting a present, absolute and unconditional assignment of the Leases and Rents. Upon an Event of Default (as defined in the Security Instrument), if and to the extent Borrower has any interest or rights in any sublease(s) of the Mortgaged Property, Borrower designates Lender to receive, and directs tenant to pay to Lender, or its designated servicer, all payment payable or receivable under any such sublease(s).

4. Performance of Leases.

(a) With respect to the ATT Lease or any Lease which replaces the ATT Lease in whole or in part, Borrower shall: (i) observe and perform all the obligations imposed upon Borrower as landlord; (ii) not do or permit to be done anything to impair the value of any of the Leases as security for the Debt; (iii) promptly send to Lender copies of all notices of default which Borrower shall send or receive thereunder; (iv) enforce all of the material terms, covenants and conditions which are to be performed by any tenant, short of termination thereof; (v) not collect any of the Rents more than one (1) month in advance (except for the Base Rent for January, 2008, which was prepaid to Borrower on the date of the Notes); (vi) not execute any other assignment of Borrower's interest in any of the Leases or the Rents; (vii) execute and deliver at the request of Lender all such further assurances, confirmations and assignments in connection with the Mortgaged Property as Lender shall from time to time require; and (viii) not extend any Lease or enter into any new or renewal Lease affecting the Mortgaged Property except as allowed pursuant to this Assignment.

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## 5. Acts Requiring Lender's Approval.

- (a) Without obtaining Lender's prior written approval, Borrower shall not:
- (i) extend the ATT Lease or enter into any new or renewal Lease affecting the Mortgaged Property;
  - (ii) consent to any assignment of or subletting (except in accordance with the terms of the ATT Lease);
  - (iii) alter, modify, change, cancel or terminate any guaranty of the ATT Lease or any guaranty of any Lease which replaces the ATT Lease in whole or in part;
  - (iv) except as provided in Section 5(b) below, alter, modify, change the terms of, cancel, terminate or accept a surrender of the ATT Lease or any Lease which replaces the ATT Lease in whole or in part; or
  - (v) transfer or permit a transfer of the Mortgaged Property or of any interest therein, even if such a transfer is permitted under the Security Instrument, if such transfer would effect a merger of the estates and rights of, or a termination or diminution of the obligations of, the ATT Tenant under the ATT Lease or the guarantor under the ATT Lease, or any tenant under any Lease which replaces the ATT Lease in whole or in part.

(b) Notwithstanding anything to the contrary above, Borrower may make Non-Material Modifications to the ATT Lease with Lender's prior written consent, which consent shall not be unreasonably withheld. For purposes hereof, "Non-Material Modifications" shall mean modifications which do not change the Rent, the Term, and do not increase or create any additional obligations on the part of Borrower.

6. Remedies of Lender. Upon or at any time after an Event of Default, Lender may, at its option, without waiving such Event of Default, without notice and without regard to the adequacy of the security for the Debt: (i) in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, take possession of the Mortgaged Property and have, hold, manage, lease and operate the Mortgaged Property on such terms and for such period of time as Lender may deem proper; (ii) with or without taking possession of the Mortgaged Property in its own name, demand, sue for or otherwise collect and receive all Rents, including those past due and unpaid, and (iii) make from time to time all alterations, renovations, repairs or replacements to the Mortgaged Property as Lender deems proper. Lender may apply any Rents obtained by it to the payment of the following in such manner and order as Lender in its sole and absolute discretion may determine, any law, custom or use to the contrary notwithstanding: (a) all expenses of securing, managing, operating and maintaining the Mortgaged Property, including, without limitation, the salaries, fees and wages of a managing agent and such other employees or agents as Lender may deem necessary or desirable; all taxes, charges, claims, assessments, water charges, sewer rents and any other liens; premiums for all insurance which Lender may deem necessary or desirable; the cost of all alterations, renovations, repairs or replacements; and all expenses incident to taking and retaining possession of the Mortgaged Property; and (b) the Debt, together with all court costs and attorney fees, receiver fees and all other costs and expenses incurred by Lender. Borrower grants to Lender its

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irrevocable power of attorney, coupled with an interest, to take any and all actions allowed hereunder and any or all other actions designated by Lender for the proper management and preservation of the Mortgaged Property. The exercise by Lender of any particular remedy or right hereunder and the collection of the Rents and the application thereof as herein provided shall not be considered a waiver of any Event of Default by Borrower.

7. No Liability of Lender. Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to let the Mortgaged Property after an Event of Default or from any other act or omission of Lender in managing the Mortgaged Property after an Event of Default unless such loss is caused by the willful misconduct, bad faith or gross negligence of Lender. Lender shall not be obligated to perform or discharge any obligation, duty or liability under the Leases or under or by reason of this Assignment. Borrower hereby agrees to hold Lender harmless from any and all liability, loss or damage (including attorney fees and the costs of defense) from any and all claims and demands whatsoever asserted against Lender pursuant to the Leases or this Assignment, including, without limitation, any claims or demands related to any alleged obligations or alleged undertakings on Lender's part to perform or discharge any of the terms, covenants or agreements contained in the Leases; provided, however, that this indemnity is not applicable if such loss is caused by the willful misconduct, bad faith or gross negligence of Lender. Borrower shall reimburse Lender immediately upon demand for the amount of any such liability, loss or damage, the payment of which shall be secured by this Assignment, by the Security Instrument and by the Other Security Documents. Upon the failure of Borrower to reimburse Lender, Lender may, at its option, declare the entire Debt immediately due and payable. This Assignment shall not obligate or make Lender liable for (i) the control, care, management or repair of the Mortgaged Property, (ii) the carrying out of any of the terms and conditions of the Leases, (iii) any waste committed on the Mortgaged Property by the tenants or any other parties, (iv) any dangerous or defective condition of the Mortgaged Property, including without limitation the presence of any Hazardous Material (as defined in the Environmental Indemnity Agreement executed contemporaneously herewith in favor of Lender), or (v) any negligence in the management, upkeep, repair or control of the Mortgaged Property resulting in loss or injury or death to any tenant, licensee, employee or stranger.

8. Notice to Tenants. Borrower hereby authorizes and directs all tenants or occupants now or in the future possessing any rights in the Mortgaged Property pursuant to any of the Leases, to pay directly to Lender all Rents in accordance with the Cash Management Agreement (as defined in the Notes) and to continue to do so until otherwise notified by Lender in writing.

9. Other Security. Lender 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 reduction or satisfaction of the Debt without prejudice to any of its rights under this Assignment.

10. Other Remedies. Nothing contained in this Assignment and no act done or omitted by Lender pursuant to the power and rights granted to Lender hereunder shall be deemed to prejudice or waive Lender's rights and remedies under the Notes, the Security Instrument, or the Other Security Documents. Lender's right to collect the Debt and to enforce any other



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security held by it may be exercised by Lender either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

11. No Mortgagee-in-Possession. Nothing herein contained shall be construed as constituting Lender a "mortgagee-in-possession" or "beneficiary-in-possession" in the absence of the taking of actual possession of the Mortgaged Property by Lender.

12. Notices. Except as otherwise specified herein, any notice, consent, request or other communication required or permitted hereunder shall be in writing and shall be deemed properly given if delivered in accordance with the notice requirements contained in the Notes.

13. Conflict of Terms. In case of any conflict between the terms of this Assignment and the terms of either the Notes or the Security Instrument, the terms of the Notes and the Security Instrument shall prevail.

14. No Oral Change. This Assignment and any provisions hereof may not be modified, amended, waived, extended, changed, discharged or terminated orally, or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom the enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

15. Certain Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Assignment (including pronouns) shall include the corresponding masculine, feminine or neuter forms, and the singular form of such words shall include the plural and vice versa. The word "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Mortgaged Property or any part thereof or any interest therein"; the word "Lender" shall mean "Lender and any subsequent holder of the Notes"; the word "Notes" shall mean "the Notes and any other evidence of indebtedness secured by the Security Instrument"; the word "person" shall include an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, trust, unincorporated association, government, governmental authority and any other entity; the words "Mortgaged Property" shall include any portion of the Mortgaged Property and any interest therein; and the word "Debt" shall mean all amounts due and payable under the Notes, together with all sums due under the Security Instrument and the Other Security Documents, including applicable attorney fees and costs.

16. Non-Waiver. The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Assignment. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) failure of Lender to comply with any request of Borrower or any other party to take any action to enforce any of the provisions hereof or of the Security Instrument, the Notes or the Other Security Documents; (ii) the release, regardless of consideration, of the whole or any part of the Mortgaged Property, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of this Assignment, the Notes, the Security Instrument or the Other Security Documents. Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its sole and absolute discretion, may elect. Lender may take any action to recover the Debt, or any portion thereof or to enforce any covenant hereof

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without prejudice to the right of Lender thereafter to enforce its rights under this Assignment. The rights of Lender under this Assignment shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

17. Inapplicable Terms, Covenants or Conditions. If any term, covenant or condition of this Assignment is held to be invalid, illegal or unenforceable in any respect, this Assignment shall be construed without such term, covenant or condition.

18. Applicable Law; Jurisdiction. This Assignment shall be governed and construed in accordance with the laws of the state in which the real property encumbered by the Security Instrument is located. Borrower hereby submits to personal jurisdiction in the state courts located in said state and the federal courts of the United States of America located in said state for the enforcement of Borrower's obligations hereunder and waives any and all personal rights under the law of any other state to object to jurisdiction within such state for the purposes of any action, suit, proceeding or litigation to enforce such obligations of Borrower.

19. Termination of Assignment. Upon payment in full of the Debt and the delivery and recording of a satisfaction, conveyance or discharge of the Security Instrument duly executed by Lender, this Assignment shall be deemed null and void and of no further effect.

20. Successors and Assigns. Lender shall have the right to assign or transfer its rights under this Assignment without limitation. This Assignment, together with the covenants and warranties herein contained, shall inure to the benefit of Lender and any subsequent holder of the Notes and beneficiary under the Security Instrument and shall be binding upon Borrower, its heirs, executors, administrators, successors and assigns and any subsequent owner of the Mortgaged Property.

21. Counterparts. This Assignment may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which when taken together shall constitute one and the same Assignment.

22. WAIVER OF JURY TRIAL. BORROWER AND LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT THEY, OR THEIR RESPECTIVE SUCCESSORS OR ASSIGNS, MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION IN CONNECTION WITH THIS ASSIGNMENT, THE NOTES, THE SECURITY INSTRUMENT OR ANY OF THE OTHER SECURITY DOCUMENTS, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF BORROWER OR LENDER. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER'S MAKING OF THE LOAN SECURED BY THE SECURITY INSTRUMENT AND THE OTHER SECURITY DOCUMENTS.

23. Exculpation. Notwithstanding anything to the contrary contained in this Assignment, the liability of Borrower for the performance of the agreements, covenants and obligations contained herein shall be limited as set forth in Paragraph 12 of the Notes.

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IN WITNESS WHEREOF, Borrower has executed this Assignment of Leases and Rents to be effective as of the day and year first above written.

BORROWER:

Oakwood Chicago Associates, LLC, a Delaware limited liability company

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

Name: Brian Kempner

Title: Manager

Property of Cook County Clerk's Office



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Elmwood Chicago Associates, LLC, a Delaware limited liability company

By:   
Name: Brian Kempner  
Title: Manager

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Landings Chicago Associates, LLC, a  
Delaware limited liability company

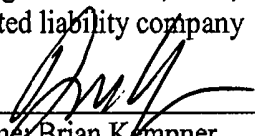
By:   
Name: Brian Kempner  
Title: Manager

Property of Cook County Clerk's Office

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Walkkill Chicago Associates, LLC, a  
Delaware limited liability company

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

  
Name: Brian Kempner

Title: Manager

Property of Cook County Clerk's Office

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STATE OF ILLINOIS )  
 )ss  
COUNTY OF COOK )

On this 27th day of December, 2007, before me, appeared Brian Kempner, to me personally known, who being by me duly sworn did say that he is the Manager of Oakwood Chicago Associates, LLC, a Delaware limited liability company, and that said instrument was signed on behalf of said limited liability company by authority of its members, and said Brian Kempner acknowledged said instrument to be the free act and deed of said limited liability company

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on the day and year last above written.

Janice Lee Glonek  
Notary Public in and for  
said County and State

Print Notary's Name: Janice Lee Glonek

My Commission Expires:

7-28-09



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STATE OF ILLINOIS )  
 )ss  
COUNTY OF COOK )

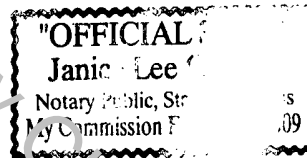
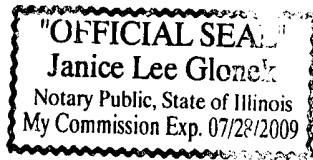
On this 27th day of December, 2007, before me, appeared Brian Kempner, to me personally known, who being by me duly sworn did say that he is the Manager of Elmwood Chicago Associates, LLC, a Delaware limited liability company, and that said instrument was signed on behalf of said limited liability company by authority of its members, and said Brian Kempner acknowledged said instrument to be the free act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on the day and year last above written.

Janice Lee Glonek  
Notary Public in and for  
said County and State

Print Notary's Name: Janice Lee Glonek

My Commission Expires: 7-28-09





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STATE OF ILLINOIS )  
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COUNTY OF COOK )

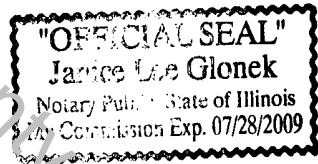
On this 27th day of December, 2007, before me, appeared Brian Kempner, to me personally known, who being by me duly sworn did say that he is the Manager of Landings Chicago Associates, LLC, a Delaware limited liability company, and that said instrument was signed on behalf of said limited liability company by authority of its members, and said Brian Kempner acknowledged said instrument to be the free act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on the day and year first above written.

Janice Lee Glonek  
Notary Public in and for  
said County and State

Print Notary's Name: Janice Lee Glonek

My Commission Expires: 7-28-09



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STATE OF ILLINOIS )  
 )ss  
COUNTY OF COOK )

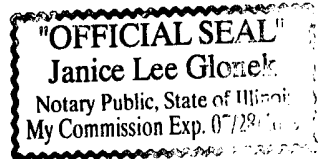
On this 27th day of December, 2007, before me, appeared Brian Kempner, to me personally known, who being by me duly sworn did say that he is the Manager of Wallkill Chicago Associates, LLC, a Delaware limited liability company, and that said instrument was signed on behalf of said limited liability company by authority of its members, and said Brian Kempner acknowledged said instrument to be the free act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on the day and year last above written.

Janice Lee Glonek  
Notary Public in and for  
said County and State

Print Notary's Name: Janice Lee Glonek

My Commission Expires: 7-28-09



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## EXHIBIT A Legal Description

### PARCEL 1:

LOTS 2, 3 AND 4 (EXCEPT THAT PART OF LOT 2 DEDICATED FOR PUBLIC ALLEY BY PLAT OF DEDICATION RECORDED AS DOCUMENT NUMBER 18928994) IN BLOCK 41 IN ORIGINAL TOWN OF CHICAGO IN THE SOUTHEAST  $\frac{1}{4}$  OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

### PARCEL 2:

THAT PART OF VACATED WEST COURT PLACE LYING SOUTH OF AND ADJOINING THE SOUTH LINE OF LOTS 2, 3 AND 4 AND LYING NORTH OF AND ADJOINING THE NORTH LINE OF LOT 6, ALL IN BLOCK 41 IN ORIGINAL TOWN OF CHICAGO AFORESAID; LYING NORTH OF AND ADJOINING THE NORTH LINE OF SUB-LOT 1 OF LOT 5 AND THE NORTH LINE OF SUB-LOTS 1, 2 AND 3 OF LOT 7, AND LYING WEST OF AND ADJOINING THE EAST LINE OF SAID SUB-LOT 3 OF LOT 7 PRODUCED NORTH 18 FEET, ALL IN BLOCK 41 IN ORIGINAL TOWN OF CHICAGO AFORESAID, ALL IN COOK COUNTY, ILLINOIS.