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Doc#: 0409931024
Eugene "Gene" Moore Fee: \$86.00
Cook County Recorder of Deeds
Date: 04/08/2004 09:58 AM Pg: 1 of 12

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

Janet Shapiro
Senior Real Estate Paralegal
Toys "R" Us, Inc.
One Geoffrey Way
Wayne, New Jersey 07470

(For Recorder's Use Only)

BRU #9246
Burbank, IL

Subordination, Non-Disturbance and Attornment Agreement

THIS AGREEMENT, made as of the 22nd day of January, 2004, between GENERAL ELECTRIC CAPITAL CORPORATION, a Delaware corporation, having an office at 16479 Dallas Parkway, Suite 500, Addison, Texas 75001 (hereinafter called "Mortgagee") and TOYS "R" US-DELAWARE, INC., INC., a Delaware corporation, having an office at One Geoffrey Way, Wayne, New Jersey 07470, (hereinafter called "Tenant").

WITNESSETH

WHEREAS, Mortgagee is to become the holder of a mortgage (hereinafter called the "Mortgage", which Mortgage is more particularly described on Exhibit C annexed hereto and made a part hereof) covering a parcel of land in Burbank, Cook County, Illinois, described on Exhibit A, to be owned by JRC Acquisition Corporation (hereinafter called "Landlord") together with the improvements thereon (being hereinafter called the "Shopping Center"); and

WHEREAS, by a certain lease heretofore entered into between Landlord's predecessor-in-interest and Tenant dated as of November 8, 1995, as amended pursuant to Exhibit D (hereinafter collectively referred to as the "Lease"), Landlord leased to Tenant a portion of the Shopping Center, shown crosshatched on Exhibit B annexed hereto, together with any improvements thereon (said premises and the improvements thereon being hereinafter called the "Demised Premises"); and

WHEREAS, a copy of the Lease has been delivered to Mortgagee, the receipt of which is hereby acknowledged; and

WHEREAS, Section 15.4 of the Lease provides that the Lease shall become subject to and subordinate to a first mortgage of the fee interest of the Shopping Center if and when a non-disturbance agreement is entered into with respect to such mortgage; and

WHEREAS, the parties hereto desire to effect the subordination of the Lease to the Mortgage and to provide for the non-disturbance of Tenant by the holder of the Mortgage.

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereto intending to be legally bound hereby agree as follows:

Book 333

8168839 M. Drummond
5 of 5

12 Bor

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1. Mortgagee hereby consents and approves the Lease and the term thereof, including the options to extend the term as set forth in the Lease, and covenants and agrees that the exercise by Tenant of any of the rights, remedies and options therein contained shall not constitute a default under the Mortgage.

2. Tenant covenants and agrees with Mortgagee that the Lease hereby is made and shall continue hereafter to be subject and subordinate to the lien of the Mortgage, and to all modifications and extensions thereof, subject, however, to the provisions of this Agreement.

3. Tenant certifies that the Lease is presently in full force and effect.

4. Mortgagee agrees that so long as the Lease shall be in full force and effect:

(a) Tenant shall not be named or joined as a party or otherwise in any suit, action or proceeding for the foreclosure of the Mortgage or to enforce any rights under the Mortgage or the bond or note or other obligation secured thereby:

(b) The possession by Tenant of the Demised Premises and Tenant's rights thereto shall not be disturbed, affected or impaired by, nor will the Lease or the term thereof be terminated or otherwise affected by (i) any suit, action or proceeding upon the Mortgage or the bond or note or other obligation secured thereby, or for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage, or by any judicial sale or execution or other sale of the Demised Premises, or any deed given in lieu of foreclosure, or by the exercise of any other rights given to any holder of the Mortgage or other documents as a matter of law, or (ii) any default under the Mortgage or the bond or note or other obligation secured thereby:

(c) All condemnation awards and insurance proceeds paid or payable with respect to the Demised Premises or any other part of the Shopping Center and received by Mortgagee shall be applied and paid in the manner set forth in the Lease; and

(d) Neither the Mortgage nor any other security instrument executed in connection therewith shall cover or be construed as subjecting in any manner to the lien thereof, any trade fixtures, signs or other personal property at any time furnished or installed by or for Tenant or its subtenants or licensees on the aforementioned property regardless of the manner or mode of attachment thereof.

5. If Mortgagee or any further holder of the Mortgage shall become the owner of the Shopping Center by reason of foreclosure of the Mortgage or otherwise, or if the Shopping Center shall be sold as a result of any action or proceeding to foreclose the Mortgage, or transfer of ownership by deed given in lieu of foreclosure, the Lease shall continue in full force and effect, without necessity for executing any new lease, as a direct lease between Tenant and the then owner of the Shopping Center, as "landlord", upon all of the same terms, covenants and provisions contained in the Lease, and in such event:

(a) Tenant shall be bound to such new owner under all of the terms, covenants and provision of the Lease for the remainder of the term thereof (including the Renewals Periods, if Tenant elects or has elected to exercise its options to extend the term) and Tenant hereby agrees to attorn to such new owner and to recognize such new owner as "landlord" under the Lease; and

(b) Such new owner shall be bound to Tenant under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the Renewals Periods, if Tenant elects or has elected to exercise its options to extend the term) which such new owner hereby agrees to assume and perform and Tenant shall, from and after the date such new owner succeeds to the interest of "landlord" under the Lease, have the same remedies against such new owner for the breach of any covenant contained in the Lease that Tenant might have had under the Lease

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against Landlord if such new owner had not succeeded to the interest of "landlord", provided, however, that such new owner shall not (i) be bound by any rent or additional rent which Tenant might have paid for more than one month in advance to any prior landlord (including Landlord); or (ii) be bound by any amendment or modification of the Lease made without its consent which would (x) reduce fixed annual rent, or (y) reduce any other monetary obligation of Tenant under the Lease.

6. Any notices or communications given under the agreement shall be in writing and shall be given by registered or certified mail, return receipt requested, postage prepaid, (a) if to Mortgagee, at the address of Mortgagee as hereinabove set forth or at such other address as Mortgagee may designate by notice, or (b) if to Tenant, then in duplicate, under separate cover, one copy to the attention of the Vice President - Real Estate, Design and Construction of Tenant, and one copy to the attention of Vice President - Real Estate Counsel of Tenant, at the address of Tenant as hereinabove set forth or at such other address as Tenant may designate by notice. During the period of any postal strike or other interference with the mail, personal delivery shall be substituted for registered or certified mail. No default notice given by Tenant under the Lease shall be effective as against Mortgagee unless a duplicate copy thereof has been given to Mortgagee.

7. This Agreement shall bind and inure to the benefit of and be binding upon and enforceable by the parties hereto and their respective successors and assigns.

8. This Agreement contains the entire agreement between the parties and cannot be changed, modified, waived or canceled except by an agreement in writing executed by the party against whom enforcement of such modification, change, waiver or cancellation is sought.

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9. This Agreement and the covenants herein contained are intended to run with and bind all lands affected thereby.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

Attest:

MORTGAGEE:

GENERAL ELECTRIC CAPITAL CORPORATION

By: [Signature]
Name: Merchi
Title:

By: [Signature]
Name: Paul Young
Title: Authorized Signatory

Attest:

TENANT:

TOYS "R" US-DELAWARE, INC.

By: [Signature]
David J. Schwartz
Assistant Secretary

By: [Signature]
Michael L. Tumolo
Vice President - Real Estate Counsel

[Corporate Seal]

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STATE OF District of Columbia)
COUNTY OF D.C.) SS:

On March 5th, 2004 before me, Deborah A. Head, a Notary Public in and for said City State, personally appeared Paul Young and Authorized Signatory, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity on behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Deborah A. Head (Seal)

Deborah A. Head
Notary Public, District of Columbia
My Commission Expires 15-14-2007

STATE OF NEW JERSEY)
COUNTY OF BERGEN) SS:

On January 22, 2004 before me, Kimora Torres, a Notary Public in and for said State, personally appeared Michael L. Tumolo and David J. Schwartz, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity on behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Kimora Torres (Seal)

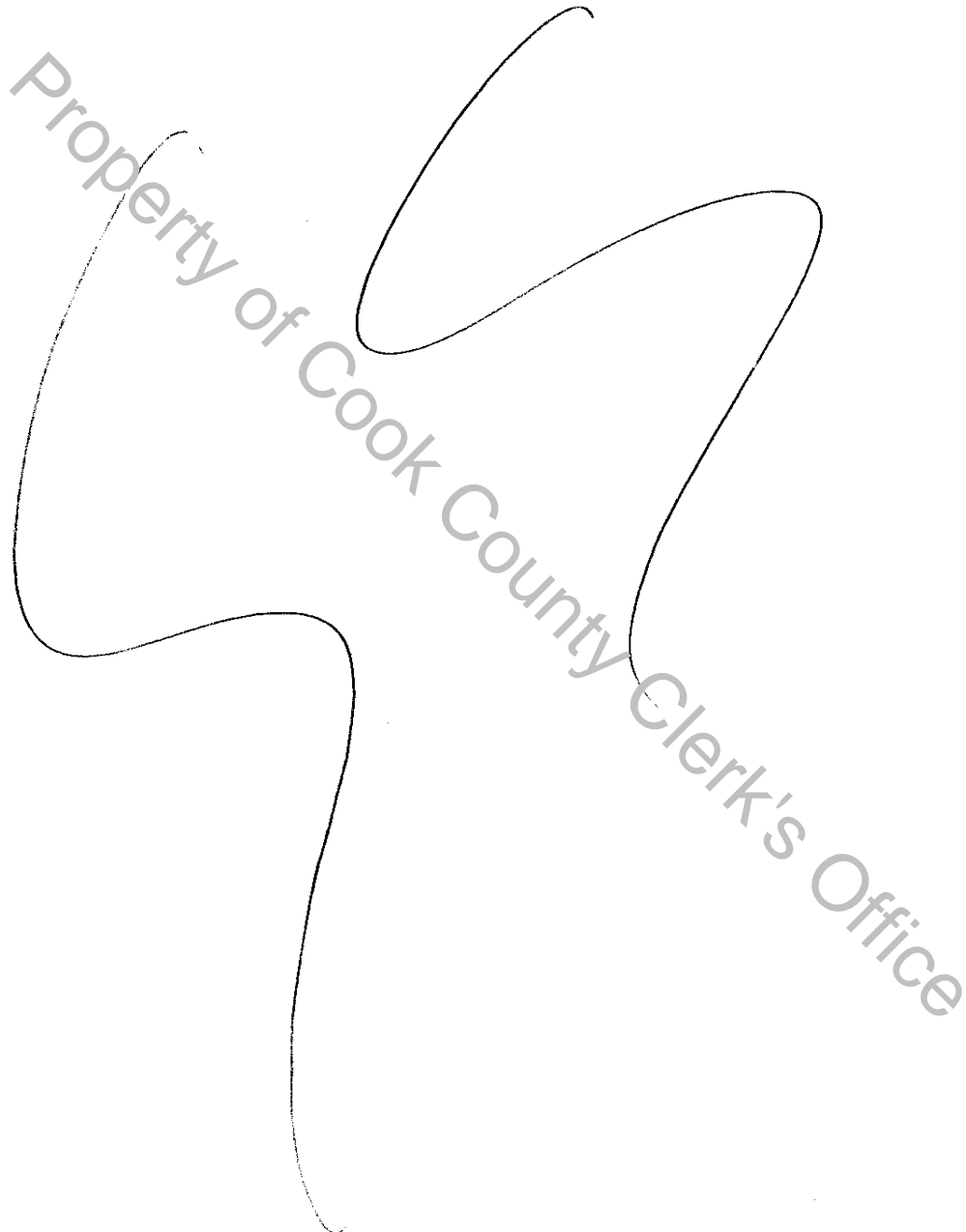
A NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES JUNE 23, 2008
NO. 2201985

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EXHIBIT A

LEGAL DESCRIPTION OF SHOPPING CENTER

Property of Cook County Clerk's Office



UNOFFICIAL COPY**EXHIBIT A****LEGAL DESCRIPTION OF THE PROPERTY****PARCEL A:**

THAT PART OF THE SOUTH 6/12 OF THE NORTH 8/12 OF THE SOUTH 60 ACRES OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 28, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTH OF THE NORTH RIGHT OF WAY LINE OF 78TH STREET, (EXCEPTING THEREFROM THE WEST 33.00 FEET TAKEN FOR LAVERGNE AVENUE) AND (EXCEPT THE EAST 60.00 FEET TAKEN FOR CICERO AVENUE), IN COOK COUNTY, ILLINOIS.

LESS AND EXCEPT THE FOLLOWING OUTLOT:

THAT PART OF THE SOUTH 1/7 OF THE NORTH 7/12 AND THE SOUTH 1/8 OF THE NORTH 8/12 OF THE SOUTH 60 ACRES OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF 7 SECTION 28, DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTH LINE OF 78TH STREET, (BEING 33.00 FEET NORTH OF THE CENTER LINE) AND THE WEST LINE OF CICERO AVENUE, (BEING 60.00 FEET WEST OF THE CENTER LINE); THENCE NORTH 89 DEGREES, 54 MINUTES, 56 SECONDS WEST ALONG SAID NORTH LINE OF 78TH STREET, A DISTANCE OF 212.00 FEET; THENCE NORTH 00 DEGREES, 08 MINUTES, 56 SECONDS WEST PARALLEL TO THE WEST LINE OF CICERO AVENUE, A DISTANCE OF 180.00 FEET; THENCE SOUTH 89 DEGREES, 54 MINUTES, 56 SECONDS EAST, A DISTANCE OF 212.00 FEET TO THE WEST LINE OF CICERO AVENUE; THENCE SOUTH 00 DEGREE, 08 MINUTES, 56 SECONDS EAST, A DISTANCE OF 180.00 FEET TO THE POINT OF BEGINNING, ALL IN SECTION 28, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, BEING SPECIFICALLY DESCRIBED AS:

LOT 1 IN BURBANK STATION, A SUBDIVISION OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 28, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED RECORDED JULY 29, 1994 AS DOCUMENT 94672782, IN COOK COUNTY, ILLINOIS;

LESS AND EXCEPT

THAT PORTION CONVEYED TO THE ILLINOIS DEPARTMENT OF TRANSPORTATION BY DEED FROM BURBANK JOINT VENTURE, A MICHIGAN GENERAL PARTNERSHIP DATED SEPTEMBER 29, 1998 AND RECORDED NOVEMBER 17, 1989 AS DOCUMENT 08036669, IN COOK COUNTY, ILLINOIS.

LESS AND EXCEPT

THE NORTH 120.00 FEET OF THE SOUTH 1/3 OF THE NORTH 3/12 OF THE SOUTH 60 ACRES OF THE EAST OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 38

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NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PARCEL B 2:

THE NORTH 33 FEET OF THE WEST 130 FEET (EXCEPT THE WEST 33 FEET THEREOF) OF THE SOUTH 1/3 OF THE NORTH 3/12 OF THE SOUTH 60 ACRES OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ADDRESS OF PROPERTY: 7750, 7770, 7780, 7712, 7716 and 7720 SOUTH CICERO AVENUE, BURBANK, ILLINOIS

TAX PARCELS: 19-28-401-055-0000
19-28-412-037-0000
19-28-412-038-0000
19-28-412-039-0000
19-28-412-040-0000

TA # NO3-2590
RECORD AND RETURN TO:
TITLE ASSOCIATES INC.
825 THIRD AVENUE
NEW YORK, NY 10022
L. WILLIAMS

Property of Cook County Clerk's Office

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EXHIBIT B

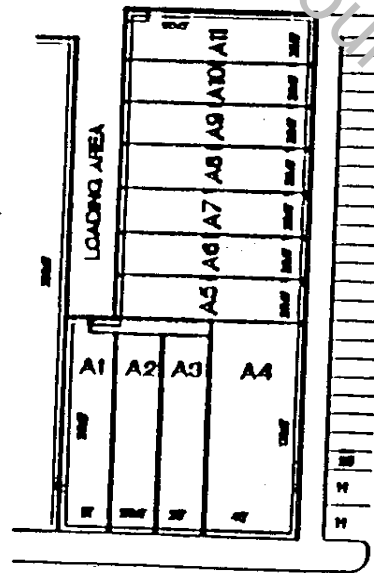
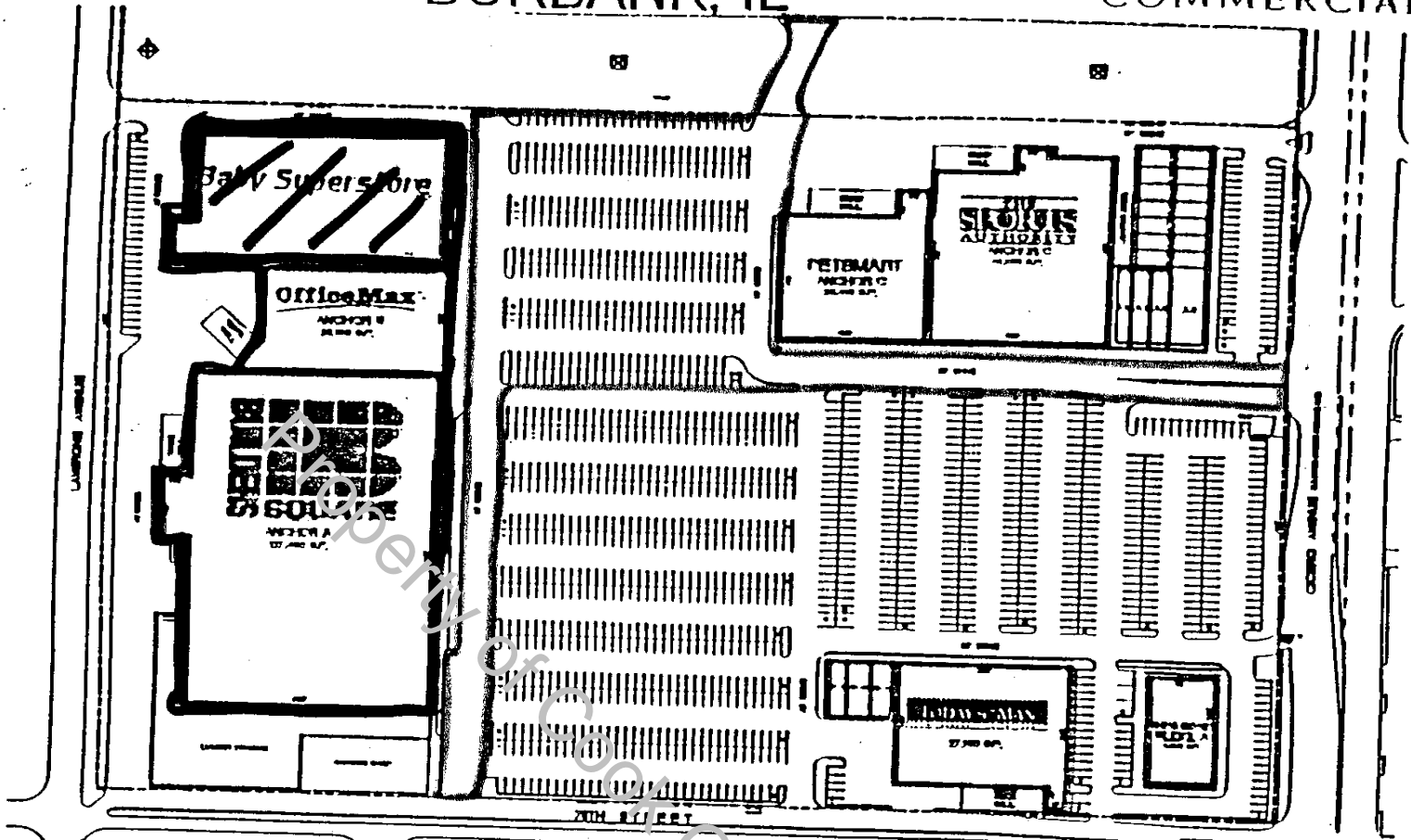
DEMISED PREMISES

Property of Cook County Clerk's Office

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BURBANK, IL

COMMERCIAL



TENANT ROSTER		
UNIT	TENANT	SQ FT
RETAIL A		
A-1	Work 'N Gear	4,000
A-2	Work 'N Gear	4,000
A-3	Work 'N Gear	4,000
A-4	Work 'N Gear	4,000
A-5	Work 'N Gear	4,000
A-6	Work 'N Gear	4,000
A-7	Work 'N Gear	4,000
A-8	Work 'N Gear	4,000
A-9	Work 'N Gear	4,000
A-10-11	American Mattress	3,490
RETAIL B		
B-1	Work 'N Gear	1,325
B-2	Work 'N Gear	1,750
B-3	Work 'N Gear	1,785

ENLARGED RETAIL B
SCALE - 1" = 10'

ENLARGED RETAIL A
SCALE - 1" = 10'

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EXHIBIT C

DESCRIPTION OF MORTGAGE

Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated January 28, 2004, recorded as Document No. 0403439068, Cook County, Illinois records.

Property of Cook County Clerk's Office

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EXHIBIT D

Memorandum of Lease, by and between Baby Superstore, Inc., as Tenant, and Burbank Joint Venture, as Landlord, recorded March 14, 1996.

First Amendment to Shopping Center Lease, by and between Baby Superstore, Inc., as Tenant, and Burbank Joint Venture, as Landlord, dated May 28, 1996.

Confirmation of Lease Term, by and between Baby Superstore, Inc., as Tenant, and Burbank Joint Venture, as Landlord, dated December 31, 1996.

Subordination, Non-Disturbance and Attornment Agreement, by and between Cole Taylor Bank, as Lender, and Baby Superstore, Inc., as Tenant, dated September 20, 1996.

TA # 1003-2590
RECORD AND RETURN TO:
TITLE ASSOCIATES INC.
825 THIRD AVENUE
NEW YORK, NY 10022
L. WILLIAMS

Property of Cook County Clerk's Office