

Stewart Title Guaranty Co.  
2 N LaSalle St., Suite 1400  
Chicago, IL 60602  
NTS# 06030179

**UNOFFICIAL COPY**



Doc#: 0608827140 Fee: \$74.50  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 03/29/2006 04:24 PM Pg: 1 of 26

Property of Cook County Clerk's Office

---

**BONSTORES REALTY TWO, LLC, as mortgagor**  
(Mortgagor)

To

**MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., as mortgagee**  
(Mortgagee)

---

**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,  
AND SECURITY AGREEMENT**

---

DATED: As of March 6, 2006

LOCATION: 3200 Lake Avenue, Wilmette, Illinois

COUNTY: Cook

MERS MIN: 8000101-0000002698-8

PREPARED BY ~~AND UPON~~  
RECORDATION RETURN TO:

Cadwalader, Wickersham & Taft LLP  
227 W. Trade Street, Suite 2400  
Charlotte, North Carolina 28202

Attention: Richard Madden, Esq.

---

# UNOFFICIAL COPY

**THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, AND SECURITY AGREEMENT** (this "Security Instrument") is made as of this 6<sup>th</sup> day of March, 2006, by BONSTORES REALTY TWO, LLC, a Delaware limited liability company, having its principal place of business at 2801 East Market Street, York, Pennsylvania 17402, as mortgagor ("Mortgagor") to MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a Delaware stock corporation ("Mortgagee"). All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement (defined below).

## RECITALS:

WHEREAS, Mortgagor is the owner of the Land and Improvements (defined below);

WHEREAS, this Security Instrument is given to Mortgagee, in its capacity as nominee for Lender (defined below) in accordance with Section 16.2 below, to secure a loan (the "Loan") in the principal sum of One Hundred Thirty Million and No/100 Dollars (\$130,000,000), with a maturity date of March 1, 2016, advanced pursuant to that certain Loan Agreement, dated as of the date hereof, between Mortgagor, as borrower (in such capacity, "Borrower"), and Bank of America, N.A. ("Lender"), (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "Loan Agreement") and evidenced by that certain Promissory Note, dated as of the date hereof, made by Mortgagor in favor of Lender (such Promissory Note, together with all extensions, renewals, replacements, restatements or modifications thereof being hereinafter referred to as the "Note");

WHEREAS, Mortgagor desires to secure the payment of the Debt (as defined in the Loan Agreement) and the performance of all of Mortgagor's obligations under the Note, the Loan Agreement and the other Loan Documents; and

WHEREAS, this Security Instrument is given pursuant to the Loan Agreement, and payment, fulfillment, and performance by Mortgagor of its obligations thereunder and under the other Loan Documents are secured hereby.

## ARTICLE I

### GRANTS OF SECURITY

Section 1.1 Property Mortgaged. Mortgagor does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer, convey and grant a security interest to Mortgagee and its successors and assigns all of its right, title and interest now owned or hereafter acquired in and to the following property (collectively, the "Property");

(a) Land. The real property described in Exhibit A attached hereto and made a part hereof (the "Land");

(b) Additional Land. All additional lands, estates and development rights hereafter acquired by Mortgagor for use in connection with the Land and the development of the

# UNOFFICIAL COPY

Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Security Instrument;

(c) Improvements. The buildings, structures, fixtures, pads, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (collectively, the "Improvements");

(d) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversions and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, rights of dower, rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) Fixtures. All fixtures (as defined in the Uniform Commercial Code) (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter affixed to and located upon the Land and the Improvements, and usable in connection with the present or future operation and occupancy of the Land and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Land and the Improvements (collectively, the "Collateral Property"), and the right, title and interest of Mortgagor in and to any of the Collateral Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (the "Uniform Commercial Code"), and all proceeds and products of the above;

(f) Leases and Rents. All leases (including the Operating Lease), subleases, subsubleases, lettings, licenses, concessions or other agreements (whether written or oral) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases or other agreements entered into in connection with such leases, subleases, subsubleases or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into, whether before or after the filing by or against Mortgagor of any petition for relief under any Creditors Rights Laws (collectively, the "Leases") and all right, title and interest of Mortgagor, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all Rents and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

# UNOFFICIAL COPY

(g) Insurance Proceeds. All Insurance Proceeds in respect of the Property under any Policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments or settlements made in lieu thereof, for damage to the Property;

(h) Condemnation Awards. All Awards, including interest thereon, which may heretofore and hereafter be made with respect to the Property by reason of Condemnation, whether from the exercise of the right of eminent domain (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(i) Rights. The right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Lender in the Property;

(j) Tax Certiorari. All refunds, rebates or credits in connection with reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

(k) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or any business or activity conducted on the Land and any part thereof and all right, title and interest of Mortgagor therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Mortgagor thereunder;

(l) Accounts. All reserves, escrows and deposit accounts maintained by Mortgagor with respect to the Property, including without limitation, the Reserve Accounts, the Cash Management Account and all accounts established pursuant to Article 10 of the Loan Agreement together with all deposits or wire transfers made to the Cash Management Account and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof;

(m) Conversion. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing items set forth in subsections (a) through (l) including, without limitation, Insurance Proceeds and Awards, into cash or liquidation claims; and

(n) Other Rights. Any and all other rights of Mortgagor in and to the items set forth in subsections (a) through (m) above.

Section 1.2 Assignment of Rents. Mortgagor hereby absolutely and unconditionally assigns to Mortgagee all of Mortgagor's right, title and interest in and to all current and future Leases and Rents; it being intended by Mortgagor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of the Loan Agreement and Section 8.1(h) of this Security

# UNOFFICIAL COPY

Instrument, Mortgagee grants to Mortgagor a revocable license to collect, receive, use and enjoy the Rents.

Section 1.3 Security Agreement. This Security Instrument is both a real property mortgage and a “security agreement” within the meaning of the Uniform Commercial Code. The Property includes real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Property. By executing and delivering this Security Instrument, Mortgagor hereby grants to Mortgagee, as security for the Obligations (hereinafter defined), a security interest in the Collateral Property to the full extent that the Collateral Property may be subject to the Uniform Commercial Code.

Section 1.4 Fixture Filing. Certain of the Property is or will become “fixtures” (as that term is defined in the Uniform Commercial Code) on the Land, and this Security Instrument, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures.

Section 1.5 Conditions to Grant. TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Mortgagee and its successors and assigns, forever; PROVIDED, HOWEVER, these presents are upon the express condition that, if Mortgagor shall fully pay to Lender the Debt and shall perform the Other Obligations (as defined below) as set forth in this Security Instrument, these presents and the estate hereby granted shall cease, terminate and be void; provided, however, that Mortgagor’s obligation to indemnify and hold harmless Lender pursuant to the provisions hereof shall survive any such payment or release.

Section 1.6 Grants to Mortgagee. This Security Instrument and the grants, assignments and transfers made to Mortgagee in this Article 1 shall inure to Mortgagee solely in its capacity as Lender’s nominee in accordance with Section 16.2 below.

## ARTICLE II

### DEBT AND OBLIGATIONS SECURED

Section 2.1 Debt. This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the Debt.

Section 2.2 Other Obligations. This Security Instrument and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the performance of the following (the “Other Obligations”): (a) all other obligations of Mortgagor contained herein; (b) each obligation of Mortgagor contained in the Loan Agreement and any other Loan Document; and (c) each obligation of Mortgagor contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, the Loan Agreement or any other Loan Document.



# UNOFFICIAL COPY

Section 2.3 Debt and Other Obligations. Mortgagor's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively herein as the "Obligations."

Section 2.4 Payment of Debt. Mortgagor will pay the Debt at the time and in the manner provided in the Loan Agreement, the Note and this Security Instrument.

Section 2.5 Incorporation by Reference. All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Note and (c) all and any of the other Loan Documents, are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

## ARTICLE III

### PROPERTY COVENANTS & REPRESENTATIONS

Mortgagor represents, covenants and agrees that:

Section 3.1 Insurance. Mortgagor shall obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Mortgagor and the Property as required pursuant to the Loan Agreement.

Section 3.2 Taxes. Mortgagor shall pay all Taxes and Other Charges assessed or imposed against the Property or any part thereof in accordance with the Loan Agreement.

Section 3.3 Leases. Mortgagor shall not enter into any Leases for all or any portion of the Property unless in accordance with the provisions of the Loan Agreement.

Section 3.4 Warranty of Title. Owner has good, indefeasible and marketable and insurable fee simple title to the Property, free and clear of all Liens whatsoever except the Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. This Security Instrument, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority lien on the Property, subject only to Permitted Encumbrances and the Liens created by the Loan Documents and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. Mortgagor shall forever warrant, defend and preserve the title and the validity and priority of the Lien of this Security Instrument and shall forever warrant and defend the same to Lender against the claims of all Persons whomsoever.

Section 3.5 Payment for Labor and Materials. Subject to the terms of the Loan Agreement, Mortgagor will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property and never permit to exist beyond the due date thereof in respect of the Property or any part thereof any Lien or security interest, even though inferior to the Liens and the security interests hereof, and in any

# UNOFFICIAL COPY

event never permit to be created or exist in respect of the Property or any part thereof any other or additional Lien or security interest other than the Liens or security interests hereof except for the Permitted Encumbrances. To Mortgagor's knowledge after due inquiry, Mortgagor represents there are no claims for payment for work, labor or materials affecting the Property which are or may become a lien prior to, or of equal priority with, the Liens created by the Loan Documents that individually or in the aggregate could be reasonably expected to cause any material adverse effect upon (i) the business operations or financial condition of the Borrower, (ii) the ability of the Borrower to repay the principal and interest of the Loan as it becomes due, or (iii) the value of the Property, on an individual basis or taken as a whole, as applicable..

## ARTICLE IV

### FURTHER ASSURANCES

Section 4.1 Compliance with Loan Agreement. Mortgagor shall comply with the covenants set forth in Article XVII of the Loan Agreement in order to protect and perfect the Lien or security interest hereof upon, and the interest of Lender in, the Property.

Section 4.2 Authorization to File Financing Statements; Power of Attorney. Mortgagor hereby authorizes Lender at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements as required by applicable law, as applicable to all or part of the Collateral Property. For purposes of such filings, Mortgagor agrees to furnish any information in its possession reasonably requested by Lender promptly upon request by Lender. Mortgagor also ratifies its authorization for Lender to have filed any like initial financing statements, amendments thereto or continuation statements, if filed prior to the date of this Security Instrument. Mortgagor hereby irrevocably constitutes and appoints Lender and any officer or agent of Lender, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Mortgagor or in Mortgagor's own name to execute in Mortgagor's name any such documents and otherwise to carry out the purposes of this Section 4.2, to the extent that Mortgagor's authorization above is not sufficient but only to the extent Mortgagor fails to take such action in accordance with this Section 4.2 upon the request of Lender. This power of attorney is a power coupled with an interest and shall be irrevocable.

## ARTICLE V

### DUE ON SALE/ENCUMBRANCE

Section 5.1 No Sale/Encumbrance. Mortgagor shall not cause or permit a sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, grant of any options with respect to, or any other transfer or disposition (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) of a legal or beneficial interest in (i) the Property or any part thereof, (ii) Mortgagor, (iii) Borrower Principal or (iv) any Restricted Party, other than in accordance with the provisions of Article VII of the Loan Agreement, without the prior written consent of Lender.

# UNOFFICIAL COPY

## ARTICLE VI

### PREPAYMENT; RELEASE OF PROPERTY

Section 6.1 Prepayment. The Debt may not be prepaid in whole or in part except in accordance with the express terms and conditions of the Note and the Loan Agreement.

Section 6.2 Prepayment on Casualty/Condemnation and Change in Tax and Debit Credit Laws. Provided no Event of Default exists under any of the Loan Documents, in the event of any prepayment of the Debt pursuant to the terms of Article VIII or Section 17.04 of the Loan Agreement, no prepayment premium shall be due in connection therewith, but Mortgagor shall be responsible for all other amounts due under any of the Loan Documents.

Section 6.3 Involuntary Prepayment. If there is an involuntary prepayment during the Lockout Period, then Mortgagor shall, in addition to any portion of the Loan prepaid (together with all interest accrued and unpaid thereon), pay to Lender the applicable Prepayment Premium as set forth in the Loan Agreement.

Section 6.4 Release of Property. Mortgagor shall not be entitled to a release of any portion of the Property from the lien of this Security Instrument except in accordance with terms and conditions of the Loan Agreement.

## ARTICLE VII

### DEFAULT

Section 7.1 Event of Default. The term "Event of Default" as used in this Security Instrument shall have the meaning assigned to such term in the Loan Agreement.

## ARTICLE VIII

### RIGHTS AND REMEDIES UPON DEFAULT

Section 8.1 Remedies. Upon the occurrence and during the continuance of any Event of Default, Mortgagor agrees that Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;



# UNOFFICIAL COPY

(c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority;

(d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

(e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, the Loan Agreement or in the other Loan Documents;

(f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents;

(g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Mortgagor, Borrower Principal or any other Person liable for the payment of the Debt;

(h) the license granted to Mortgagor under Section 1.2 hereof shall automatically be revoked and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Mortgagor and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Mortgagor agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Mortgagor with respect to the Property, whether in the name of Mortgagor or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Mortgagor to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Mortgagor; (vi) require Mortgagor to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Mortgagor may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property,

# UNOFFICIAL COPY

as well as just and reasonable compensation for the services of Lender's counsel, agents and employees;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Collateral Property or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral Property, and (ii) request Mortgagor at its expense to assemble the Property (to the extent movable) and make it available to Lender at a convenient place reasonably acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Collateral Property sent to Mortgagor in accordance with the provisions hereof at least five (5) days prior to such action shall constitute commercially reasonable notice to Mortgagor;

(j) apply any sums then deposited or held in escrow or otherwise by or on behalf of Lender in accordance with the terms of the Loan Agreement, this Security Instrument or any other Loan Document to the payment of the following items in any order in its uncontrolled discretion: (i) Taxes and Other Charges; (ii) Insurance Premiums; (iii) interest on the unpaid principal balance of the Note; (iv) amortization of the unpaid principal balance of the Note; (v) all other sums payable pursuant to the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, including without limitation advances made by Lender pursuant to the terms of this Security Instrument;

(k) surrender the Policies maintained pursuant to the Loan Agreement, collect the unearned insurance premiums for the Policies and apply such sums as a credit on the Debt in such priority and proportion as Lender in its discretion shall deem proper, and in connection therewith, Mortgagor hereby appoints Lender as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Mortgagor to collect such insurance premiums;

(l) apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Lender shall deem to be appropriate in its discretion; or

(m) pursue such other remedies as Lender may have under applicable law.

In the event of a sale, by foreclosure, power of sale or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority. Notwithstanding the provisions of this Section to the contrary, if any Event of Default as described in Section 11.01(f) of the Loan Agreement shall occur, the entire unpaid Debt shall be automatically due and payable, without any further notice, demand or other action by Lender or Mortgagee.

Section 8.2 Application of Proceeds. The purchase money, proceeds and avails of any disposition of the Property, and or any part thereof, or any other sums collected by Lender pursuant to the Note, this Security Instrument or the other Loan Documents, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper.

# UNOFFICIAL COPY

Section 8.3 Right to Cure Defaults. Upon the occurrence and during the continuance of any Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, make any payment or do any act required of Mortgagor hereunder in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by applicable law), with interest as provided in this Section 8.3, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

Section 8.4 Actions and Proceedings. Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Lender, in its discretion, decides should be brought to protect its interest in the Property.

Section 8.5 Recovery of Sums Required to be Paid. Subject to Article XV of the Loan Agreement, Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Mortgagor existing at the time such earlier action was commenced.

Section 8.6 Other Rights, etc. (a) 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 Security Instrument. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of (i) the failure of Lender or Mortgagee to comply with any request of Mortgagor or any guarantor or indemnitor with respect to the Loan to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof (except for a specific written release by Lender of Mortgagor's obligations), or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Mortgagor, and Lender shall have no liability whatsoever for decline in the value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Lender shall not be deemed an election of judicial

# UNOFFICIAL COPY

relief if any such possession is requested or obtained with respect to any Property or collateral not in Lender's possession.

(c) Lender may also look to any other security held by Lender, in addition to that which is granted hereunder, for the payment of the Debt in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Security Instrument. The rights of Lender under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender or Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Neither Lender nor Mortgagee shall be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

Section 8.7 Right to Release any Portion of the Property. Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

Section 8.8 Right of Entry. Upon reasonable advance notice to Mortgagor, Lender and its agents shall have the right to enter and inspect the Property at all reasonable times.

Section 8.9 Bankruptcy. (a) Upon or at any time after the occurrence of an Event of Default, Lender shall have the right to proceed in its own name or in the name of Mortgagor in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Mortgagor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code.

(b) If there shall be filed by or against Mortgagor a petition under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "Bankruptcy Code"), and Mortgagor, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Mortgagor shall give Lender not less than ten (10) days' prior notice of the date on which Mortgagor shall apply to the bankruptcy court for authority to reject the Lease. Lender shall have the right, but not the obligation, to serve upon Mortgagor within such ten-day period a notice stating that (i) Lender demands that Mortgagor assume and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code and (ii) Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Lender serves upon Mortgagor the notice described in the preceding sentence, such Mortgagor shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of



# UNOFFICIAL COPY

the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Lender of the covenant provided for in clause (ii) of the preceding sentence.

Section 8.10 Subrogation. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of Mortgagor's obligations hereunder, under the Loan Agreement, the Note and the other Loan Documents and the performance and discharge of the Other Obligations.

## ARTICLE IX

### ENVIRONMENTAL HAZARDS

Section 9.1 Environmental Covenants. Mortgagor has provided representations and warranties regarding environmental matters set forth in Section 12.01 of the Loan Agreement and shall comply with the covenants regarding environmental matters set forth in Section 12.02 of the Loan Agreement.

Section 9.2 Lender's Rights. Lender and any other person or entity designated by Lender, including but not limited to any representative of a Governmental Authority, and any environmental consultant, and any receiver appointed by any court of competent jurisdiction, shall have the right, but not the obligation, upon prior written notice to Mortgagor in the manner specified in Article XVI of the Loan Agreement and subject to the terms and conditions of Section 12.03 of the Loan Agreement, to enter upon the Property at all reasonable times to assess any and all aspects of the environmental condition of the Property.

## ARTICLE X

### WAIVERS

Section 10.1 Marshalling and Other Matters. Mortgagor hereby waives, to the extent permitted by law, the benefit of all Legal Requirements now or hereafter in force regarding appraisal, valuation, stay, extension, reinstatement and redemption and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Mortgagor, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument to the extent permitted by Legal Requirements.

Section 10.2 Waiver of Notice. Mortgagor shall not be entitled to any notices of any nature whatsoever from Lender or Mortgagee except with respect to matters for which this



# UNOFFICIAL COPY

Security Instrument or the Loan Agreement specifically and expressly provides for the giving of notice by Lender or Mortgagee to Mortgagor and except with respect to matters for which Mortgagor is not permitted by Legal Requirements to waive its right to receive notice, and Mortgagor hereby expressly waives the right to receive any notice from Lender or Mortgagee with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Lender or Mortgagee to Mortgagor.

Section 10.3 Waiver of Statute of Limitations. Mortgagor hereby expressly waives and releases to the fullest extent permitted by applicable law, the pleading of any statute of limitations as a defense to payment of the Debt or performance of its Other Obligations.

Section 10.4 Sole Discretion of Lender. Whenever pursuant to this Security Instrument, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Lender and shall be final and conclusive.

Section 10.5 WAIVER OF TRIAL BY JURY. LENDER, MORTGAGEE AND MORTGAGOR EACH HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS SECURITY INSTRUMENT, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY LENDER, MORTGAGEE AND MORTGAGOR AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH OF LENDER, MORTGAGEE AND MORTGAGOR IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY LENDER, MORTGAGEE AND MORTGAGOR.

Section 10.6 Waiver of Foreclosure Defense. Mortgagor hereby waives any defense Mortgagor might assert or have by reason of Lender's failure to make any tenant or lessee of the Property a party defendant in any foreclosure proceeding or action instituted by Lender.

Section 10.7 Failure to Act. Notwithstanding anything to the contrary contained herein or in any other Loan Document, the failure of Mortgagee to take any action hereunder or under any other Loan Document shall not (i) be deemed to be a waiver of any term or condition of this Security Instrument or any of the other Loan Documents, (ii) adversely effect any rights of Lender hereunder or under any other Loan Document or (iii) relieve Mortgagor of any of Mortgagor's obligations hereunder or under any other Loan Document.

# UNOFFICIAL COPY

## ARTICLE XI

### EXCULPATION

Section 11.1 Exculpation. The provisions of Article XV of the Loan Agreement are hereby incorporated by reference into this Security Instrument to the same extent and with the same force as if fully set forth herein.

## ARTICLE XII

### NOTICES

Section 12.1 Notices. All notices, consents, approvals and requests required or permitted under this Security Instrument shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested, (b) expedited prepaid overnight delivery service, either commercial or United States Postal Service, with proof of attempted delivery, or by (c) telecopier (with answer back acknowledged, provided an additional notice is given pursuant to subsection (b) above), addressed as follows (or at such other address and Person as shall be designated from time to time by either party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section):

If to Lender:	Bank of America, N.A. Capital Markets Servicing Group 900 West Trade Street, Suite 650 Mail Code: NC1-026-06-01 Charlotte, North Carolina 28255 Attn: Servicing Manager Telephone No: (866) 531-0957 Facsimile No.: (704) 317-4500
With a copy to:	Cadwalader, Wickersham & Taft LLP 227 West Trade Street, Suite 2400 Charlotte, North Carolina 28202 Attention: Richard Madden, Esq. Telephone No.: (704) 348-5100 Facsimile No.: (704) 348-5200
If to Mortgagee:	MERS Commercial P.O. Box 2300 Flint, Michigan 48501-2300 Attention: Corporate Secretary Facsimile No.: (703) 748-0183
If to Mortgagor:	Bonstores Realty Two, LLC P.O. Box 2821 York, Pennsylvania 17402

# UNOFFICIAL COPY

Attention: General Counsel  
 Facsimile No.: (717) 751-3196

With a copy to: Wolf, Block, Schorr & Solis-Cohen LLP  
 1650 Arch Street, 22<sup>nd</sup> Floor  
 Philadelphia, Pennsylvania 19103  
 Attention: Henry F. Miller, Esq.  
 Facsimile No.: (215) 977-2740

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; or in the case of expedited prepaid delivery and telecopy, upon the first attempted delivery on a Business Day.

## ARTICLE XIII

### APPLICABLE LAW

Section 13.1 Governing Law. THIS SECURITY INSTRUMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES) AND APPLICABLE UNITED STATES FEDERAL LAW; PROVIDED, HOWEVER, THAT THE PROVISIONS FOR THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIENS CREATED HEREUNDER SHALL BE GOVERNED BY THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED TO THE EXTENT NECESSARY FOR THE VALIDITY AND ENFORCEMENT THEREOF.

Section 13.2 Provisions Subject to Applicable Law. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law.

## ARTICLE XIV

### DEFINITIONS

Section 14.1 Defined Terms. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "Mortgagor" shall mean "Mortgagor and any subsequent permitted owner or owners of the Property or any part thereof or any interest therein," the word "Lender" shall mean "Lender and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument," the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees", "legal fees" and "counsel fees" shall include

# UNOFFICIAL COPY

any and all reasonable attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender with respect to retained firms in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

## ARTICLE XV

### MISCELLANEOUS PROVISIONS

Section 15.1 No Oral Change. This Security Instrument, 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 Mortgagor or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 15.2 Successors and Assigns. This Security Instrument shall be binding upon and inure to the benefit of (a) Mortgagee and Lender and their respective successors and assigns and (b) Mortgagor and its permitted successors and assigns.

Section 15.3 Inapplicable Provisions. If any term, covenant or condition of this Security Instrument is held to be invalid, illegal or unenforceable in any respect, this Security Instrument shall be construed without such provision and the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

Section 15.4 Headings, etc. The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 15.5 Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 15.6 Entire Agreement. This Security Instrument and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written between Mortgagor and Lender are superseded by the terms of this Security Instrument and the other Loan Documents.

Section 15.7 Limitation on Lender's Responsibility. No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender or Mortgagee, nor shall it operate to make Lender or Mortgagee responsible or liable for any waste committed on the Property by the tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger except to the extent that Lender takes possession of the Property. Nothing herein contained shall be construed as constituting Lender or Mortgagee a "mortgagee in possession."

# UNOFFICIAL COPY

## ARTICLE XVI

### STATUS OF PARTIES

Section 16.1 Status of Mortgagor. Mortgagor's exact legal name is correctly set forth in the first paragraph of this Security Instrument and the signature block at the end of this Security Instrument. Mortgagor is an organization of the type specified in the first paragraph of this Security Instrument. Mortgagor is incorporated in or organized under the laws of the state specified in the first paragraph of this Security Instrument. Mortgagor's principal place of business and chief executive office, and the place where Mortgagor keeps its books and records, including recorded data of any kind or nature, regardless of the medium or recording, including software, writings, plans, specifications and schematics, has been for the preceding four months (or, if less, the entire period of the existence of such Mortgagor) the address of Mortgagor set forth on the first page of this Security Instrument. Mortgagor will not change or permit to be changed (a) Mortgagor's name, (b) Mortgagor's identity (including its trade name or names), (c) Mortgagor's principal place of business set forth on the first page of this Security Instrument, (d) the corporate, partnership or other organizational structure of such Mortgagor, (e) such Mortgagor's state of organization, or (f) such Mortgagor's organizational number, without notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change and, in the case of a change in Mortgagor's structure, without first obtaining the prior written consent of Lender. If Mortgagor does not now have an organizational identification number and later obtains one, Mortgagor promptly shall notify the Lender of such organizational identification number.

Section 16.2 Mortgagee as Nominee. (a) Mortgagee is acting as nominee under certain agreements by and between Lender and Mortgagee as the same may have been or may be amended, restated, replaced, supplemented or otherwise modified from time to time.

(b) Notwithstanding anything to the contrary contained herein or in any other Loan Document, all references herein and in any other Loan Document to "Lender" shall be deemed to collectively or individually (as the context requires) refer to Lender or to Mortgagee acting on behalf of and at the sole direction of Lender in its capacity as Lender's nominee.

(c) Unless Lender, in its sole discretion, shall determine otherwise, only Lender (and not Mortgagee) shall be deemed to be "Lender" with respect to (i) any consent, determination or similar approval right granted to Lender under the Loan Documents (including, without limitation, any consent or similar approval right that is deemed granted if not approved or denied within a specified time period), (ii) any items, documents or other information required to be delivered to Lender under the Loan Documents (other than notices), or (iii) any future funding or other obligations of Lender to Mortgagor or any affiliate of Mortgagor under the Loan Documents, if any.



# UNOFFICIAL COPY

## ARTICLE XVII

### STATE-SPECIFIC PROVISIONS

Section 17.1 Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Article 17 and the terms and conditions of this Security Instrument, the terms and conditions of this Article 17 shall control and be binding.

Section 17.2 Illinois Mortgage Foreclosure Law. In the event that any provision in this Security Instrument shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et seq. herein called the "Act"), the provisions of the Act shall take precedence over the provisions of this Security Instrument, but shall not invalidate or render unenforceable any other provision of this Security Instrument that can be construed in a manner consistent with the Act.

If any provision of this Security Instrument shall grant to Lender any rights or remedies upon the occurrence and during the continuation of an Event of Default which are more limited than the rights that would otherwise be vested in Lender under the Act in the absence of said provision, Lender shall be vested with the rights granted in the Act to the full extent permitted by law.

Without limiting the generality of the foregoing, all expenses incurred by Lender upon the occurrence and during the continuation of an Event of Default to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Security Instrument, shall be added to the Debt.

Mortgagor acknowledges that the transaction of which this Security Instrument is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Act) or residential real estate (as defined in Section 15-1219 of the Act), and upon the occurrence and during the continuation of an Event of Default to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption to the extent allowed under Section 15-1601(b) of the Act, and to the full extent permitted by law, the benefits of all present and future valuation, appraisal, homestead, exemption, stay, redemption and moratorium laws under any state or federal law.

Section 17.3 Mortgagor Waivers. Mortgagor agrees, to the fullest extent that Mortgagor may lawfully so agree, that upon the occurrence and during the continuation of an Event of Default, Mortgagor will not at any time insist upon or plead or in any manner whatsoever claim the benefit of any valuation, stay, extension, or exemption law now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Security Instrument or the absolute sale of the Property or the possession thereof by any purchaser at any sale made pursuant to any provision hereof, or pursuant to the decree of any court of competent jurisdiction; but Mortgagor, for Mortgagor and all who may claim through or under Mortgagor, so far as Mortgagor or those claiming through or under Mortgagor now or hereafter lawfully may, hereby waives upon the occurrence and during the continuation of an Event of Default the benefit of all such laws. Mortgagor, to the extent Mortgagor may lawfully do so, hereby waives

# UNOFFICIAL COPY

upon the occurrence and during the continuation of an Event of Default any and all right to have the Property marshaled upon any foreclosure of this Security Instrument, or sold in inverse order of alienation, and agrees that Lender or any court having jurisdiction to foreclose this Security Instrument may sell the Property as an entirety. If any law now or hereafter in force referred to in this paragraph of which Mortgagor or Mortgagor's successor or successors might take advantage despite the provisions hereof, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to constitute any part of the contract herein contained or to preclude the operation or application of the provisions of this paragraph.

In the event of the commencement of judicial proceedings to foreclose this Security Instrument, Mortgagor, on behalf of Mortgagor, its successors and assigns, and each and every person or entity they may legally bind acquiring any interest in or title to the Property subsequent to the date of this Security Instrument: (a) expressly waives any and all rights of appraisal, valuation, stay, extension and (to the extent permitted by law) reinstatement and redemption from sale under any order or decree of foreclosure of this Security Instrument; and (b) to the extent permitted by applicable law, agrees that when sale is had under any decree of foreclosure of this Security Instrument, upon confirmation of such sale, the officer making such sale, or his successor in office, shall be and is authorized immediately to execute and deliver to any purchaser at such sale a deed conveying the Property, showing the amount paid therefor, or if purchased by the person in whose favor the order or decree is entered, the amount of his bid therefor.

Section 17.4 Maximum Amount Secured. The maximum principal indebtedness secured by this Security Instrument shall not exceed \$260,000,000.00.

Section 17.5 Business Loan. The Loan is a "business loan" in accordance with 815 ILCS 205/4.

[NO FURTHER TEXT ON THIS PAGE]

# UNOFFICIAL COPY

IN WITNESS WHEREOF, this Security Instrument has been executed by Mortgagor as of the day and year first above written.

MORTGAGOR:

BONSTORES REALTY TWO, LLC, a Delaware limited liability company

By: *JH Baireuther*

Name: James H. Baireuther

Title: Vice President

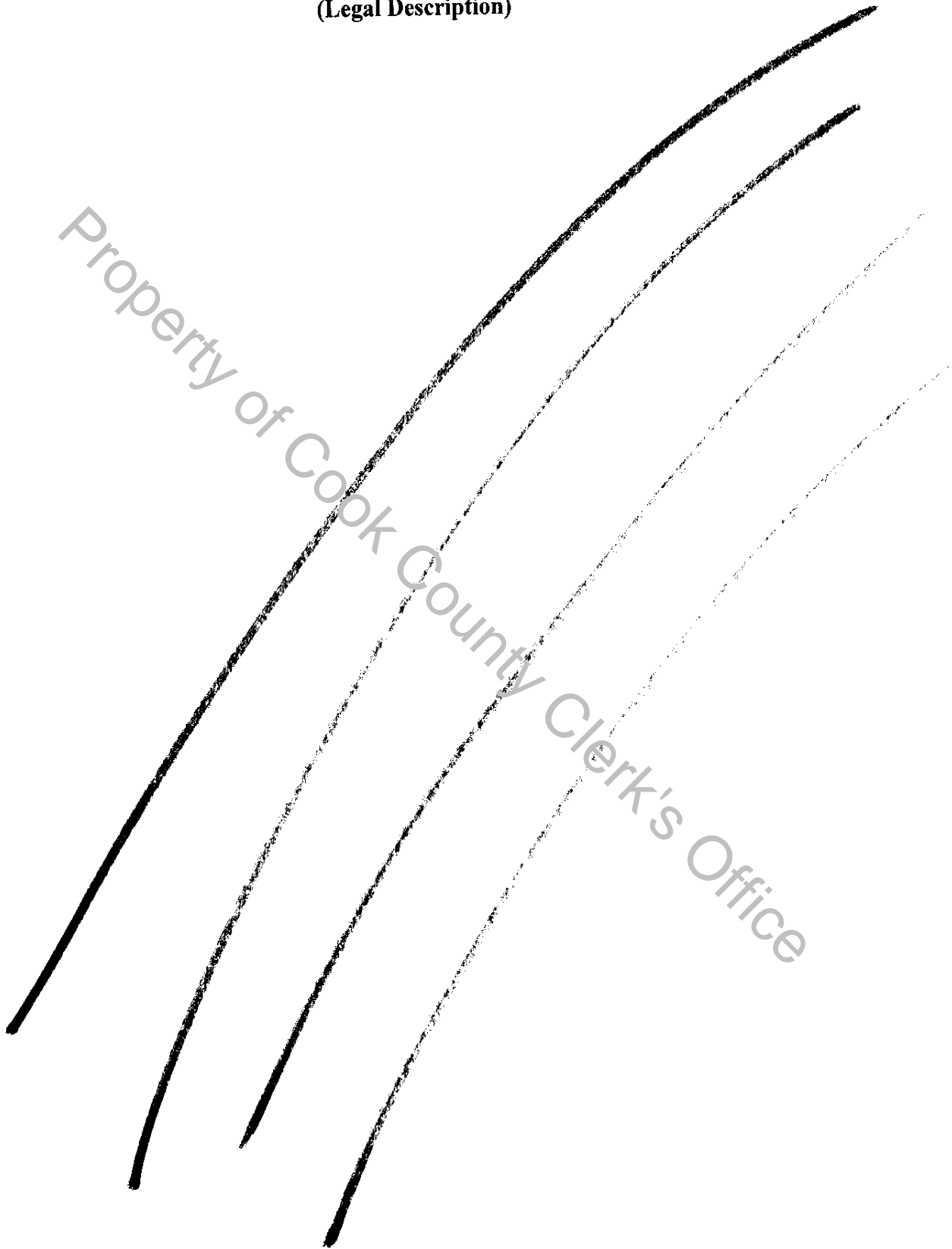
Property of Cook County Clerk's Office



# UNOFFICIAL COPY

## EXHIBIT A

(Legal Description)



Property of Cook County Clerk's Office



# UNOFFICIAL COPY

Edens Plaza  
Wilmette, IL

## EXHIBIT A

### PARCEL 1:

LOT 1 IN EDENS PLAZA SUBDIVISION, BEING A SUBDIVISION IN THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 42 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 20, 1967 AS DOCUMENT 20265607 IN COOK COUNTY, ILLINOIS EXCEPT FOR THE PROPERTY DESCRIBED AS FOLLOWS:

THAT PART OF LOT 1 IN EDENS PLAZA, BEING A SUBDIVISION IN THE SOUTHEAST QUARTER OF SECTION 30, TOWNSHIP 42, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 20, 1967 AS DOCUMENT 20265607, IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 1 AFORESAID; THENCE ON AN ASSUMED AZIMUTH OF 129 DEGREES 36 MINUTES 27 SECONDS ALONG THE NORTHERLY LINE OF SAID LOT 1, A DISTANCE OF 585.84 FEET TO THE EASTERLY LINE OF SAID LOT 1; THENCE ON AN AZIMUTH OF 153 DEGREES 45 MINUTES 59 SECONDS ALONG SAID EASTERLY LINE, BEING ALSO THE WESTERLY LINE OF SKOKIE BLVD., 76.51 FEET TO A POINT OF CURVATURE IN SAID LINE; THENCE SOUTHEASTERLY ALONG A TANGENTIAL CURVE CONCAVE TO THE EAST, RADIUS 5679.65 FEET, CENTRAL ANGLE 02 DEGREES 51 MINUTES 55 SECONDS, 284.03 FEET; THENCE ON AN AZIMUTH OF 250 DEGREES 52 MINUTES 06 SECONDS, 223.90 FEET; THENCE ON AN AZIMUTH OF 166 DEGREES 51 MINUTES 28 SECONDS, 113.94 FEET; THENCE ON AN AZIMUTH OF 160 DEGREES 20 MINUTES 46 SECONDS, 95.91 FEET; THENCE ON AN AZIMUTH OF 269 DEGREES 57 MINUTES 45 SECONDS, 78.44 FEET; THENCE ON AN AZIMUTH OF 359 DEGREES 57 MINUTES 45 SECONDS, 223.80 FEET; THENCE ON AN AZIMUTH OF 333 DEGREES 27 MINUTES 26 SECONDS, 166.82 FEET; THENCE ON AN AZIMUTH 270 DEGREES 32 MINUTES 36 SECONDS, 296.68 FEET TO A POINT ON THE WEST LINE OF LOT 1 WHICH IS 598.76 FEET SOUTH OF THE NORTHWEST CORNER THEREOF; THENCE ON AN AZIMUTH OF 359 DEGREES 53 MINUTES 30 SECONDS ALONG SAID WEST LINE, 598.76 FEET TO THE POINT OF BEGINNING.

### ALSO

THAT PART OF LOT 1 IN EDENS PLAZA, BEING A SUBDIVISION IN THE SOUTHEAST QUARTER OF SECTION 30, TOWNSHIP 42, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 20, 1967 AS DOCUMENT 20265607, IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

# UNOFFICIAL COPY

BEGINNING AT THE SOUTHWEST CORNER OF LOT 1 AFORESAID; THENCE ON AN ASSUMED AZIMUTH OF 359 DEGREES 59 MINUTES 43 SECONDS ALONG THE WEST LINE OF SAID LOT 1, A DISTANCE OF 360.00 FEET TO AN ANGLE POINT THEREIN; THENCE ON AN AZIMUTH OF 305 DEGREES 04 MINUTES 59 SECONDS ALONG THE WEST LINE OF LOT 1, A DISTANCE OF 143.97 FEET TO A POINT WHICH IS 204.00 FEET SOUTHEASTERLY OF AN ANGLE POINT IN SAID WEST LINE; THENCE ON AN AZIMUTH OF 35 DEGREES 04 MINUTES 59 SECONDS, 50.64 FEET; THENCE ON AN AZIMUTH OF 89 DEGREES 55 MINUTES 36 SECONDS, 175.52 FEET; THENCE ON AN AZIMUTH OF 359 DEGREES 57 MINUTES 45 SECONDS, 141.04 FEET; THENCE ON AN AZIMUTH OF 89 DEGREES 57 MINUTES 45 SECONDS, 93.57 FEET; THENCE ON AN AZIMUTH OF 160 DEGREES 20 MINUTES 46 SECONDS, 190.61 FEET; THENCE ON AN AZIMUTH OF 90 DEGREES 00 MINUTES 00 SECONDS, 210.19 FEET; THENCE ON AN AZIMUTH OF 341 DEGREES 36 MINUTES 33 SECONDS, 185.60 FEET; THENCE ON AN AZIMUTH OF 39 DEGREES 58 MINUTES 08 SECONDS, 46.59 FEET TO THE EAST LINE OF LOT 1; THENCE SOUTHERLY ALONG SAID EAST LINE AND A CURVE CONCAVE TO THE EAST (BEING ALSO THE WEST LINE OF SKOKIE BLVD.), RADIUS 5679.65 FOOT, A CENTRAL ANGLE 04 DEGREES 05 MINUTES 18 SECONDS, 405.28 FEET TO A POINT ON A 3291.63 FOOT RADIUS CURVE, THE CENTER OF CIRCLE OF SAID CURVE BEARS AN AZIMUTH OF 74 DEGREES 03 MINUTES 26 SECONDS FROM SAID POINT; THENCE SOUTHERLY ALONG SAID CURVE, CENTRAL ANGLE 04 DEGREES 00 MINUTES 39 SECONDS, 230.42 FEET TO A POINT OF REVERSE CURVATURE; THENCE SOUTHWESTERLY ALONG A 25.00 FOOT RADIUS CURVE, CENTRAL ANGLE 109 DEGREES 56 MINUTES 59 SECONDS, 47.98 FEET TO THE SOUTH LINE OF LOT 1; THENCE ON AN AZIMUTH OF 270 DEGREES 00 MINUTES 00 SECONDS ALONG SAID SOUTH LINE, BEING ALSO THE NORTH LINE OF LAKE AVE., 612.39 FEET TO THE POINT OF BEGINNING.

## PARCEL 2:

NON-EXCLUSIVE EASEMENT IN FAVOR OF PARCEL 1 AS CREATED BY THE EDENS PLAZA RECIPROCAL OPERATING AND EASEMENT AGREEMENT DATED MARCH 25, 1994 AND RECORDED MARCH 30, 1994 AS DOCUMENT 94287447 MADE BY AND BETWEEN NBD BANK, AS TRUSTEE UNDER TRUST NO. 4671.AH, EDENS CENTER ASSOCIATES AND CPS DEPARTMENT STORES, INC. FOR THE FOLLOWING PURPOSES: USE OF THE PARKING AREA FOR THE PARKING AND PASSAGE OF PASSENGER MOTOR VEHICLES AND PEDESTRIANS; USE OF THE ROADWAYS TO PROVIDE PASSAGE BY MOTOR VEHICLES AND PEDESTRIANS; USE OF VARIOUS WALKWAYS; USE OF THE PARKING AREA FOR SURFACE STORM WATER RUN-OFF TO THE STORM WATER FACILITIES; USE FOR VEHICULAR AND PEDESTRIAN ACCESS OVER THE ACCESS ROAD DEPICTED ON EXHIBIT B THERETO; INSTALL, MAINTAIN, REPAIR, USE AND OPERATE THE SHOPPING CENTER IDENTIFICATION SIGNS; RIGHT TO HAVE OTHER PARTY'S BUILDING (AS DEFINED THEREIN) ABUT AND CONNECT TO; FOR COMMON UTILITY FACILITIES AND OTHER UTILITY FACILITIES; OVER, UPON, UNDER AND ON THE FOLLOWING TRACT OF LAND:

THAT PART OF LOT 1 IN EDENS PLAZA, BEING A SUBDIVISION IN THE SOUTHEAST QUARTER OF SECTION 30, TOWNSHIP 42 NORTH, RANGE 13 EAST OF THE THIRD

# UNOFFICIAL COPY

PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 20, 1967 AS DOCUMENT 20265607 IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 1 AFORESAID; THENCE ON AN ASSUMED AZIMUTH OF 129 DEGREES 36 MINUTES 27 SECONDS ALONG THE NORTHERLY LINE OF SAID LOT 1, A DISTANCE OF 585.84 FEET TO THE EASTERLY LINE OF SAID LOT 1; THENCE ON AN AZIMUTH OF 153 DEGREES 45 MINUTES 59 SECONDS ALONG SAID EASTERLY LINE, BEING ALSO THE WESTERLY LINE OF SKOKIE BLVD., 76.51 FEET TO A POINT OF CURVATURE IN SAID LINE; THENCE SOUTHEASTERLY ALONG A TANGENTIAL CURVE, CONCAVE TO THE WEST, RADIUS 5679.65 FEET, CENTRAL ANGLE 02 DEGREES 51 MINUTES 55 SECONDS, 284.03 FEET FOR A POINT OF BEGINNING; THENCE ON AN AZIMUTH OF 250 DEGREES 52 MINUTES 06 SECONDS 223.90 FEET; THENCE ON AN AZIMUTH OF 166 DEGREES 51 MINUTES 28 SECONDS 113.94 FEET; THENCE ON AN AZIMUTH OF 160 DEGREES 20 MINUTES 46 SECONDS 95.91 FEET; THENCE ON AN AZIMUTH OF 269 DEGREES 57 MINUTES 45 SECONDS, 78.44 FEET; THENCE ON AN AZIMUTH OF 359 DEGREES 57 MINUTES 45 SECONDS 223.80 FEET; THENCE ON AN AZIMUTH OF 333 DEGREES 27 MINUTES 26 SECONDS, 166.62 FEET; THENCE ON AN AZIMUTH 270 DEGREES 32 MINUTES 56 SECONDS 296.68 FEET TO A POINT ON THE WEST LINE OF LOT 1 WHICH IS 598.76 FEET SOUTH OF THE NORTHWEST CORNER THEREOF; THENCE ON AN AZIMUTH OF 179 DEGREES 53 MINUTES 30 SECONDS ALONG SAID WEST LINE, 486.59 FEET TO AN ANGLE POINT THEREIN; THENCE ON AN AZIMUTH OF 125 DEGREES 04 MINUTES 59 SECONDS ALONG THE WEST LINE OF SAID LOT 1, A DISTANCE OF 204.00 FEET; THENCE AN AZIMUTH OF 35 DEGREES 04 MINUTES 59 SECONDS; 50.64 FEET; THENCE ON AN AZIMUTH OF 89 DEGREES 55 MINUTES 36 SECONDS; 175.52 FEET; THENCE ON AN AZIMUTH OF 359 DEGREES 57 MINUTES 45 SECONDS, 141.04 FEET; THENCE ON AN AZIMUTH OF 89 DEGREES 57 MINUTES 45 SECONDS 93.57 FEET; THENCE ON AN AZIMUTH OF 160 DEGREES 20 MINUTES 46 SECONDS 190.61 FEET; THENCE ON AN AZIMUTH OF 90 DEGREES 00 MINUTES 00 SECONDS 210.19 FEET; THENCE ON AN AZIMUTH OF 341 DEGREES 36 MINUTES 33 SECONDS 185.60 FEET; THENCE ON AN AZIMUTH OF 69 DEGREES 58 MINUTES 08 SECONDS, ALONG RADIAL LINE 46.59 FEET TO THE EAST LINE OF LOT 1; THENCE NORTHERLY ALONG SAID EAST LINE AND A CURVE CONCAVE TO THE WEST (BEING ALSO THE WEST LINE OF SKOKIE BLVD.) RADIUS 5679.65 FEET, CENTRAL ANGLE 03 DEGREES 20 MINUTES 14 SECONDS, 330.82 FEET TO THE POINT OF BEGINNING.

PIN NO. 05-30-405-020-000

ADDRESS: 3200 LAKE AVENUE, WILMETTE, IL