

# UNOFFICIAL COPY

Doc#: 1623608073 Fee: \$64.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 08/23/2016 01:56 PM Pg: 1 of 9

Prepared by and upon  
recording return to:  
Morgan, Lewis & Bockius LLP  
One Federal Street  
Boston, MA 02110  
Attention: James L. Black, Jr., Esq.

## FIRST AMENDMENT TO MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, AND SECURITY AGREEMENT

THIS FIRST AMENDMENT TO MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, AND SECURITY AGREEMENT (this "Amendment") is dated as of August 15, 2016, to be effective as of August 15, 2016 (the "Effective Date"), by and between BONSTORES REALTY TWO, LLC, a Delaware limited liability company, having a place of business at 2801 East Market Street, York, Pennsylvania 17402, as mortgagor ("Mortgagor") to BANK OF AMERICA, N.A., a national banking association, with a place of business at 100 Federal Street, Boston, Massachusetts 02110, as agent for the Lenders (referred to herein as "Mortgagee").

### RECITALS:

WHEREAS, Mortgagor executed and delivered for the benefit of Mortgagee that certain Mortgage, Assignment of Leases and Rents, and Security Agreement dated as of January 15, 2016 and recorded January 26, 2016 as Document Number 1602615045 in the Recorder's Office of Cook, Illinois (the "Security Instrument"), to secure certain loans in the principal sum of Seven Hundred Fifty Million and 00/100 Dollars (\$750,000,000.00) advanced pursuant to that certain Second Amended and Restated Loan and Security Agreement, dated as of March 21, 2011 (the "Original Second Amended and Restated Loan Agreement"), by and among The Bon-Ton Department Stores, Inc., a Pennsylvania corporation ("Bon-Ton"), The Elder-Beerman Stores Corp., an Ohio corporation ("Elder-Beerman"), Carson Pirie Scott II, Inc., a Mississippi corporation ("CPS II Mississippi"), Bon-Ton Distribution, Inc., an Illinois corporation ("Distribution"), and MCRIL, LLC, a Virginia limited liability company ("MCRIL"), the financial institutions party thereto from time to time as lenders (the "Lenders"), Mortgagee, as agent for the Lenders, and the other parties thereto (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time), which Security Instrument encumbers, among other things, the property legally described on Exhibit A attached hereto. All capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Security Instrument;

NO-80156526

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WHEREAS, the Original Second Amended and Restated Loan Agreement was amended pursuant to that certain First Amendment to Second Amended and Restated Loan and Security Agreement dated as of October 25, 2012 by and among Bon-Ton, Elder-Beerman, Distribution, MCRIL, The Bon-Ton Stores of Lancaster, Inc., a Pennsylvania corporation ("Lancaster"), and CPS II Mississippi, as borrowers, Lenders, Mortgagee as agent and co-collateral agent for the Lenders, General Electric Capital Corporation ("GECC") as co-collateral agent for the Lenders, and the other parties thereto (the "First Amendment to the Second Amended and Restated Loan Agreement");

WHEREAS, the Original Second Amended and Restated Loan Agreement was further amended pursuant to that certain Second Amendment to Second Amended and Restated Loan and Security Agreement dated as of December 12, 2013 by and among Bon-Ton, Distribution, MCRIL, Lancaster, and Carson Pirie Scott II, Inc. ("CPS II"), a Florida corporation (successor by merger to CPS II Mississippi), as borrowers, Lenders, Mortgagee as agent and co-collateral agent for the Lenders, GECC as co-collateral agent for the Lenders, and the other parties thereto (the "Second Amendment to the Second Amended and Restated Loan Agreement");

WHEREAS, the Original Second Amended and Restated Loan Agreement was further amended pursuant to that certain Consent and Third Amendment to Second Amended and Restated Loan and Security Agreement dated as of January 15, 2016 by and among Bon-Ton, Distribution, MCRIL, and CPS II, Inc., as borrowers, Lenders, Mortgagee as agent and co-collateral agent for the Lenders, GECC as co-collateral agent for the Lenders, and the other parties thereto (the "Consent and Third Amendment to the Second Amended and Restated Loan Agreement");

WHEREAS, the Original Second Amended and Restated Loan Agreement was further amended pursuant to that certain Fourth Amendment to Second Amended and Restated Loan and Security Agreement dated as of the date hereof by and among Bon-Ton, Distribution, MCRIL, CPS II, Inc., Bonstores Realty One, LLC, a Delaware limited liability company, and Mortgagor, as borrowers, Lenders, Mortgagee as agent and co-collateral agent for the Lenders, Wells Fargo Bank, National Association, as co-collateral agent for the Lenders, and the other parties thereto (the "Fourth Amendment to the Second Amended and Restated Loan Agreement"); the Original Second Amended and Restated Loan Agreement, as amended by the First Amendment to the Second Amended and Restated Loan Agreement, the Second Amendment to the Second Amended and Restated Loan Agreement, the Consent and Third Amendment to the Second Amended and Restated Loan Agreement, and the Fourth Amendment to the Second Amended and Restated Loan Agreement, and as may be further amended, restated, replaced, supplemented or otherwise modified from time to time, the "Second Amended and Restated Loan Agreement"); and

WHEREAS, Mortgagor and Mortgagee desire to modify and amend the Security Instrument as more particularly set forth below.

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NOW THEREFORE, in consideration of the making of the Loan and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor and Mortgagee, intending to be legally bound, hereby agree as follows:

1. Amendments to Security Instrument. The Security Instrument is hereby amended as follows:
  - a. The second recital of the Security Instrument is hereby amended and restated to read as follows:
 

“WHEREAS, this Security Instrument is given to Mortgagee to secure certain loans (the “Loan”) in the principal sum of up to Nine Hundred Fifty Million and 00/100 Dollars (\$950,000,000.00), with a maturity date of the Termination Date (as defined by the Loan Agreement), advanced pursuant to that certain Second Amended and Restated Loan and Security Agreement, dated as of March 21, 2011, by and among **THE BON-TON DEPARTMENT STORES, INC.**, a Pennsylvania corporation (“Bon-Ton”), **THE ELDER-BEERMAN STORES CORP.**, an Ohio corporation (“Elder-Beerman”), **CARSON PIRIE SCOTT II, INC.**, (“Carson”), a Mississippi corporation, **BON-TON DISTRIBUTION, INC.**, an Illinois corporation (“Distribution”), and **MCRIL, LLC**, a Virginia limited liability company (“MCRIL” and together with Bon-Ton, Elder-Beerman, Carson, and Distribution, collectively, the “Borrowers”), the financial institutions party to this Agreement from time to time as lenders (collectively, “Lenders”), Mortgagee, as agent for the Lenders (“Agent”), and the other parties thereto (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the “Loan Agreement”);”.
  - b. The first word in Section 3.4 of the Security Instrument is hereby changed from “Owner” to “Mortgagor”.
  - c. In the second sentence of Section 4.2 of the Security Instrument, the word “Mortgagee” is hereby inserted after the words “reasonably requested by” and before the words “promptly upon request.”
  - d. Section 6.2 of the Security Instrument is hereby amended and restated to read “Intentionally Omitted”.
  - e. From and after the Effective Date, the term “Borrowers” shall have the meaning ascribed to such term in the Second Amended and Restated Loan Agreement, with each of the “Borrowers” being referred to as a “Borrower.”
2. Limited Modifications. The Security Instrument is deemed amended and modified only to the extent necessary to give effect to the terms of this Amendment. All of the terms, covenants and conditions of the Security Instrument, except as expressly modified pursuant to the provisions of this Amendment, are hereby ratified, confirmed and reaffirmed by Mortgagor and shall and do remain in full force and effect in accordance

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with their terms. It is the express intent of the parties that the modification of the Security Instrument as provided herein shall in no respect affect the original priority of the lien created by the Security Instrument. As amended hereby, the Security Instrument remains in full force and effect.

3. Successors and Assigns. This Amendment shall be binding upon and inure to the benefit of (a) Mortgagee and its respective successors and assigns and (b) Mortgagor and its permitted successors and assigns.
4. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute a single instrument.
5. Further Acts. Mortgagor will, without expense to Mortgagee or the Lenders, do, execute, acknowledge and deliver such further acts or documents as Mortgagee shall, from time to time, reasonably require for the purpose of better effectuating, assuring and confirming unto Mortgagee the rights bestowed on Mortgagee or for carrying out the intention or facilitating the performance of the terms of this Amendment or the obligations of Mortgagor hereunder.
6. Recitals. The recitals set forth above are hereby incorporated into this Amendment as though set forth in their entirety herein.

*[Remainder of page intentionally left blank; signature pages follow]*

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IN WITNESS WHEREOF, Mortgagor and Mortgagee have executed this Amendment to be effective as of the Effective Date.

MORTGAGOR:

BONSTORES REALTY TWO, LLC, a Delaware limited liability company

By: *J. Gregory Yawman*  
Name: J. GREGORY YAWMAN  
Title: VICE PRESIDENT  
GENERAL COUNSEL & SECRETARY

COMMONWEALTH OF PENNSYLVANIA )

COUNTY OF YORK )

I, the undersigned, a notary public in and for said County, in the State/Commonwealth aforesaid, DO HEREBY CERTIFY, that J. Gregory Yawman is personally known to me to be the VP of BONSTORES REALTY TWO, LLC, a Delaware limited liability company, and is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act, and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 10<sup>th</sup> day of August, 2016.

COMMONWEALTH OF PENNSYLVANIA  
NOTARIAL SEAL  
Renee L. Elliott, Notary Public  
Springettsbury Twp., York County  
My Commission Expires Nov. 10, 2019  
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES


*Renee L. Elliott*  
Notary Public

[Signature Page to Wilmette, IL]

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MORTGAGEE:

BANK OF AMERICA, a national banking association, as agent for the Lenders

By: 

Name: Andrew Cerussi

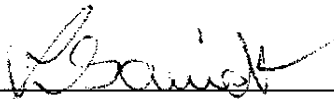
Title: Director

COMMONWEALTH OF MASSACHUSETTS )

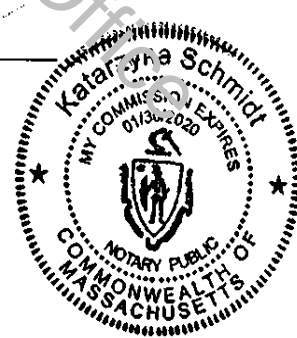
COUNTY OF SUFFOLK )

I, the undersigned, a notary public in and for said County, in the State/Commonwealth aforesaid, DO HEREBY CERTIFY, that Andrew Cerussi, is personally known to me to be a Director of Bank of America, a national banking association, and is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act, and as the free and voluntary act and deed of said national banking association, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 11 day of Aug 2016.



Notary Public





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## Exhibit A

### Legal Description

#### 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 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 359 DEGREES 53 MINUTES 30 SECONDS ALONG SAID WEST LINE, 598.75 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:

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

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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 69 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 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



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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. 05-30-405-020-0000

ADDRESS: 3200 LAKE AVENUE, WILMETTE, IL 60091