

# UNOFFICIAL COPY

**PREPARED OUT-OF-STATE BY AND  
WHEN RECORDED MAIL TO:**

SEYFARTH SHAW LLP  
ONE PEACHTREE POINTE, SUITE 700  
1545 PEACHTREE STREET, N.E.  
ATLANTA, GEORGIA 30309-2401  
ATTENTION: JAY WARDLAW, ESQ.



Doc#: 0431533046  
Eugene "Gene" Moore Fee: \$42.00  
Cook County Recorder of Deeds  
Date: 11/10/2004 07:32 AM Pg: 1 of 10

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## ASSIGNMENT OF LEASES AND RENTS

This Assignment of Leases and Rents (this "Assignment") is made as of the 5<sup>th</sup> day of November, 2004, by STATE-WALTON, LLC, an Illinois limited liability company, having its principal place of business at 920 York #300, Hinsdale, Illinois 60521 ("Borrower"), to THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, a New Jersey corporation, having an office at 2200 Ross Avenue, Suite 4900E, Dallas, Texas 75201 ("Lender").

### RECITALS:

- A. Borrower is the sole owner and holder of (a) the premises described in Exhibit A attached hereto and incorporated herein ("Property") and (b) the landlord's interest under the leases described in Exhibit B attached hereto and incorporated herein ("Specific Leases");
- B. Lender has made a loan to Borrower in the principal sum of Five Million Three Hundred Thousand and 00/100 Dollars (\$5,300,000.00) ("Loan") evidenced by that certain Promissory Note dated as of the date of this Assignment ("Note") and secured by that certain Leasehold Mortgage and Security Agreement dated as of the date of this Assignment ("Instrument") (capitalized terms used without definition shall have the meanings ascribed to them in the Instrument) and the Documents; and
- C. Lender was willing to make the Loan to Borrower only if Borrower assigned the Leases and Rents to Lender in the manner provided below to secure payment of the Obligations.

IN CONSIDERATION of the principal sum of the Note and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower agrees as follows:

- 1. Assignment. Borrower irrevocably, absolutely and unconditionally assigns, transfers, and sets over to Lender, its successors and assigns all of the right, title, interest, and estates that Borrower may now or later have in, to and under (a) the Leases (which term shall also include the Specific Leases and all guaranties thereof); (b) the Rents; (c) all proceeds from the cancellation, surrender, sale or other disposition of the Leases; (d) the right to collect and receive all the Rents; and (e) the right to enforce and exercise, whether at law or in equity or by any other means, all terms and conditions of the Leases ("Lease Provisions"). This Assignment is intended by Borrower and Lender to constitute a present, absolute assignment and not a

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Prudential Loan No. 6 105 294  
State-Walton, LLC\Assignment of Leases and Rents

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collateral assignment for additional security only. Upon full payment and satisfaction of the Obligations and written request by Borrower, Lender shall transfer, set over, and assign to Borrower all right, title, and interest of Lender in, to, and under the Leases and the Rents.

2. Borrower's License. Until an Event of Default occurs, Borrower shall have a revocable license ("License") from Lender to exercise all rights extended to the landlord under the Leases. Borrower shall hold the Rents, or an amount sufficient to discharge all current sums due on the Obligations, in trust for use in the payment of the Obligations. Upon an Event of Default, whether or not legal proceedings have commenced and without regard to waste, adequacy of security for the Obligations or the solvency of Borrower, the License shall automatically terminate without notice by Lender (any such notice being expressly waived by Borrower). Upon such termination, Borrower shall deliver to Lender within seven (7) days (a) all Rents (including prepaid Rents) held by Borrower, (b) all security or other deposits paid pursuant to the Leases, and (c) all previously paid charges for services, facilities or escalations to the extent allocable to any period after the Event of Default. Borrower agrees and stipulates that upon execution of this Assignment, Borrower's only interest in the Leases or Rents is as a licensee revocable upon an Event of Default.

3. Lender as Creditor of Tenant. Upon execution of this Assignment, Lender, and not Borrower, shall be the creditor of any Tenant in respect of assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution or receivership proceedings affecting any such Tenant; provided, however, that Borrower shall be the party obligated to make timely filings of claims in such proceedings or to otherwise pursue creditor's rights therein. Notwithstanding the foregoing, Lender shall have the right, but not the obligation, to file such claims instead of Borrower and if Lender does file a claim, Borrower agrees that Lender (a) is entitled to all distributions on such claim to the exclusion of Borrower and (b) has the exclusive right to vote such claim and otherwise to participate in the administration of the estate in connection with such claim. Lender shall have the option to apply any monies received by it as such creditor to the Obligations in the order set forth in the Documents. If a petition is filed under the Bankruptcy Code by or against Borrower, and Borrower, as landlord under any Lease, decides to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Borrower shall give Lender at least ten (10) days' prior written notice of the date when Borrower shall apply to the bankruptcy court for authority to reject the Lease. Lender may, but shall not be obligated to, send Borrower within such ten-day period a written notice stating that (a) Lender demands that Borrower assume and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code and (b) Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Lender sends such notice, Borrower shall not reject the Lease provided Lender complies with clause (b) of the preceding sentence.

4. Notice to Tenant of an Event of Default. Upon demand and notice of an Event of Default by Borrower sent by Lender to Tenants, Borrower irrevocably authorizes each Tenant to (a) pay all Rents to Lender and (b) rely upon any such notice from Lender without any obligation to inquire as to the actual existence of the default, notwithstanding any claim of Borrower to the contrary. Borrower shall have no claim against any Tenant for any Rents paid by Tenant to Lender.

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5. Indemnification of Lender. Borrower hereby agrees to indemnify and hold Lender harmless from any and all Losses that Lender may incur under the Leases or by reason of this Assignment, except for Losses incurred as a direct result of Lender's willful misconduct or gross negligence. Nothing in this Assignment shall be construed to bind Lender to the performance of any Lease Provisions or to otherwise impose any liability on Lender including, without limitation, any liability under covenants of quiet enjoyment in the Leases in the event that any Tenant shall have been joined as party defendant in any action to foreclose the Instrument and shall have been barred thereby of all right, title, interest, and equity of redemption in the premises. This Assignment imposes no liability upon Lender for the operation and maintenance of the Property or for carrying out the terms of any Lease before Lender has entered and taken actual possession and complete control of all operations of the Property. Any Losses incurred by Lender, by reason of actual entry and taking possession under any Lease or this Assignment or in the defense of any claims shall, at Lender's request, be reimbursed by Borrower. Such reimbursement shall include interest at the Default Rate and Costs. Lender may, upon entry and taking of possession, collect the Rents and apply them to reimbursement for any such items.

6. Representations and Warranties. Borrower represents and warrants that (a) Borrower is the absolute owner of the lessor's interest in the Leases, (b) Borrower has the right, power and authority to assign, transfer, and set over all of its right, title and interest in, to and under the Leases and Rents and no other person (other than the respective Tenants) has any right, title or interest therein, (c) the Leases are valid and in full force and effect and have not been modified, amended or terminated, nor have any of the terms and conditions of the Leases been waived, except as stated in the Leases, (d) there are no outstanding assignments or pledges of the Leases or Rents, (e) there are no outstanding leasing commissions due under the Leases for the initial term or for any extensions, renewals or expansions, (f) except as disclosed to Lender in writing, there are no existing defaults or any state of facts which, with the giving of notice and/or passage of time, would constitute a default under the Leases by either party, (g) no Tenant has any defense, set-off or counterclaim against Borrower, (h) each Tenant is in possession and paying Rent and other charges as provided in its Lease, (i) no Rents have been or will later be anticipated, discounted, released, waived, compromised or otherwise discharged, except as may be expressly permitted by the Lease, (j) except as specified in the Leases and shown on the rent roll delivered to Lender in connection with the funding of the Loan (the "Rent Roll"), there are no (i) unextinguished rent concessions, abatements or other inducements relating to the Leases, (ii) options or other rights to acquire any interest in the Property in favor of any Tenant, or (iii) options or other rights (whether in the form of expansion rights, purchase rights, rights of first refusal to lease or purchase, or otherwise) relating to property which is not part of the Property and/or would require Borrower and/or Lender to possess or control any property (other than the Property) to honor such rights, and (k) the Rent Roll discloses all currently existing Leases and is true, complete and accurate in all respects.

7. New Leases, Amendments and Terminations. Borrower may (a) terminate any Lease other than the Lease of a Major Tenant which is in default, (b) amend any Lease other than the Lease of a Major Tenant, provided the amendment does not (i) increase the obligations of the landlord, (ii) decrease or accelerate the rent, or (iii) decrease the term, and (c) enter into new, bona-fide, arm's length Leases (or renew existing Leases) with third-party tenants at market rents (based on the type quality, and location of the Property) for premises of nine thousand (9,000)

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square feet or less provided each Lease satisfies (A) the minimum leasing requirements in Exhibit C attached hereto and incorporated herein, (B) is on Borrower's standard form lease (approved by Lender) with no modifications that increase the obligations of the landlord, and (C) does not give the tenant any rights (whether in the form of expansion rights, purchase rights, rights of first refusal to lease or purchase, or otherwise) relating to property which is not part of the Property and/or would require Borrower and/or Lender to possess or control any property (other than the Property) to honor such rights. Except as expressly provided above or after obtaining Lender's prior written consent, Borrower shall not (i) amend or modify any Lease, (ii) extend or renew (except in accordance with the existing Lease provisions, if any) any Lease, (iii) terminate or accept the surrender of any Lease, (iv) enter into any new Lease of the Property, and/or (v) accept any prepayment of rent, termination fee, or any similar payment and, if Borrower takes any of the actions in (i)-(v), such action shall be null and void. Subject to the foregoing, Borrower shall give Lender prompt notice of any Lease of the Property it enters into subsequent to the date hereof, together with a certified copy of such lease, and such Lease shall be deemed included in this Assignment. Upon Lender's request and at Borrower's expense, Borrower shall (a) promptly deliver to Lender copies of all notices of default Borrower has sent to any Tenant, (b) enforce the Leases and all remedies available to Borrower upon any Tenant's default, (c) deliver to Lender copies of all papers served in connection with any such enforcement proceedings, and (d) consult with Lender, its agents and attorneys with respect to the conduct thereof. Borrower shall not enter into any settlement of any such proceeding without Lender's prior written consent.

8. Covenants. Borrower shall not, except with the prior written consent of Lender in each instance, (a) sell, assign, pledge, mortgage or otherwise transfer or encumber (except hereby) any of the Leases, Rents or any right, title or interest of Borrower therein; (b) accept prepayments of any Rents for a period of more than one (1) month in advance of the due dates thereof; (c) in any manner intentionally or materially impair the value of the Property or the benefits to Lender of this Assignment; (d) except as otherwise permitted in this Assignment, waive, excuse, condone, discount, set off, compromise, or in any manner release or discharge any Tenant from any of its obligations under the Leases; (e) except as otherwise permitted herein, enter into any settlement of any action or proceeding arising under, or in any manner connected with, the Leases or with the obligations of the landlord or the Tenants thereunder; (f) modify, cancel or terminate any guaranties under any Lease; or (g) lease any portion of the Property to a dry cleaner that uses dry cleaning solvents on the Property. Borrower shall, at its sole cost and expense, duly and timely keep, observe, perform, comply with and discharge all of the material obligations of the landlord under the Leases, or cause the foregoing to be done, and Borrower shall not take any actions that would, either presently or with the passage of time, cause a default by Borrower under any of the Leases.

9. No Merger. Each Lease shall remain in full force and effect, notwithstanding any merger of Borrower's and Tenant's interest thereunder.

10. Documents Incorporated. The terms and conditions of the Documents are incorporated into this Assignment as if fully set forth in this Assignment.

11. **WAIVER OF TRIAL BY JURY. BORROWER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN**

Prudential Loan No. 6 105 294  
State-Walton, LLC Assignment of Leases and Rents

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**ANY ACTION, PROCEEDING OR COUNTERCLAIM FILED BY EITHER PARTY, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN, THE DOCUMENTS, OR ANY ALLEGED ACTS OR OMISSIONS OF LENDER IN CONNECTION THEREWITH.**

12. Termination Fees. If (i) Borrower cashes or applies a Security Deposit (as defined in the Note) or receives a Termination Fee (as defined in the Note) in connection with a Lease termination, cancellation, or expiration and (ii) such Security Deposit or Termination Fee is in excess of one (1) month's base rent for the Lease to which such Security Deposit or Termination Fee applies, Borrower hereby assigns any such Security Deposit or Termination Fee to Lender and further covenants and agrees that it shall pay such Security Deposit or Termination Fee to Lender to be disbursed by Lender for the payment of Lender approved (1) tenant improvements and/or (2) market leasing commissions; provided, however, that if an Event of Default occurs under the Documents, Lender, at its option and in its sole discretion, shall have the right to apply all such remaining undisbursed amounts to the Obligations in such order as Lender in its sole discretion shall determine.

[SIGNATURE PAGE FOLLOWS]

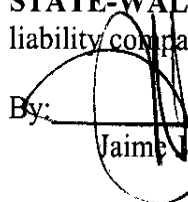


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IN WITNESS WHEREOF, Borrower has duly executed this Assignment the date first above written.

**BORROWER:**

STATE-WALTON, LLC, an Illinois limited liability company

By:  (SEAL)  
Jaime J. Javors, its Manager

STATE OF ILLINOIS

COUNTY OF DuPage

Personally appeared before me, C. FAGAN Notary Public, Jaime J. Javors, with whom I am personally acquainted, and who acknowledged that he executed the foregoing instrument for the purposes therein contained and who further acknowledged that he is the Manager of State-Walton, LLC, an Illinois limited liability company, and is authorized to execute this instrument on behalf of said company.

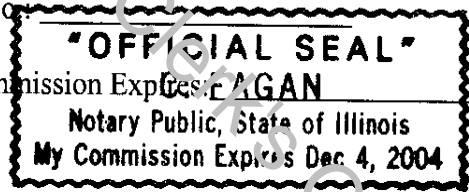
WITNESS my hand, at office, this 5<sup>th</sup> day of November, 2004.

  
Notary Public

Serial No. \_\_\_\_\_

[SEAL]

My Commission Expires: FAGAN



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Exhibit A  
LEGAL DESCRIPTION OF LAND

Lots 1, 2 and 3 (except the South 40.20 feet of the East 27.33 feet thereof) in the subdivision of the South half of Block 9 in Canal Trustee's Subdivision of the fractional quarter of Section 3, Township 39 North, also:

Lots 4 and 5 in the subdivision of the North half of Block 9 in Canal Trustee's Subdivision of the fractional quarter of Section 3, Township 39 North, Range 14 East of the Third Principal Meridian in Cook County, Illinois.

Permanent index numbers:

17-03-206-002-0000

17-03-206-003-0000

17-03-206-004-0000

17-03-206-005-0000

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## Exhibit B

### DESCRIPTION OF LEASES

All leases, subleases, lettings and licenses of or affecting the Property, now or hereafter in effect, and all amendments, extensions, modifications, replacements or revenues thereof, including, but not limited to, the following:

Leases of the Property having the following tenants:

Walgreens Co.  
Exhale



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## Exhibit C

### MINIMUM LEASING REQUIREMENTS

All additional Leases and renewal Leases covering the Property shall satisfy the following conditions:

1. Minimum (original or renewal) Term: Sixty (60) month minimum.
2. Concessions: (a) All free rent and similar concessions shall be given only at the beginning of the Lease term; (b) there shall be no step downs or other decreases in rent over the Lease term; (c) there shall be no expense stops that increase over the Lease term; and (d) there shall be no economic obligations on the landlord under the Lease in the future beyond maintaining the Property.

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Exhibit D

## PERMITTED ENCUMBRANCES

1. Taxes for 2004 and subsequent years, which are not yet due and payable.
2. Encroachment by the 2 story brick building located on Lot 1 of the Property over and upon the public alley north and adjoining by approximately 0.25 fee, as shown on Plat of Survey prepared by Craig R. Knoche & Associates Civil Engineers, P.C., 4-060 dated September 21, and redated October 28, 2004.

Property of Cook County Clerk's Office

Prudential Loan No. 6 105 294  
State-Walton, LLC(mortgage)

AT1 32192078.2 / 28227-000483