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2014

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



1436018024

Doc#: 1436018024 Fee: \$82.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 12/26/2014 10:37 AM Pg: 1 of 23

Report Mortgage Fraud
800-532-8785

The property identified as: PIN: 28-21-117-014-0000

Address:

Street: 5525 W 159TH ST

Street line 2:

City: OAK FOREST

State: IL

ZIP Code: 60452

Lender: UNION BANK & TRUST COMPANY

Borrower: MAR WAL IL, LLC

Loan / Mortgage Amount: \$15,511,406.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is commercial property.

Certificate number: E6C6C5C7-B360-455C-A6ED-4EE7735DF5CC

Execution date: 12/10/2014

NOV 23 2014

23

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Prepared by and after recording,
please return to:

Kutak Rock LLP
Two Pershing Square
2300 Main Street, Suite 800
Kansas City, Missouri 64108
Attn: John M. Keller

Tax PIN: 28-21-117-01070-017
Street Address: 5525 West 159th Street
Oak Forest, Illinois 60452

MORTGAGE AND FIXTURE FILING

(Oak Forest, Cook County, Illinois)

THIS MORTGAGE AND FIXTURE FILING ("**Mortgage**"), dated December 10, 2014, is executed by **Mar Wall IL, LLC**, a Florida limited liability company, having an address of 1172 South Dixie Highway #369, Coral Gables, Florida 33146 ("**Borrower**"), in favor of **Union Bank & Trust Company**, 11460 Tomahawk Creek Parkway, Suite 120, Leawood, Kansas 66211 ("**Lender**").

THIS MORTGAGE SECURES FUTURE ADVANCES UP TO A MAXIMUM PRINCIPAL INDEBTEDNESS OF \$15,511,406.00, TOGETHER WITH ALL ACCRUED AND UNPAID INTEREST, ADVANCES MADE TO PROTECT LENDER'S INTEREST IN THE PROPERTY, AND ALL OTHER ADVANCES ALLOWED UNDER APPLICABLE LAW.

This Mortgage encumbers certain real property described on Exhibit A, attached hereto and incorporated herein by reference, together with all Borrower's rights, privileges, royalties and easements relating thereto (the "**Real Property**").

RECITALS:

- A.** Borrower is the owner of all the Real Property;
- B.** On or about September 23, 2014, in consideration for Lender extending credit to Borrower in the total amount of \$15,511,406.00 ("**Loan**"), Borrower executed and delivered to Lender certain documents, including but not limited to the following:
1. a \$15,511,406.00 Promissory Note ("**Note**");
 2. a Loan and Security Agreement ("**Loan Agreement**");
 3. an Assignment of Leases, Rents and Profits ("**Lease Assignment**");
 4. an Environmental Indemnity Agreement ("**Indemnity**"); and
 5. UCC financing statements ("**UCCs**").
- C.** As additional security for the Loan, a certain individual comprising "**Guarantor**" (as defined in the Loan Agreement) has executed a Continuing Unlimited Guaranty on or about September 23, 2014 ("**Guaranty**").

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D. The Loan and above-referenced documents have been modified pursuant to a certain Loan Modification Agreement executed by Borrower and Lender on or about November 18, 2014 ("LMA").

E. The Note, Loan Agreement, Lease Assignment, Indemnity, UCCs, Guaranty, and this Mortgage, together with all other "Loan Documents" as defined in the Loan Agreement, as such documents have been modified by the LMA and may hereafter be modified from time to time, shall hereafter be referred to as the "**Loan Documents**".

F. All debts, obligations, responsibilities and liabilities presently and hereafter owed by Borrower and Guarantor under the Loan, which mature November 21, 2021, with interest thereon, together with all obligations and liabilities under the Loan Documents, and all extensions, renewals, amendments, and modifications thereof, including increases or decreases in the interest rate, extensions of the maturity date, and payment modifications (including deferrals or accelerations of principal or interest) shall hereafter be collectively referred to as the "**Indebtedness**".

CONVEYANCES, COVENANTS, REPRESENTATIONS AND WARRANTIES:

In consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, **BORROWER HEREBY IRREVOCABLY MORTGAGES, GRANTS, CONVEYS, ASSIGNS, AND TRANSFERS TO LENDER WITH POWER OF SALE TO HAVE AND TO HOLD** all of Borrower's present and hereafter acquired interests in and to the following, including all products and proceeds thereof, all of which shall be hereafter collectively referred to as the "**Mortgaged Property**":

- A. The Real Property;
- B. All buildings, structures, facilities, fixtures, and other improvements now existing or hereafter located on the Real Property ("**Fixtures**");
- C. All items of tangible and intangible personal property now or hereafter attached to, located in or on, and used in connection with, the Real Property, including but not limited to the following (collectively, "**Personal Property**"): **i)** all Borrower owned furniture, fixtures, inventory, and equipment; **ii)** all rental agreements, leases, management agreements, franchise agreements, trademarks, trade names, insurance policies and proceeds, condemnation proceeds, and all general intangibles with respect to the Real Property; **iii)** all documents, instruments, securities, goods, accounts, accounts receivable, and contract rights; and **iv)** all property now or hereafter in Lender's possession;
- D. All leases, licenses, occupancy agreements and related agreements (collectively, "**Leases**"), and all rents, cash, security deposits, income, and revenue of all kinds that arise out of, or relate to, the Real Property, Fixtures, or Personal Property, including—but not limited to all revenue realized from the Leases (collectively, "**Rents**");
- E. All water rights, water stock, oil and gas rights, rights of way, easements, tenements, hereditaments, and privileges now or hereafter used or enjoyed with the Real Property; and
- F. All Borrower's interest in any taking of any portion of the Real Property by any power of eminent domain, by any proceeding, conveyance or purchase in lieu thereof, or through other governmental action, and all awards, proceeds, or other compensation payable in connection therewith.

TO HAVE AND TO HOLD the said Mortgaged Property with all and singular the rights, privileges and appurtenances thereon belonging, to the use and benefit of Lender forever. This conveyance is made for the purpose of securing performance and payment in full of the indebtedness as set forth in the Loan Documents.

AND Borrower further represents, warrants, covenants and agrees as follows:

1. **RECITALS.** The recitals listed above form an integral part of this Mortgage and are fully binding upon Borrower.
2. **COMPLIANCE WITH THIS MORTGAGE AND THE LOAN DOCUMENTS.** Borrower shall comply with all provisions of the Note, Loan Agreement, this Mortgage, and all other Loan Documents. Borrower shall pay promptly to Lender the principal with interest thereon and all other sums

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required to be paid by Borrower under the Note. Borrower shall promptly perform all duties, fully discharge all obligations, and actively fulfill all warranties and representations in strict accordance with the Loan Documents. All sums payable by Borrower shall be paid without demand, offset, counterclaim, deduction, reduction or defense. To the maximum extent permitted by law, Borrower hereby waives all rights now or hereafter conferred by statute or otherwise to any such demand, offset, counterclaim, deduction, reduction or defense.

3. WARRANTY AND COVENANT OF OWNERSHIP. As of the date hereof, Borrower represents, warrants and covenants that Borrower **a)** is, and, as to any portion of the Mortgaged Property acquired hereafter, will upon such acquisition be, the owner of the Mortgaged Property and all legal and beneficial interests therein, free and clear of all Liens and Encumbrances, other than the Permitted Encumbrances; **b)** is the owner of the Premises in fee simple; and **c)** shall remain the owner of the entire Mortgaged Property and all legal and beneficial interests free and clear of all Liens and Encumbrances, other than the Permitted Encumbrances. As used herein, **i)** "**Lien or Encumbrance**" and "**Liens and Encumbrances**" mean, respectively, each and all of the following in respect of the Mortgaged Property, other than Permitted Encumbrances and other matters expressly permitted by this Mortgage: leases, other rights to occupy or use, mortgages, deeds of trust, pledges, security agreements, assignments, assignments as security, conditional sales, title retention arrangements or agreements, conditions, covenants, and restrictions and other liens or adverse interests, whether voluntarily or involuntarily created and regardless of whether prior or subordinate to any estate, right, title, or interest granted to Lender in this Mortgage; and **ii)** "**Permitted Encumbrances**" means those liens, leases, clouds, easements, contracts, commitments and encumbrances that Lender may accept on its policy of title insurance insuring this Mortgage, except any exception arising from liens for unpaid taxes and all preprinted and/or standard exceptions and exclusions appearing thereon, and any other similar matter that is expressly permitted in the Loan Documents or that Lender expressly approves in writing.

4. LIEN. Borrower warrants and represents that the lien of this Mortgage is a first mortgage lien that is valid and enforceable in all respects. If at any time Lender is unable to obtain satisfactory title insurance insuring such lien as a valid first lien, Lender shall have the option of declaring an Event of Default under this Mortgage.

5. ZONING; COMPLIANCE WITH LAWS. As of the date hereof and continuing for so long as this Mortgage (as may be modified from time to time) remains in effect, Borrower hereby represents and warrants as follows: **a)** the Loan was lawfully and validly made by Lender to Borrower; **b)** no consent, approval or other authorization is required with respect to this transaction from any person or under any document by which Borrower is obligated or bound; **c)** the Loan was made and accepted for lawful business purposes; **d)** each of the Loan Documents has been properly executed and delivered by Borrower or Guarantor, as applicable, for valuable consideration; **e)** each of the Loan Documents is fully enforceable in accordance with the terms thereof without set-off, defenses, avoidance, counterclaim, or objection of any kind; **f)** there is no person or entity in possession of or entitled to possession of the Mortgaged Property or any part or aspect thereof other than interests listed as Permitted Encumbrances; **g)** there is no litigation or similar proceeding pending, or to the actual knowledge of Borrower, threatened against the Mortgaged Property or Borrower; **h)** Borrower shall preserve and protect the Mortgaged Property and all of the collateral of the Loan to ensure that Lender's security interests and all benefits therefrom shall be preserved and protected, without caveat or condition; **i)** Borrower is solvent and has not filed for relief under the United States Bankruptcy Code or made any assignment for the benefit of creditors during the past three (3) years; **j)** except as otherwise provided in the Loan Agreement, at all times the Mortgaged Property shall be used and operated only as a Walgreens pharmacy and retail store, and the use of the Mortgaged Property shall not be changed without the prior written consent of Lender, which consent may be withheld in Lender's sole discretion; and **k)** Borrower shall not sell, assign, mortgage or otherwise convey any interest in the Mortgaged Property.

6. NO FURTHER ENCUMBRANCES. As material inducements to Lender to make the Loan evidenced by the Note, Borrower unconditionally acknowledges that the Mortgaged Property or any portion or aspect of the Mortgaged Property shall not be further encumbered by any matter for any reason other than those liens listed as Permitted Encumbrances. The attachment or imposition of any lien, cloud, easement or encumbrance of any kind other than Permitted Encumbrances shall automatically constitute an Event of Default hereunder. Borrower hereby unconditionally and irrevocably acknowledges that this

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provision absolutely precludes any further encumbrance of any kind or nature whatsoever. The materiality, significance, economic impact and financial consequences of any lien, cloud, easement or encumbrance shall be irrelevant and immaterial and shall not affect, alter or dilute the enforcement of this provision by any court of competent jurisdiction.

7. REPRESENTATIONS, WARRANTIES AND COVENANTS. As of the date hereof and continuing for so long as this Mortgage (as may be modified from time to time) remains in effect, Borrower hereby represents and warrants as follows: **a)** the Loan was lawfully and validly made by Lender to Borrower; **b)** no consent, approval or other authorization is required with respect to this transaction from any person or under any document by which Borrower is obligated or bound; **c)** the Loan was made and accepted for lawful business purposes; **d)** each of the Loan Documents has been properly executed and delivered by Borrower or Guarantor, as applicable, for valuable consideration; **e)** each of the Loan Documents is fully enforceable in accordance with the terms thereof without set-off, defenses, avoidance, counterclaim, or objection of any kind; **f)** there is no person or entity in possession of or entitled to possession of the Mortgaged Property or any part or aspect thereof other than interests listed as Permitted Encumbrances; **g)** there is no litigation or similar proceeding threatened or pending against the Mortgaged Property or Borrower; **h)** Borrower shall preserve and protect the Mortgaged Property and all of the collateral of the Loan to ensure that Lender's security interests and all benefits therefrom shall be preserved and protected, without caveat or condition; **i)** Borrower is solvent and has not filed for relief under the United States Bankruptcy Code or made any assignment for the benefit of creditors during the past three (3) years; **j)** at all times the Mortgaged Property shall be used and operated only as a Walgreens pharmacy and retail store, and the use of the Mortgaged Property shall not be changed without the prior written consent of Lender, which consent may be withheld in Lender's sole discretion; and **k)** Borrower shall not sell, assign, mortgage or otherwise convey any interest in the Mortgaged Property.

8. FURTHER ASSURANCES. Borrower shall, from time to time, execute and deliver to or at the direction of Lender such further assurances as Lender may reasonably require for the purpose of evidencing, perfecting or confirming the Indebtedness, and the liens and the security interests created by the Loan Documents. Immediately upon Lender's request, Borrower shall execute and deliver or cause to be executed and delivered to Lender and, where appropriate shall cause to be recorded or filed, at such time and in such places as shall be deemed desirable by Lender, all such further mortgages, instruments, certificates and other documents as Lender may request to effectuate, complete, enlarge, perfect, continue and preserve **a)** the obligations of Borrower under the Loan Documents; and **b)** the lien of this Mortgage as a valid lien upon all of the Mortgaged Property. Upon any failure by Borrower to do so, Lender may execute, record, file, re-record, or re-file any and all such mortgages, instruments, certificates and documents for and in the name of Borrower.

9. HAZARDOUS WASTE. After due inquiry and investigation, Borrower unconditionally represents and warrants to the best of its knowledge that: **a)** the Mortgaged Property is now in full compliance with all Environmental Laws (as hereinafter defined); **b)** no portion of the Mortgaged Property has ever contained either asbestos, PCB's or other toxic materials, whether used in construction or stored on the Mortgaged Property; **c)** all aboveground and underground storage tanks on the Mortgaged Property have been properly registered as required by all applicable laws and regulations; **d)** there are no Hazardous Substances (as hereinafter defined), the presence of which is limited, regulated or prohibited by any federal, state or local governmental authority or agency having jurisdiction over the Mortgaged Property, or which are otherwise known to pose a hazard to health or safety of occupants of the Mortgaged Property, located on, in or under the Mortgaged Property or used in connection therewith; and **e)** Borrower has not received notice of any past, present or future events, conditions, circumstances, activities, practices, incidents, actions or plans which may interfere with or prevent compliance or continued compliance with any Environmental Law or any regulation, code, plan, order, decree, judgment, injunction, notice or demand letter issued, entered, promulgated or approved thereunder, which may give rise to any statutory or common law legal liability or otherwise form the basis of any claim, action, demand, suit, proceeding, hearing, study or investigation, based on or related to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling, or the emission, discharge, release or threatened release into the environment, of any Hazardous Substance with respect to the Mortgaged Property.

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Borrower hereby unconditionally and irrevocably indemnifies Lender and holds Lender completely harmless from and against any and all claims, losses, liabilities, penalties, fines and expenses (including reasonable attorneys', expert, and consultant fees and costs) of every kind and nature asserted, imposed, sanctioned, assessed, incurred or suffered by Lender as a result of any matter that: **a)** is contrary to the warranties contained in this Mortgage; or **b)** relates to or arises from the presence of any Hazardous Substance on the Mortgaged Property. This indemnification shall apply regardless of whether Lender's involvement in an environmental issue arises from Lender's position as Lender, owner, operator, or otherwise.

As used herein, "**Environmental Law**" means any federal, state or local statutory or common law, ordinance, rule or regulation, relating to pollution or protection of the environment, including, without limitation, any common law of nuisance or trespass, and any law, rule or regulation relating to emissions, discharges, releases or threatened releases of pollutants, contaminants or chemicals, or industrial, toxic or Hazardous Substances or wastes into the environment (including, without limitation, ambient air, surface water, ground water, land surface or subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants or chemicals or industrial, toxic or Hazardous Substances or wastes.

As used herein, "**Hazardous Substance**" means any substance or material **a)** identified in Section 101(14) of CERCLA, 42 USC Section 9601 (14) and as set forth in Title 40, Code of Federal Regulations, Part 302, as the same may be amended from time to time; or **b)** determined to be toxic, a pollutant or contaminant, under federal, state or local statute, law, ordinance, rule, or regulation or a judicial or administrative order or decision, as the same may be amended from time to time; **c)** asbestos; **d)** radon; **e)** polychlorinated biphenyls, and **f)** such other materials, substances or wastes which are otherwise generally recognized as dangerous, hazardous, or harmful to human health or the environment.

Lender shall have the right to enter the Mortgaged Property at reasonable times and perform, by its agents or employees, such environmental inspections and audits as shall be deemed necessary by Lender in its sole and unfettered discretion. The cost of any such environmental inspections or audits shall be paid by Borrower.

10. TAXES AND ASSESSMENTS. Borrower shall bear full and complete responsibility for, and shall promptly pay, or cause to be paid, all real estate taxes, charges, impositions, assessments (including special assessments), stamps and other obligations (together with any interest or penalties associated therewith) and any other charges against the Mortgaged Property heretofore or hereafter arising under or imposed by the United States Government or other federal, state, county or local governmental agency or subdivision in connection with the Mortgaged Property, the debt instruments, the security instruments, or the transaction evidenced by the Loan Documents other than income and franchise taxes incurred by Lender ("**Taxes**"). All such payments shall be made when due and payable according to law before they become delinquent and before any interest attaches or any penalty is incurred. Borrower shall furnish to Lender within three (3) days of Lender's request copies of receipts evidencing the timely payment of all Taxes ("**Tax Receipts**"). Any delay in compliance with the obligations of this paragraph shall constitute an uncontestable and actionable Event of Default.

11. INSURANCE. Borrower shall keep the Mortgaged Property (and particularly the improvements now existing or hereafter erected on the Mortgaged Property) fully insured against all hazards and contingencies in amounts which are equal to the maximum insurable value of the Mortgaged Property with an endorsement guaranteeing replacement coverage for all improvements thereon, and for such periods as may be required by Lender from time to time or at any time, in Lender's reasonable discretion. Borrower shall also maintain, or cause to be maintained, "all risk" insurance and comprehensive general liability insurance covering personal injury and property damage in an amount not less than \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate. Borrower shall be responsible for paying, or causing to be paid, all premiums on such insurance ("**Premiums**") and shall furnish to Lender within three (3) days of Lender's request copies of receipts evidencing the timely payment of all Premiums ("**Premium Receipts**"). All insurance shall be carried with companies pre-approved by Lender and the policies and all renewals, or certificates therefor, shall be held by Lender and shall have attached thereto a standard mortgage clause and a separate Lender's loss payable clause in Lender's favor. Such insurance shall also contain: **a)** a requirement that the insurer give Lender thirty (30) days prior written

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notice before any coverage is cancelled or modified; **b)** flood insurance, if any portion of the Mortgaged Property is located in a flood plain; **c)** earthquake insurance, if any portion of the Mortgaged Property is located in an earthquake zone; **d)** hurricane insurance, if any portion of the Mortgaged Property is located in a hurricane zone; **e)** environmental insurance, if an environmental assessment report reveals any potential ongoing environmental concerns with respect to any portion of the Mortgaged Property; **f)** law and ordinance insurance, providing Coverage A: "Loss Due to Operation of Law" (with a minimum liability limit equal to Replacement Cost With Agreed Value Endorsement), Coverage B: "Demolition Cost" and Coverage C: "Increased Cost of Construction", if any use of the Mortgaged Property, now or at any time during the term of the Loan, does not comply with current applicable building, zoning or land use laws, ordinances or regulations; and **g)** coverage for any other insurable hazards or casualties which at the time are commonly insured against in the case of property similarly situated including, without limitation, Sinkhole and Mine Subsidence insurance. Lender has been provided one or more certificates of property and liability insurance (collectively, the "**Insurance Certificate**") being provided for the Mortgaged Property by Walgreens Co., an Illinois corporation ("**Walgreens**") pursuant to its lease agreement with Borrower ("**Walgreens Lease**"). By making the Advance (as defined in the Note) to finance a portion of Borrower's purchase price for the Mortgaged Property, Lender shall be deemed to have reviewed and approved the property and liability insurance contained in the Certificate as of the date of such Advance. In the event of loss, Borrower shall give immediate written notice to Lender and Lender may make proof of loss if not made promptly by Borrower. Each insurance company insuring the Mortgaged Property is hereby authorized and directed to make payments for such loss directly to Lender alone, rather than to Borrower or to Borrower and Lender jointly. Borrower shall not settle or otherwise compromise any claim for insurance proceeds without Lender's prior written consent, which consent may be withheld in Lender's reasonable discretion. Lender may, at its sole discretion, apply such insurance proceeds to any or all of the following, or any combination thereof: **x)** all reasonable costs, expenses and attorneys' fees incurred in connection with the enforcement of this section and the collection of such insurance proceeds; **y)** payment of all amounts outstanding under the Note and other Loan Documents, either in whole or in part, which payment shall be applied first to any interest and other charges then due and owing under the Note and other Loan Documents in any order determined by Lender in its sole and unfettered discretion, with the balance to be applied as a prepayment of principal under the Note; and **z)** repair or replacement, either partly or entirely, of any part of the Mortgaged Property so destroyed or damaged, in which case Lender may impose such terms, conditions and requirements for the disbursement of such proceeds for such purposes as it, in its sole and unfettered discretion, deems advisable. Notwithstanding the foregoing, Lender agrees that so long as the Walgreens Lease is in full force and effect without breach by Walgreens, Lender shall not apply insurance proceeds in any manner that would cause a default under the Walgreens Lease. Lender shall not be a trustee with respect to any such insurance proceeds, and may commingle insurance proceeds with its funds without obligation to pay interest thereon. Lender is hereby authorized to settle and compromise (in Lender's sole and unfettered discretion) all claims, awards, damages, rights of action and proceeds, and all other payment and relief under any insurance policy. In the event of foreclosure of the lien created by this Mortgage, or other transfer of title to the Mortgaged Property, all right, title, and interest of Borrower in and to any insurance policies then in force shall pass to the purchaser or grantee. In the event of default under any of the terms, covenants and conditions to be performed or observed by Borrower under this Mortgage or any of the Loan Documents, which is not cured within any applicable Cure Period (as defined in the Loan Agreement), Lender may cancel any insurance policy as and when Lender deems appropriate and replace such policy with insurance satisfactory to Lender.

12. CONDEMNATION. If any material part of the Mortgaged Property shall be damaged or taken through condemnation or eminent domain (which term when used herein shall include any damage or taking by any governmental authority or any other authority authorized by the laws of the State in which the Mortgaged Property is located or the United States of America to so damage or take by eminent domain, and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire Indebtedness and all other sums secured hereby shall (at the sole option of Lender) become immediately due and payable, and Lender shall be entitled to all claims, rights of action awards, settlement recoveries, damages, compensations, and proceeds from or on account of any taking or damage through condemnation or eminent domain. Lender is hereby authorized to commence, appear in and prosecute (in its own name or in Borrower's name) any action or proceeding relating to any condemnation, and to

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settle or compromise any claim in connection therewith. All such claims, rights of action, settlement recoveries, awards, damages, compensations, proceeds, and other payments or relief, and all rights thereto, are hereby assigned to, and shall be paid directly and solely to, Lender, with Lender to apply such proceeds as provided below. Each condemning authority is hereby authorized and directed to make all eminent domain or condemnation awards and payments directly to Lender alone, rather than to Borrower or to Borrower and Lender jointly. Borrower shall not settle or otherwise compromise any claim for eminent domain or condemnation of proceeds or awards without Lender's prior written consent, which consent may be withheld in Lender's sole discretion. Lender may, at its sole discretion, apply such condemnation proceeds to any or all of the following or any combination thereof: a) all costs, expenses and attorneys' fees incurred in connection with the enforcement of this Section and the collection of such condemnation proceeds; b) payment of all amounts outstanding under the Note and other Loan Documents, either in whole or in part, which payment shall be applied first to any interest and other charges then due and owing under the Note and other Loan Documents in any order determined by Lender in its sole and unfettered discretion, with the balance to be applied as a prepayment of principal under the Note; and c) replacement or restoration, either partly or entirely, of any part of the Mortgaged Property so taken through condemnation or eminent domain, in which case Lender may impose such terms, conditions and requirements for the disbursement of such proceeds for such purposes as it, in its sole and unfettered discretion, deems advisable. Notwithstanding the foregoing, Lender agrees that so long as the Walgreens Lease is in full force and effect without breach by Walgreens, Lender shall not apply condemnation proceeds in any manner that would cause a default under the Walgreens Lease. Lender shall not be a trustee with respect to any such condemnation or eminent domain proceeds, and may commingle such proceeds with its funds without obligation to pay interest thereon. The assignment effected hereby and Lender's right to damages or awards arising from any condemnation shall not be extinguished by any foreclosure or by the acceptance of any deed-in-lieu of foreclosure or otherwise. This assignment shall survive and shall remain absolute notwithstanding the status of this Mortgage, unless previously released, or the amount of the Indebtedness secured hereby. No part of the Mortgaged Property has been or will be taken in condemnation or other like proceedings to an extent that would impair the value of the Mortgaged Property, this Mortgage, the Loan or the usefulness of the Mortgaged Property for the use described in the "Representations and Warranties" Section of this Mortgage, nor is any proceeding pending, threatened, or known to be contemplated for the partial total condemnation or taking of the Mortgaged Property.

13. CARE OF MORTGAGED PROPERTY. Borrower shall not remove, demolish, transfer or encumber any property forming a part of the Mortgaged Property (except in the ordinary course of business and only if promptly replaced with property of equal or greater value) without the prior written consent of Lender. Borrower shall not permit, commit, or suffer any waste, impairment or deterioration of the Mortgaged Property or any part thereof, and shall keep the same and all improvements thereon in good condition and full repair. Borrower shall notify Lender in writing within three calendar days of any damage to, or impairment of, the Mortgaged Property.

14. INSPECTIONS. Lender may at any time during normal business hours, following reasonable prior notice to Borrower, and without interference with any tenant under any Lease, inspect the Mortgaged Property and Borrower shall pay all costs incurred by Lender in executing such inspection. Borrower shall permit Lender and its employees, contractors, environmental consultants, engineers, surveyors, inspectors and other agents to enter in and upon the Mortgaged Property at all reasonable times to make inspections and for all other lawful purposes. Borrower irrevocably authorizes and consents to allowing Lender and its agents to enter the Mortgaged Property or any other premises for the purpose of taking possession of the Mortgaged Property after any Event of Default, not cured within any applicable Cure Period contained in the Loan Agreement. Borrower waives all rights to assert any claim based upon trespass or conversion or any other cause of action for entering the Mortgaged Property or any other premises or seizing any of the Mortgaged Property wherever located.

15. APPRAISALS. From time to time, but not more frequently than one time in the any calendar year (except as otherwise provided in Section 5 (c) of the Loan Agreement), Lender may procure (at Borrower's sole expense) a current valuation appraisal of the Mortgaged Property reflecting the "as is" fair market value of the Mortgaged Property as of a date within thirty (30) days before the date of the request. The cost of all such appraisals obtained by Lender after the first anniversary of this

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Mortgage shall be payable upon demand and shall be added to the principal balance of the Note if not so paid. The valuation appraisal shall be performed by a duly qualified, experienced and licensed appraiser pre-approved by Lender. The appraisal shall consider and reconcile in narrative form all appropriate valuation techniques and shall conclude with an opinion consistent with generally accepted appraisal techniques. The appraisal shall be codified in a written report addressed to Lender and Lender shall be expressly authorized to rely upon the data and opinions reflected therein; provided, however, that any data or opinions reflected in any appraisal report furnished to Lender pursuant hereto or otherwise shall not be binding upon Lender for any purpose and, if rejected by Lender (for any reason in Lender's sole and unfettered discretion), shall be inadmissible for any and all purposes in any action or proceeding involving the Mortgaged Property or the parties hereto.

16. PRESERVATION EXPENSES. Borrower shall promptly pay, or cause to be paid, all the costs, charges and expenses (including reasonable attorneys' fees and disbursements) to protect or preserve the Mortgaged Property. If Borrower fails to pay and discharge, or cause to be paid and discharged, all amounts promptly, Lender may (but shall not be obligated to) pay and discharge such amounts and Lender shall receive reimbursement in accordance with this Mortgage.

17. FINANCIAL RECORDS. Borrower shall provide Lender, at Borrower's sole cost and expense, all financial information required by Lender, and shall, upon reasonable notice, permit Lender, by Lender's employees, agents, accountants and attorneys, to visit and inspect the Mortgaged Property and examine and make extracts from its records and books of account and to discuss its affairs, finances, and accounts with Borrower and the officials and principals of Borrower, at such reasonable times as may be requested by Lender.

18. LENDER'S RIGHT TO MAKE PAYMENTS. If Borrower fails to pay or discharge, or cause to be paid or discharged, any Taxes, Premiums or Permitted Encumbrances when and as required, or fails to keep, or cause to be kept, the Mortgaged Property insured or fails to deliver the insurance policies (with Premiums paid), or fails to maintain, repair, protect and preserve, or cause to be maintained, repaired, protected and preserved, the value of the Mortgaged Property in any manner reasonably required or requested by Lender, or fails to fulfill any other obligation hereunder to protect or preserve the value of the Mortgaged Property, Lender may (at Lender's sole option) pay or discharge any or all of such Taxes, Permitted Encumbrances, Premiums, fees, liabilities, obligations, encumbrances, mortgage liens, and other charges, or any part thereof in order to protect and preserve the value of the Mortgaged Property. Lender shall have no obligation to determine the validity thereof or necessity of any payment therefor and any such payment shall not waive or affect any option, lien, equity or right of Lender under or by virtue of this Mortgage or otherwise. The full amount of each such payment made by or at the direction of Lender shall be immediately due and payable to Lender without notice, and shall bear interest from the date thereof until paid at the Default Rate as defined in the Note. All amounts paid or advanced by Lender in connection with the Mortgaged Property, together with such interest thereon at the Default Rate as set forth in the Note, shall be secured by the liens of this Mortgage and the Loan Documents. If Borrower fails to reimburse Lender within ten (10) days for funds advanced or expended by Lender hereunder, such failure shall constitute an additional event of default under this Mortgage and the Loan Documents. Notwithstanding the foregoing, nothing contained herein shall be construed as requiring Lender to advance or expend any sums for any purpose.

19. SUITS TO PROTECT THE MORTGAGED PROPERTY. Lender shall have power to a) institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or any violation of this Mortgage, b) preserve and protect its interest in the Mortgaged Property and in the income, revenues, rents and profits arising therefrom, and c) restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of Lender. All amounts advanced hereunder by Lender shall constitute Indebtedness secured hereby and shall be payable by Borrower upon demand.

20. SECURITY AGREEMENT.

a) This Mortgage also serves as a first and prior security interest under the Uniform Commercial Code of the State of Kansas, as amended from time to time ("UCC") with respect to

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the Personal Property, Fixtures and all other tangible and intangible property comprising the Mortgaged Property. To this end, Borrower, as debtor, has GRANTED, BARGAINED, CONVEYED, ASSIGNED, TRANSFERRED and SET OVER unto Lender, as secured party, a first and prior security interest in and to all of Borrower's right, title and interest in the Personal Property, Fixtures and other Mortgaged Property (collectively, "**Collateral**"), in trust, to secure the full and timely payment of the Indebtedness.

b) Lender shall have, in addition to all rights and remedies provided in the Loan Documents and this Mortgage with respect to the Real Property, all the rights and remedies of a "secured party" under the UCC. This Mortgage constitutes and shall be deemed to be a "security agreement" for all purposes of the UCC, and to the extent permitted by law, this Mortgage, once properly filed with the recorder's office of the county wherein the Personal Property, Fixtures and other Mortgaged Property are located, shall also be deemed a fixture filing financing statement which perfects Lender's security interests in such property.

c) Subsequent to the continuation of any Event of Default beyond the applicable cure period contained in the Loan Agreement (if any), Lender may without notice (except as hereinafter provided) sell any or all of the Personal Property, Fixtures and other Mortgaged Property at public or private sale (with or without appraisal or having such property at the place of sale) for cash, upon credit, or for future delivery. The Personal Property, Fixtures and other Mortgaged Property shall be sold at such prices as Lender deems best, and Lender may be the purchaser of any or all of such property so sold and may apply against the purchase price therefor any or all of the Indebtedness. Lender shall give Borrower written notice at the address set forth herein (which shall satisfy any requirement of notice or reasonable notice in any applicable statute) of Lender's intention to make any such public or private sale. Such notice shall be personally delivered or mailed, postage prepaid, at least ten (10) calendar days before the date fixed for a public sale, or at least ten (10) calendar days before the date after which a private sale or other disposition is to be made. In the case of public sale, such notice shall state the time and place fixed for such sale. In the case of private sale, such notice shall state the time after which the sale or other disposition is to be made. Borrower shall remain liable for any deficiency balance of the Indebtedness which remains upon sale of the Personal Property, Fixtures and other Mortgaged Property and the application of the proceeds.

d) Lender shall have all the rights of a secured party after any Event of Default under the UCC, including but not limited to the right to require Borrower to assemble all documents relating to the Personal Property, Fixtures and other Mortgaged Property and to make such documents and items available at a place Lender designates. Before applying the sale proceeds to the Indebtedness, such proceeds shall be applied to the reasonable expenses of retaking, holding, preparing for sale or lease, selling and leasing such property, together with reasonable attorneys' fees and legal expenses incurred by Lender. Borrower hereby waives demand of performance, advertisement and presence of property at the sale, together with any right Borrower may have to require Lender to pursue any other remedy for the benefit of Borrower. Lender may, at its election, at any time after delivery of this Mortgage, file an original of this Mortgage as a financing statement or sign one or more copies of this Mortgage to use as a UCC financing statement. Borrower covenants and agrees to execute all additional documents and instruments requested by Lender for the attachment or perfection of the security interests contained herein. Borrower further authorizes Lender to file any and all UCC financing statements, without Borrower's signature as "debtor", as necessary to perfect the security interests contained herein.

e) If there is any conflict between this security agreement and another security agreement given by Borrower to Lender, this security agreement will control as to Fixtures and the other security agreement will control as to all Personal Property other than Fixtures.

f) This Mortgage also constitutes and shall be effective as a financing statement for the purpose of the UCC and shall constitute a "fixture filing" under such statutes and shall be filed in the real estate records of the County in which the Land is located. For such purpose the name and address of the debtor and the secured party are as set forth below:

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Name and Address of Debtor: Mar Wall IL, LLC
1172 South Dixie Highway #369
Coral Gables, Florida 33146

Address of Property: 5525 West 159th Street
Oak Forest, Illinois 60452

Debtor's Taxpayer I.D. No.: 61-1748053

Name and Address of Secured Party: Union Bank & Trust Company
11460 Tomahawk Creek Parkway, Suite 120
Leawood, Kansas 66211

This financing statement covers the Collateral. Some of the items or types of property comprising the Collateral are or are to become fixtures on the Real Property. Borrower is the record owner of the Real Property described herein upon which the foregoing fixtures and other items and types of property are located.

21. AFTER ACQUIRED PROPERTY. The lien of this Mortgage shall automatically attach (without further act or notice) to all after acquired property of Borrower, of whatever kind, located in, on, or attached to, or used or intended to be used in connection with, or in the operation of, the Mortgaged Property.

22. EVENTS OF DEFAULT. Any one of the following shall constitute an "Event of Default":

- a) The occurrence of any "Event of Default" as defined in the Loan Agreement or any other Loan Document.
- b) Failure by Borrower to keep exclusive fee simple title to the Mortgaged Property and keep the Mortgaged Property completely free from any lien, cloud, easement and encumbrance of every kind (with the exclusive exception of Permitted Encumbrances).
- c) Failure by Borrower to duly keep, properly perform, timely observe or fully discharge any monetary or non-monetary covenant, warranty, condition, obligation or agreement in this Mortgage or any other Loan Document to which it is a party.
- d) Any breach of any warranty or falsity of any representation contained herein.

23. ACCELERATION. Notwithstanding any established maturity date or other provisions regarding installment payments, all amounts payable or chargeable under the Note or under any of the Loan Documents may automatically become immediately due and payable at Lender's option if any Event of Default shall occur and continue beyond the applicable cure period provided in the Loan Agreement (if any). The acceleration of the payment obligations may be automatic, self-effectuating, and instantaneous at Lender's option, and Lender shall not be obligated to provide any further notice whatsoever or take any affirmative action of any kind in order to effectuate this acceleration of the Indebtedness.

24. REMEDIES. Lender's remedies as provided in the Loan Documents shall be cumulative and concurrent, and may be pursued individually, successively, or together, at Lender's sole and absolute discretion. Borrower acknowledges and consents that Lender shall not be required or obligated to elect or select remedies and no election of remedies shall be implied or imposed. Lender shall not be required or obligated to pursue or exhaust any right or remedy against any person or property before pursuing rights or remedies against any other person or property that is obligated or may be liable to Lender under the Loan Documents or otherwise.

Upon the occurrence of any Event of Default and the expiration of any applicable grace or cure period provided for in the Loan Agreement (if any): **a)** at Lender's option, the outstanding principal balance of the Indebtedness, all accrued and unpaid interest, and all other sums payable in connection with the Indebtedness shall immediately become due and payable in full, without notice, demand, or any other action; and **b)** Lender shall have the right to enforce all of its liens and security interests, and

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exercise all of its rights or remedies, in accordance with the provisions of the Loan Documents, applicable law, and/or principles of equity, in any order, manner, or combination from time to time. It is the intention of the parties that this Mortgage shall confer upon the Lender the fullest rights, remedies and benefits available under applicable law. Lender may:

24.1. Demand for Payment.

Demand payment of the Indebtedness in full by formal notice.

24.2. Judicial Foreclosure.

Institute a proceeding or proceedings, judicial or otherwise, for the complete or partial foreclosure of this Mortgage as a mortgage under the law of the State in which the Real property is located as to any or all of the Mortgaged Property, under any applicable provision of law.

24.3. Foreclosure Sale.

Obtain an order directing the Sheriff of the County in which the Mortgaged Property is located or any other person or entity authorized by applicable law or a court of competent jurisdiction to sell Borrower's interest in the Mortgaged Property, and all estate, right, title, interest, claim and demand of Borrower therein, and all rights of redemption thereof, at one or more sales, as an entirety or in parcels, with such elements of real and personal property (and, to the extent permitted by applicable law Lender, may elect to deem all of the Mortgaged Property to be real property for purposes thereof) as Lender may deem expedient, in accordance with applicable law. To the fullest extent permitted by law, after any such sale the Borrower will be completely and irrevocably divested of all of its right, title, interest, claim and demand whatsoever, in both law and equity, in and to the property sold, and the sale will be a perpetual bar against Borrower and all other persons claiming the property sold or any part of it, by, through, or under Borrower. Lender may be a purchaser at any sale and its bid price may be credited to the Indebtedness in the manner and order provided herein in lieu of the payment of cash.

24.4. Suit for Collection of Indebtedness.

Lender may sue and recover a judgment on the Indebtedness, and may execute on such judgment and take any other actions to enforce the collection thereof in any manner permitted by law.

24.5. Collection of Revenues and Rents.

With or without entrance upon or taking possession of the Mortgaged Property, Lender may collect and receive all earnings, revenues, rents, issues, profits, income and cash collateral derived from the Mortgaged Property, and may make demand directly to any or all tenants of the Mortgaged Property for payment of such items directly to Lender.

24.6. Release of Mortgaged Property.

Lender may release any portion of the Mortgaged Property for such consideration as Lender may reasonably require without in any way impairing or affecting the lien or priority of this Mortgage on the remainder of the Mortgaged Property.

24.7. Surrender of Mortgaged Property.

Upon Lender's demand, Borrower shall surrender to Lender the actual possession of the Mortgaged Property and, to the extent permitted by law, Lender may enter and take possession of the Mortgaged Property and may exclude Borrower and Borrower's agents and employees wholly therefrom. If Lender exercises its rights under this sub-paragraph, Lender shall be deemed to be acting as agent of Borrower and not as owner of the Mortgaged Property.

24.8. Judgment Following Failure to Surrender.

If Borrower shall, for any reason, fail to surrender or deliver the Mortgaged Property after Lender's demand, Lender may commence proceedings, in unlawful detainer or otherwise, to obtain a judgment or decree giving Lender the right to immediate possession of the Mortgaged Property, and Borrower hereby specifically consents to the entry of such judgment or decree.

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24.9. Reimbursement of Expenses.

Upon Lender's demand, Borrower shall pay, or reimburse Lender for the payment of, all expenses, including without limitation reasonable attorneys' fees incurred by Lender in obtaining any judgment or decree or in enforcing any other rights or remedies under this Mortgage, any other Loan Document, or applicable law. All of such expenses shall be part of the Indebtedness.

24.10. Control and Management of the Mortgaged Property.

Upon taking possession of the Mortgaged Property, Lender may: **a)** hold, store, and use the Mortgaged Property; **b)** conduct the business thereof; **c)** from time to time make all reasonably necessary maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon, and purchase or otherwise acquire additional fixtures, personalty and other property; **d)** insure the Mortgaged Property and exercise all the rights and powers with respect to the same; **e)** manage and operate the Mortgaged Property and exercise all rights and powers with respect to the same; and **f)** enter into any and all agreements deemed necessary with respect to the use, operation, management, and control of the Mortgaged Property.

24.11. Simultaneous or Separate Foreclosures.

Subject to Borrower's failure to exercise its right under applicable law to direct the manner in which the Mortgaged Property is sold, Lender may elect to sell the Mortgaged Property as a whole or in separate parcels, all as may be determined by Lender in its sole discretion.

24.12. Application of Proceeds.

Any and all proceeds realized from: **a)** any foreclosure sale of the Mortgaged Property; **b)** any and all Rents derived from the Mortgaged Property; and **c)** any combination of the foregoing, shall be applied in the following order: **s)** first, to all costs and expenses incurred in connection with any foreclosure sale or remedies pursued hereunder; **t)** then to all expenses related to the taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes); **u)** then to all costs incurred by Lender for maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases, and acquisitions with respect to the Mortgaged Property; **v)** then to the cost of insurance paid for by Lender; **w)** then to taxes, assessments, and other charges prior to the lien of this Mortgage as Lender may determine to pay; **x)** then to the reasonable compensation to, and expenses and disbursements of, Lender's attorneys and agents; **y)** then in satisfaction of the Indebtedness in such order as is specified in the Loan Agreement, or any other Loan Document, or as Lender otherwise determines; and **z)** the surplus, if any, to whomever is entitled according to law.

24.13. Attorney-in-fact.

Borrower hereby irrevocably constitutes and appoints Lender as Borrower's true and lawful attorney-in-fact to do and perform, from time to time, any and all actions necessary and incidental to exercise Lender's remedies under the Loan Documents. Borrower ratifies and confirms any and all actions of Lender as Borrower's attorney-in-fact.

25.14 Waiver of Rights.

To the maximum extent permitted under Applicable Law, Borrower knowingly and voluntarily (a) waives the benefit of all laws now or hereafter existing that (i) provide for any appraisal or valuation before sale of any portion of the Mortgaged Property; or (ii) in any way extend the time for the enforcement of the collection of the Obligations or creating or extending a period of redemption from any sale made in collecting the Obligations; (b) waives the benefit of or any Applicable Law limiting Lender's right to pursue a deficiency judgment after a judicial or non-judicial foreclosure; and (c) agrees that Borrower will not at any time insist upon, plea, claim or take the benefit or advantage of any law now or hereafter in force providing for any homestead exemption, and Borrower, for Borrower, Borrower's representatives, successors and assigns, and for any and all Persons ever claiming any interest in the Mortgaged Property, waives and

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releases all rights of homestead exemption. In addition, Borrower expressly waives and relinquishes any and all rights, remedies and defenses that Borrower may have or be able to assert by reason of any Applicable Law pertaining to the rights, remedies and defenses of sureties. Borrower relinquishes all rights of dower and curtesy in the Mortgaged Property and waives all right of statutory redemption of the Mortgaged Property.

25. [INTENTIONALLY OMITTED].

26. APPOINTMENT OF A RECEIVER.

a) Upon and after any Event of Default and expiration of any applicable cure period (if any), Lender shall be automatically entitled, immediately upon application without notice and without receivership bond, to the appointment of a receiver to operate, maintain, construct, develop, complete, control, protect and preserve the Mortgaged Property and any aspect thereof. Borrower irrevocably consents to the appointment of a receiver for the Mortgaged Property, and Lender's entitlement to the appointment of a receiver shall be absolute and automatic, and shall not be dependent upon or affected by i) the value or condition of the Mortgaged Property, ii) the actions or ability of Borrower, or iii) the status or condition of the Loan. In order to be entitled to the appointment of a receiver, Lender shall not be required to show or prove (to any degree) that the Mortgaged Property is deteriorated or deteriorating, or that the value of the Mortgaged Property is less than the Indebtedness secured hereby, or that Borrower is unsuitable to maintain or manage the Mortgaged Property. Lender's agent or designee may serve as the receiver and the receiver shall not be required to post any bond or security for performance or otherwise.

b) Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Mortgaged Property. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Borrower at the time of application for such receiver and without regard to the then value of the Mortgaged Property. Such receiver shall have power to collect the rents, issues and profits of the Mortgaged Property during the pendency of such foreclosure suit, and in case of a sale and a deficiency, during the full statutory period of redemption, if any, whether there be redemption or not, as well as during any further times when Borrower, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Mortgaged Property during the whole of said period.

c) Any appointment of a receiver under this Section may be secured by Lender pursuant to an *ex parte* application to a court of competent jurisdiction, without any notice thereof to Borrower (any rights of notice with respect thereto being specifically waived by Borrower), and with or without the commencement of a foreclosure. All expenses and costs incurred by the receiver or its agent shall constitute a part of the obligations secured by this Mortgage and the Loan Documents.

27. SEVERANCE OF FORECLOSURE. In any foreclosure action or other proceeding involving this Mortgage, the court shall sever for separate trial all counterclaims against Lender and the assertion of affirmative defenses shall not preclude entry of summary judgment *in rem*.

28. DISCONTINUANCE OF PROCEEDINGS AND RESTORATION OF THE PARTIES. In case Lender shall have proceeded to enforce any right or remedy under this Mortgage by receiver, entry or otherwise, and such proceeding shall have been discontinued or abandoned for any reason or shall have been determined adverse to Lender, then and in every such case Borrower and Lender shall be restored to their former positions and rights hereunder, and all rights, powers, and remedies of the Lender shall continue as if no such proceeding had been taken.

29. DELAY OR OMISSION NO WAIVER. No delay or omission of Lender or of any holder of the Note to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power and remedy contained within this Mortgage may be exercised from time to time and as often as may be deemed expedient by Lender.

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30. NO WAIVER OF ONE DEFAULT TO AFFECT ANOTHER. No waiver of any default hereunder shall extend to or shall affect any subsequent or any other then existing default or shall impair any rights, powers or remedies consequent thereon. If Lender **a)** grants forbearance or an extension of time for payment of any sums secured hereby; **b)** takes other or additional security for the payment thereof; **c)** waives or does not exercise any right granted herein or in the Loan Agreement; **d)** releases any part of the Mortgaged Property from the Loan Agreement or this Mortgage; **e)** consents to the filing of any map, plat or replat thereof; **f)** consents to the granting of any easement thereon; or **g)** makes or consents to any agreement subordinating the lien hereof, any such act or omission shall not release, discharge, modify, change or affect the original liability under the Note, this Mortgage or otherwise of Borrower or any subsequent purchaser of the Mortgaged Property or any part thereof; nor shall any such act or omission preclude Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default nor, except as otherwise expressly provided in an instrument or instruments executed by Lender, shall the lien of this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, Lender, without notice to any person or corporation, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

31. SATISFACTION OF MORTGAGE. Borrower shall pay all reasonable costs and expenses associated with releasing or satisfying this Mortgage of record or effecting any modification or extension hereof.

32. NO MERGER. This Mortgage and the liens and security interests created hereby, shall not merge into, and shall not be extinguished by, the issuance or recordation of any judgment or certificate of title. The rights created and afforded by this Mortgage shall survive until Lender duly executes and records in the public records an instrument that clearly references, and unequivocally releases this Mortgage.

33. NO AGENCY. Notwithstanding any agreement, representation, course of conduct, action, inaction, assertion or any provision of this Mortgage, or otherwise, Borrower is not and shall not be an agent or representative of Lender. Borrower is totally without authority to act on behalf of Lender. Borrower shall avoid any appearance that an agency relationship exists between Borrower and Lender. Borrower shall not execute any contracts or incur any obligations on behalf of Lender without the express prior written approval of Lender. Nothing contained herein shall be construed as any attempt by Lender to control the Mortgaged Property or to create a joint venture relationship between Lender and Borrower. Lender has never been engaged or involved in any joint venture relationship with Borrower, and Borrower expressly waives and forever relinquishes any past and future claims that a joint venture ever existed or may ever exist. Any action taken by Lender pursuant hereto is not intended and shall not be construed as creating or imposing any liability upon Lender.

34. NOTICE TO LENDER. If at any time or from time to time, Borrower believes or intends to claim that Lender has failed to comply with any obligation or provision of any of the Loan Documents, Borrower shall promptly furnish to Lender written notice of such belief and intention. The written notice to be furnished to Lender pursuant to this paragraph shall specify with particularity and in detail **a)** the obligation(s) or provision(s) of the Loan Documents that Borrower believes or intends to claim that Lender has violated, and **b)** the manner in which Borrower believes or intends to claim that Lender has violated the specified obligation(s) or provision(s) of the Loan Documents. If Borrower fails to provide the notice required by this paragraph within 60 days from the date the alleged violation or failure to comply, Borrower shall be forever prohibited and precluded from asserting such violation or failure to comply as a defense or avoidance.

35. LENDER NOT LIABLE FOR DAMAGE OR LOSS. All inspections and other services heretofore or hereafter rendered by or on behalf of Lender shall be rendered solely for the protection and benefit of Lender. Neither Borrower nor any other person shall be entitled to claim any loss or damage against Lender or against its agents or employees for any action or inaction in connection with the Mortgaged Property.

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36. BUSINESS OR COMMERCIAL PURPOSE. Borrower warrants that the extension of credit hereby secured is solely for business or commercial purposes, other than agricultural purposes. Borrower further warrants that the credit transaction hereby secured is specifically exempted under Regulation Z issued by the Board of Governors of the Federal Reserve System and Title I (Truth-in-Lending Act) of the Consumer Credit Protection Act, and that no disclosures are required to be given under such regulations and federal laws in connection with the transaction evidenced hereby.

37. NOTICES. Any and all notices specifically required or otherwise permitted under this Mortgage shall be in writing and shall be deemed given and effective according to the terms of the Loan Agreement. Except as otherwise expressly provided in the Loan Agreement or this Mortgage, or as otherwise required by statute or court rule, Lender shall have no duty or obligation to provide any notice to Borrower or to any other person before Lender pursues remedies following an Event of Default.

38. SUBORDINATION OF MORTGAGE TO LEASES. Lender reserves the right and shall have the right, at any time and from time to time, without the consent or joinder of any other person, to subordinate this Mortgage and the liens, assignments and security interests created herein, to all or any of the Leases, regardless of the respective priority of any such Leases and this Mortgage. Upon doing so and filing evidence of such subordination in the real property records in the county or counties where the Mortgaged Property is located, a foreclosure of Lender's liens under this Mortgage shall be subject to, and shall not operate to extinguish any of, the Leases as to which such subordination is operative.

39. MISCELLANEOUS. a) This Mortgage shall be binding on and shall inure to the benefit of the parties and their successors and assigns. b) Headings are inserted into this Mortgage for convenience only and shall not be considered in construing any provision. c) This Mortgage shall be deemed to have been delivered and executed in the State of Kansas and shall be governed and construed by its laws, except to the extent that the validity or priority of the liens or the exercise of remedies hereunder is governed by the laws of the State where the Mortgaged Property is located. d) The terms of this Mortgage may not be amended, nor any of its provisions waived, without the written consent of Borrower and Lender. e) The provisions of this Mortgage are severable. If any provision of this Mortgage is held to be invalid or unenforceable by any judgment of a court of competent jurisdiction, then the remaining terms of this Mortgage shall be carried out as nearly as possible according to its original terms. f) Time shall be of the essence of this Mortgage, but no delay in enforcing any right or remedy hereunder shall be construed to be a waiver of that or any other right or remedy. g) The term "person" includes, but is not limited to, natural persons, corporations, partnerships, trusts, limited liability companies, joint ventures, and/or other legal entities. h) The term "modified" means amended, changed, extended, renewed, altered, terminated, or cancelled. i) All Exhibits attached hereto are incorporated herein.

40. LEASING COMMISSIONS. Borrower covenants that every agreement to pay leasing commissions with respect to the leasing of the Mortgaged Property or any part thereof, are and shall be subject, subordinate and inferior to the right of Lender, so that in the event Lender acquires title to the Mortgaged Property, either at a foreclosure sale or by other means, Lender will be exonerated and discharged from all liabilities for the payment of any such commissions or compensation.

41. LIEN PRIORITY. The lien priority of this Mortgage shall not be affected by any change in the Note (including but not limited to an increase in the interest rate charged thereunder) or any other Loan Document. Any parties acquiring an interest in the Mortgaged Property shall acquire such interest in the Mortgaged Property with notice that Lender may increase the interest rate charged pursuant to the Note or otherwise modify the Note or other Loan Documents. This Mortgage shall always be and always remain superior in all respects to the interests of any other party in the Mortgaged Property.

42. ESTOPPEL AFFIDAVITS. Borrower shall, upon ten (10) days written notice, furnish to Lender a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Indebtedness secured hereby and whether or not any set-offs or defenses are claimed to exist against the repayment of the Loan.

43. SEVERANCE AND WAIVER. The invalidity or unenforceability of any portion or provision of this Mortgage shall not affect the remaining portions or provisions hereof. If any portion or provision of this Mortgage is finally adjudicated, by a court of competent jurisdiction, to be invalid or unenforceable to

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any degree or in any manner, all other portions and provisions shall be valid and enforceable to the fullest extent of the law. If the enforceable and valid portions or provisions of this Mortgage (i.e. those portions or provisions other than the particular portion or provision adjudicated unenforceable or invalid) are not capable of being enforced or applied after removal of the unenforceable or invalid portion or provision, the remaining portions or provisions of this Mortgage shall be interpreted so as to serve Lender's interests and to effectuate its purposes.

44. JURISDICTION AND VENUE. Borrower irrevocably agrees that subject to Lender's sole and absolute discretion, Lender may bring suit, action, or other legal proceedings arising out of this Mortgage in courts having jurisdiction in Kansas, whether local, state, or federal, except to the extent required for the exercise of remedies under the laws of the state where the Mortgaged Property is located, in which case suit shall be brought in the courts thereof. Borrower hereby waives any rights Borrower may have to request a change of venue or removal to another court.

45. Maximum Amount Secured. The maximum amount of Indebtedness secured by this Mortgage shall be Fifteen Million Five Hundred Eleven Thousand Four Hundred Six and no/100 Dollars (\$15,511,406.00).

46. Note. The Maturity Date of the Note is November 21, 2021. The interest rate of the Note is a variable rate per annum equal to the sum of the "Index" and the "Margin" (as such quoted terms are defined in the Loan Agreement), which rate shall be adjustable daily with every change in the Index.

48. Illinois mortgage law. If there are any inconsistencies or conflict between the terms and conditions of this section 48 and the other terms and conditions of this Mortgage, the terms and conditions of this section 48 shall control.

a) In the event that any provision of this Mortgage shall be inconsistent with any provision of the Foreclosure Law, the provisions of the Foreclosure Law shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Foreclosure Law. "Foreclosure Law" means the provisions of 735 ILCS 5/Article XV, also known as the Illinois Mortgage Foreclosure Law.

b) If any provision of this Mortgage shall grant to Lender any rights or remedies upon default of Borrower which are more limited than the rights that would otherwise be vested in Lender under the Foreclosure Law in the absence of said provision, Lender shall be vested with the rights granted in the Foreclosure Law to the full extent permitted by law.

c) Without limiting the generality of the foregoing, all expenses incurred by Lender, to the extent reimbursable under the Foreclosure Law, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

d) Without limitation on the foregoing, all advances, disbursements and expenditures made by Lender before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage or by the Foreclosure Law, shall have the benefit of all applicable provisions of the Foreclosure Law, including those provisions of the Foreclosure Law herein below referred to (collectively, "Protective Advances"):

i) all advances by Lender in accordance with the terms of this Mortgage to: (A) preserve or maintain, repair, restore or rebuild any improvements upon the Mortgaged Property; (B) preserve the lien of this Mortgage or the priority thereof; or (C) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 15-1301 of the Foreclosure Law;

ii) payments by Lender of: (A) installments, when due, of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (B) installments, when due, of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature

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whatsoever which are assessed or imposed upon the Mortgaged Property or any part thereof; (C) other obligations authorized by this Mortgage; or (D) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the Foreclosure Law;

iii) advances by Lender in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

iv) attorneys' fees and other expenses incurred: (A) in connection with the foreclosure of this Mortgage as referred to in Sections 15-1504(d)(2) and 15-1510 of the Foreclosure Law; (B) in connection with any action, suit or proceeding brought by or against the Lender for the enforcement of this Mortgage or arising from the interest of the Lender hereunder; or (C) in the preparation for the commencement or defense of any such foreclosure or other action;

v) Lender's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and confirmation hearing as referred to in Subsection (b)(1) of Section 15-1508 of the Foreclosure Law;

vi) expenses deductible from proceeds of sale as referred to in Subsections (a) and (b) of Section 15-1512 of the Foreclosure Law; and

vii) expenses incurred and expenditures made by Lender for any one or more of the following: (A) if all or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (B) if any interest in the Mortgaged Property is a fee simple estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (C) premiums for casualty and liability insurance paid by Lender whether or not Lender or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the Mortgaged Property imposed by subsection (c)(1) of Section 15-1704 of the Foreclosure Law; (D) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (E) payments required or deemed by Lender to be for the benefit of the Mortgaged Property or required to be made by the owner of the Mortgaged Property under any grant or declaration of easements, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Mortgaged Property; (F) shared or common expense assessment payable to any association or corporation in which the owner of the Mortgaged Property is a member if any way affecting the Mortgaged Property; (G) costs incurred by Lender for demolition, preparation for and completion of construction; and (H) pursuant to any lease or other agreement for occupancy of the Mortgaged Property.

viii) This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(1) of Section 15-1302 of the Foreclosure Law. All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Foreclosure Law, apply to and be included in: (1) determination of the amounts of indebtedness secured by this Mortgage at any time; (2) the indebtedness found due and owing to the Lender in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that, in any foreclosure judgment, the court may reserve jurisdiction for such purpose; (3) if the right of redemption is deemed not to be waived by this Mortgage, computation of amount required to redeem, pursuant to Subsections (d)(2) and (e) of Section 15-1603 of the Foreclosure Law; (4) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Foreclosure Law; (5) application of income in the hands of any receiver or Lender in possession; and (6) computation of any

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deficiency judgment pursuant to Subsections (b)(2) and (e) of Section 15-1508 and Section 15-1511 of the Foreclosure Law.

e) Borrower certifies and agrees that the Mortgaged Property does not include either agricultural real estate (as defined in 15-1201 of the Foreclosure Law) or residential real estate (as defined in 15-1219 of the Foreclosure Law).

49. WAIVERS OF JURY TRIAL. All persons who sign this Mortgage: (a) waive the right to a trial by jury in any action, proceeding, or counterclaim based upon, or related to, the subject matter of this Mortgage and brought by either party; (b) have made this waiver knowingly, intentionally, and voluntarily; (c) acknowledge no reliance upon any oral or written statements made by the other party or in its behalf, either to induce this waiver of trial by jury or to modify or nullify its effect, other than those contained herein; (d) acknowledge having read and understanding the meanings and ramifications of this waiver provision; and (e) agree to take all actions as may be required by applicable law to allow this waiver to be enforceable.

To effectuate the foregoing, Lender is hereby granted a power of attorney to file, as attorney-in-fact for all of the persons who sign this Mortgage, a copy of this Mortgage in any court described in the "Jurisdiction and Venue" paragraph. This grant is to allow Lender to receive the benefit of this waiver of trial by jury pursuant to applicable law. The copy of this Mortgage so filed shall conclusively be deemed to constitute the waiver of trial by jury by all persons who sign this Mortgage in any proceeding arising out of or otherwise relating to this Mortgage, any other Loan Document, or Lender's conduct with respect to any of the foregoing. This power of attorney is coupled with an interest and is irrevocable. All persons who sign this Mortgage acknowledge that the foregoing waiver has been reviewed with an attorney of such person's choice and the meaning and effect of the foregoing waiver are fully understood.

50. WAIVER OF REDEMPTION, APPRAISEMENT RIGHTS AND MARSHALLING OF ASSETS. To the maximum extent permitted by applicable law, Borrower hereby knowingly and voluntarily (a) waives the benefit of all laws now or hereafter existing that (i) provide for any appraisement or valuation before sale of any portion of the Mortgaged Property; or (ii) in any way extend the time for the enforcement of the collection of the Indebtedness or creating or extending a period of redemption (such waiver of the right of redemption being made pursuant to 735 ILCS 5/15-1601(b) from any sale made in collecting the Indebtedness; (b) waives the benefit of or any applicable law limiting Lender's right to pursue a deficiency judgment after a judicial or non-judicial foreclosure; and (c) agrees that Borrower will not at any time insist upon, plea, claim or take the benefit or advantage of any law now or hereafter in force providing for any homestead exemption, and Borrower, for Borrower, Borrower's representatives, successors and assigns, and for any and all Persons ever claiming any interest in the Mortgaged Property, waives and releases all rights of homestead exemption. In addition, Borrower expressly waives and relinquishes any and all rights, remedies and defenses that Borrower may have or be able to assert by reason of any applicable law pertaining to the rights, remedies and defenses of sureties. Borrower acknowledges that the Mortgaged Property does not constitute agricultural real estate or residential real estate, as said terms are defined in Foreclosure Law.

51. NO ORAL AGREEMENTS.

This Agreement and all the Loan Documents collectively constitute the written credit agreement which is the final expression of the credit agreement between Borrower and Lender.

This Agreement and all the Loan Documents may not be contradicted by evidence of any prior oral credit agreement or of a contemporaneous oral credit agreement between Borrower and Lender.

The following space (which Borrower and Lender agree is sufficient space) is provided for the placement of nonstandard terms, if any:

[None]

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Borrower and Lender affirm that there is no unwritten oral credit agreement between Borrower and Lender with respect to the subject matter of this Agreement and the other Loan Documents.

[Remainder of page intentionally left blank.]

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IN WITNESS WHEREOF, this Mortgage has been duly executed and delivered on or about the date first written above.

MAR WALL IL, LLC,
a Florida limited liability company

By: Joaquin E. Luaces
Joaquin E. Luaces, Manager

ACKNOWLEDGEMENT

STATE OF Florida)
) ss.
COUNTY OF Miami Dade)

On this 8 day of December, 2014, before me personally appeared Joaquin E. Luaces, as Manager of **MAR WALL IL, LLC**, a Florida limited liability company, and executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said limited liability company, and that said individual is authorized to execute said instrument on behalf of said limited liability company for the consideration, uses and purposes mentioned and set forth therein.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

Miriam S. Breland
Notary Public for the State of Florida
My Commission Expires: 12/22/18



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Exhibit A

Real Property

The legal description of the Real Property follows this cover page.

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LEGAL DESCRIPTION

PARCEL 1:

LOTS 1 TO 5, IN THE RESUBDIVISION OF LOT "A", (EXCEPT THE NORTH 100.00 FEET OF THE WEST 150.00 FEET THEREOF), LOT "D" AND THE EAST 150.00 FEET (EXCEPT THE NORTH 100.00 FEET THEREOF) OF LOT "E", IN WARREN J. PETERS FRIENDLY OAKS SUBDIVISION, BEING A SUBDIVISION OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 21, TOWNSHIP 36 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPTING THEREFROM THAT PART HERETOFORE DEDICATED FOR PUBLIC HIGHWAY BY DOCUMENT 11113019, ACCORDING TO PLAT FILED ON MARCH 6, 1962 AS LR2022665, EXCEPT THAT PART OF LOT 1 DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 1; THENCE SOUTHEASTERLY ALONG THE SOUTHERLY LINE OF SAID LOT 1, BEING ALONG AN ARC OF A CIRCLE, HAVING A RADIUS OF 260.00 FEET, BEING CONVEX TO THE NORTHEAST, THE CHORD THEREOF HAVING A BEARING OF SOUTH 78 DEGREES, 21 MINUTES, 02 SECONDS EAST AND A LENGTH OF 105.00 FEET, AN ARC DISTANCE OF 105.73 FEET TO A POINT; THENCE NORTH 21 DEGREES, 57 SECONDS, 16 MINUTES EAST, A DISTANCE OF 126.15 FEET TO THE NORTHEAST CORNER OF SAID LOT 1; THENCE NORTH 89 DEGREES, 54 MINUTES, 00 SECOND WEST ALONG THE NORTH LINE OF SAID LOT 1, A DISTANCE OF 150.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 1; THENCE SOUTH 00 DEGREE, 00 MINUTE, 00 SECOND WEST ALONG THE WEST LINE OF SAID LOT 1, A DISTANCE OF 96.06 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

PARCEL 2:

A NONEXCLUSIVE PERPETUAL AND RECIPROCAL EASEMENT FOR REASONABLE ACCESS, INGRESS AND EGRESS OVER ALL PAVED DRIVEWAYS, ROADWAYS AND WALKWAYS AS PRESENTLY OR HEREAFTER CONSTRUCTED AND CONSTITUTING A PART OF THE COMMON AREA OF PARCEL 1 AND THE COMMON AREA OF 'PARCEL A' (HEREINAFTER DESCRIBED) SO AS TO PROVIDE FOR THE PASSAGE OF MOTOR VEHICLES AND PEDESTRIANS BETWEEN ALL PORTIONS OF THE COMMON AREA OF SUCH PARCELS INTENDED FOR SUCH PURPOSES, AND TO AND FROM ALL ABUTTING STREETS OR RIGHTS OF WAY FURNISHING ACCESS TO SUCH PARCELS AS SET FORTH IN AGREEMENT DATED JULY 6, 1999 AND RECORDED AUGUST 5, 1999 AS DOCUMENT 99743112, TO WIT:

'PARCEL A' (RETAIL PARCEL):

LOTS "B" AND "C" IN WARREN J. PETER'S FRIENDLY OAKS SUBDIVISION, BEING A SUBDIVISION OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 21, TOWNSHIP 36 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPTING THEREFROM THAT PART HERETOFORE DEDICATED FOR PUBLIC HIGHWAY BY DOCUMENT 11113019, ACCORDING TO PLAT OF SAID RESUBDIVISION FILED ON APRIL 12, 1957 AS LR1732808; ALSO,

THE WEST 43.00 FEET OF LOT 6 AND THE WEST 43.00 FEET OF LOT 7 IN THE RESUBDIVISION OF LOT "A" (EXCEPT THE NORTH 100.00 FEET THEREOF) OF LOT "E", IN WARREN J. PETER'S FRIENDLY OAKS SUBDIVISION, BEING A SUBDIVISION OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 21, TOWNSHIP 36 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPTING THEREFROM THAT PART HERETOFORE DEDICATED FOR PUBLIC HIGHWAY BY DOCUMENT 11113019, ACCORDING TO PLAT OF SAID RESUBDIVISION FILED ON MARCH 6, 1962 AS LR2022665, ALL IN COOK COUNTY, ILLINOIS.

Common Address: 5525 W. 159th Street, Oak Forest, IL 60452

PIN: 28-21-117-014, -015, -016, -017, -021