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Doc# 1911945005 Fee \$58.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 04/29/2019 09:44 AM PG: 1 OF 11

*Hory Knapp*  
*Freeman Sanders*  
*807 Peachtree St NE*  
*Suite 3000*  
*Atlanta Georgia 30308*

PREPARED BY, AND  
WHEN RECORDED, RETURN TO: ↑

*1805579 NC LK Deed*

(Space Above for Recorder's Use)

## SECOND AMENDMENT TO EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND

This Second Amendment to Easements with Covenants and Restrictions Affecting Land (this "Second Amendment") is made this 5<sup>th</sup> day of April, 2019, by WAL-MART REAL ESTATE BUSINESS TRUST, a Delaware business trust ("Walmart"), as Ground Lessee, TMT POINTE PLAZA, INC., a Delaware corporation ("TMT"), and Wells Fargo Bank, N.A. (the "Bank")

### RECITALS

A. Walmart and TDC Niles, LLC, an Illinois limited liability company, previously entered into that certain Easements with Covenants and Restrictions Affecting Land dated as of December 30, 1998, recorded as Document No. 99265776 in Cook County, Illinois, as amended by First Amendment to Easements with Covenants and Restrictions Affecting Land dated March 13, 1999, recorded as Document No. 99334830 in aforesaid County (the "ECR").

B. Walmart is the Ground Lessee of Tract 1.

C. TMT is the fee simple owner of a portion of Tract 2.

D. Wells Fargo, successor by merger to Wachovia Bank, National Association, successor by merger to World Savings Bank, FSB, is the fee simple owner of the property identified as Outlot B on Exhibit "A".

E. The parties desire to amend the ECR to modify the Building Area on Outlot A, clarify Walmart's rights to institute online pickup operations, and to make certain other changes to the ECR as provided herein.

F. Pursuant to Section 15 of the ECR, the ECR may be amended by a written agreement signed by (a) Wal-Mart, as long as it or its affiliate has any interest as either owner or Lessee of Tract 1 and (b) Developer, as long as it or its affiliate has any interest as either owner or Lessor of Tract 2, or its successors in interest. TMT and the Bank are the successors in interest to Developer as the owners of Tract 2.

*Rv*

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**NOW, THEREFORE**, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the parties agree as follows:

1. **Outlot A; Building Area.** The Site Plan attached to the ECR as Exhibit A with respect to Outlot A is hereby modified and supplemented by Exhibit A-1 attached hereto and made a part hereof.

2. **Product Pickup in Common Areas.** Notwithstanding anything to the contrary in the ECR, including, without limitation Sections 4 and 5 of the ECR, Walmart shall have the right to place, maintain, construct or install, in the Common Areas located on the Walmart Tract, any equipment, improvements or structures (including, without limitation, lockers, outposts, pods, metal canopies, the dedicated parking spaces, or other similar drive-through, mail order, drop-off and/or pick-up facilities) (the "Product Pickup Improvements") to be used for the sole purpose of remote operations and distributions (such as internet fulfillment centers and locations and other drop-off and pick-up services) related to delivering, transferring, conveying or otherwise distributing or receiving general merchandise, groceries or other products (collectively, "Products"). Product Pickup Improvements on the Walmart Tract may be operated by Walmart, the owner of the Walmart Tract, or by any person or entity affiliated with, or designated by, Walmart or the owner of the Walmart Tract. Notwithstanding anything to the contrary contained herein, the Product Pickup Improvements on the Walmart Tract shall not be located within the slant-hatched area shown on Exhibit A-2 attached hereto and made a part hereof (the "No Pickup Zone").

In addition, Developer or their successors shall have the right to place Product Pickup Improvements on any portion of the Developer Tract located at least two hundred (200) feet from the Building Areas located on the Walmart Tract, as generally depicted in Exhibit A of the ECR, to be used for the sole purpose of remote operations and distributions (such as internet fulfillment centers and locations and other drop-off and pick-up services) related to delivering, transferring, conveying or otherwise distributing or receiving Products of an "Operator" on the Developer Tract (as hereinafter defined). Only an Operator shall have the right to construct Product Pickup Facilities on the Developer Tract. "Operator" shall mean an owner or lessee: (i) of at least ten thousand (10,000) square feet on the Developer Tract, (ii) that operates a retail business on the Developer Tract, and (iii) that uses the Product Pickup Improvements to sell Operator's own Products (and not Products for any other person or entity, whether or not affiliated with such Operator, by contract or otherwise). For clarification with respect to (iii), if a retailer on the Developer Tract enters into an agreement to sell or distribute Products of another retailer on its website, or in any other manner, Product Pickup Improvements shall not be used for such purpose. Any Product Pickup Improvements on the Developer Tract that are not solely for the Products of an Operator shall be prohibited.

Notwithstanding the foregoing, Product Pickup Improvements placed on either the Walmart Tract or the Developer Tract pursuant to this Section 2 shall not include any enclosed structure that is built in such a way as to allow for one or more persons to enter into and/or exit from such structure. Any such Product Pickup Improvements of the Parties shall be constructed and operated in a manner that (a) the parking in the Common Areas and the flow of traffic between

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the Tracts and to and from the adjacent roadways are not obstructed, (b) the Floor Area of any improvements constructed in conjunction with any Product Pickup Improvements shall be counted toward the calculation of required Parking Spaces for each Tract as set forth in the Declaration, including, without limitation, pursuant to Section 2 of this Amendment, (c) the Floor Area of any one structure constructed in conjunction with any Product Pickup Improvements shall be no greater than two thousand (2,000) square feet in the aggregate, (d) the height of any Product Pickup Improvements shall not exceed twenty-four (24) feet, and (e) all Product Pickup Improvements shall (i) be of good quality construction and first-class design, (ii) conform to the design concepts of the Shopping Center to be architecturally and aesthetically compatible and harmonious with the other buildings and improvements in the Shopping Center, and (iii) be designed functionally to integrate with the existing buildings and improvements of the Shopping Center.

3. **Conflicts/Ratification.** If there is any conflict between the provisions of the ECR and this Second Amendment, the provisions of this Second Amendment shall control.

4. **Captions; Capitalized Terms.** Except as otherwise expressly provided herein, capitalized terms used in this Second Amendment shall bear the same meanings assigned thereto in the ECR. The captions set forth herein are for convenience only and are not a part of this Second Amendment.

5. **Authority.** Each of the parties represents and warrants that it has the full capacity, right, power and authority to execute, deliver and perform this Second Amendment and that all required actions, consents and approvals therefor have been duly taken and obtained. Furthermore, each of the parties represents and warrants that upon full execution of this Second Amendment, the ECR as amended by this Second Amendment shall be binding on all parties with any interest in its respective Tract, including but not limited to the holder of any mortgagee's interest

6. **Counterparts.** This Second Amendment may be executed in counterparts or with counterpart signature pages, which upon execution by all parties shall constitute one integrated agreement.

[Signatures begin on the following page.]

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SIGNATURE PAGE
FOR
SECOND AMENDMENT TO EASEMENTS WITH
COVENANTS AND RESTRICTIONS AFFECTING LAND

IN WITNESS WHEREOF, the undersigned has executed this Second Amendment effective as of the day and year first above written.

WAL-MART REAL ESTATE BUSINESS TRUST,
a Delaware business trust

By: [Signature]
Printed Name: Darryl J. Spinks
Its: Sr. Real Estate & Portfolio Manager II

STATE OF ARKANSAS )
) ss.
COUNTY OF BENTON )

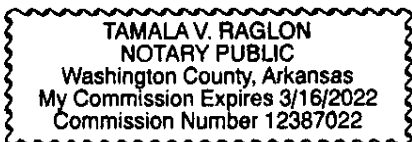
I, THE UNDERSIGNED, A Notary Public in and for said State at Large, hereby certify that Darryl J. Spinks, whose name as Sr. Real Estate and Portfolio Manager II of Wal-Mart Real Estate Business Trust, a Delaware Statutory Trust, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, she/he, as Sr. Real Estate and Portfolio Manager II of such corporation, by authority of its Board of Directors, executed the same voluntarily for and as the act of corporation as of the date of this acknowledgement.

Given under my hand and official seal this the 5th day of March, 2019.

[Signature: Tamala V. Raglon]
Notary Public

My Commission Expires: 3/16/2022

(NOTARIAL SEAL)



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## SIGNATURE PAGE FOR SECOND AMENDMENT TO EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND

IN WITNESS WHEREOF, the undersigned has executed this Second Amendment effective as of the day and year first above written.

TMT POINTE PLAZA, INC.,  
a Delaware corporation

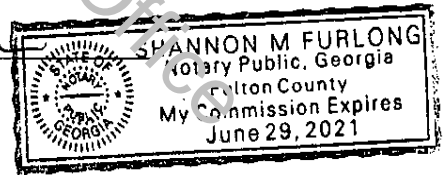
By: Keith Edwards  
Name: Keith Edwards  
Title: Vice President

STATE OF Georgia )  
) SS.  
COUNTY OF Fulton )

On this 27 day of March, 2018, before me appeared Keith Edwards to me personally known who, being by me duly sworn, did say that they are the Vice President of TMT POINTE PLAZA, INC., a Delaware corporation, and said Vice President acknowledged that they executed this instrument on behalf of said corporation by authority of the Board of Directors of said corporation and acknowledged said instrument as the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid on the day and year above written.

Spannon M. Furlong  
Notary Public



My Commission Expires: June 29, 2021

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## SIGNATURE PAGE FOR SECOND AMENDMENT TO EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND

IN WITNESS WHEREOF, the undersigned has executed this Second Amendment effective as of the day and year first above written.

Wells Fargo Bank, N.A.  
a national banking association

By: WFS  
Name: Wayne Santos  
Title: SVP, Corp Counsel Director

STATE OF Colorado )  
  ) SS.  
COUNTY OF Arapahoe )

On this 16 day of November, 2018, before me appeared Wayne Santos to me personally known, who, being by me duly sworn, did say that he is the SVP of Wells Fargo Bank, N.A., and acknowledged that he executed this instrument on behalf of said corporation by authority of the Board of Directors of said corporation and acknowledged said instrument as the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid on the day and year above written.

[Signature]  
Notary Public

My Commission Expires: 11/21/2021

KANDICE BACA  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20094010634  
MY COMMISSION EXPIRES NOVEMBER 21, 2021

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## CONSENT AND SUBORDINATION AGREEMENT

THIS CONSENT AND SUBORDINATION AGREEMENT is entered into by Nationwide Life Insurance Company, an Ohio corporation ("Lender"), as the holder of that certain Mortgage and Security Agreement as secured by an Assignment of Leases, Rents and Profits, executed in favor of Lender and recorded on July 31, 2014 as Document No. 1421234087 and Document No. 1421234088, respectively, in the Official Records of Cook County, Illinois (collectively, the "Security Documents"), which Security Documents encumber a portion of the property described as Tract 2 in the Second Amendment Easement Agreement with Covenants and Restrictions (the "Easement Agreement") to which this Consent and Subordination Agreement is attached. Lender consents to the execution and delivery of the Easement Agreement and agrees that the Security Documents are and will be subordinate to the rights and easements created under the Easement Agreement.

Lender has executed this Consent and Subordination Agreement under seal by its duly authorized representative as of the 21 day of April, 2019.

Nationwide Life Insurance Company, *De VATT*  
 an Ohio corporation  
 By: *Dennis C. Fisher*  
 Title: DENNIS C. FISHER  
 Title: SENIOR INVESTMENT PROFESSIONAL  
 Attest: RE RISK  
 AUTHORIZED SIGNATORY

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EXHIBIT A

DESCRIPTION OF LAND

Lot 7 in Pointe Plaza Subdivision, being a subdivision of Lot 2 in Annie Mullen Subdivision, being a subdivision of part of the south  $\frac{1}{4}$  of Section 29, Township 41 North, Range 13, east of the Third Principal Meridian, according to the plat thereof recorded December 22, 1999 as Document No. 09188471 in Cook County, Illinois.

5650 W Touhy Ave, Niles, IL 60714

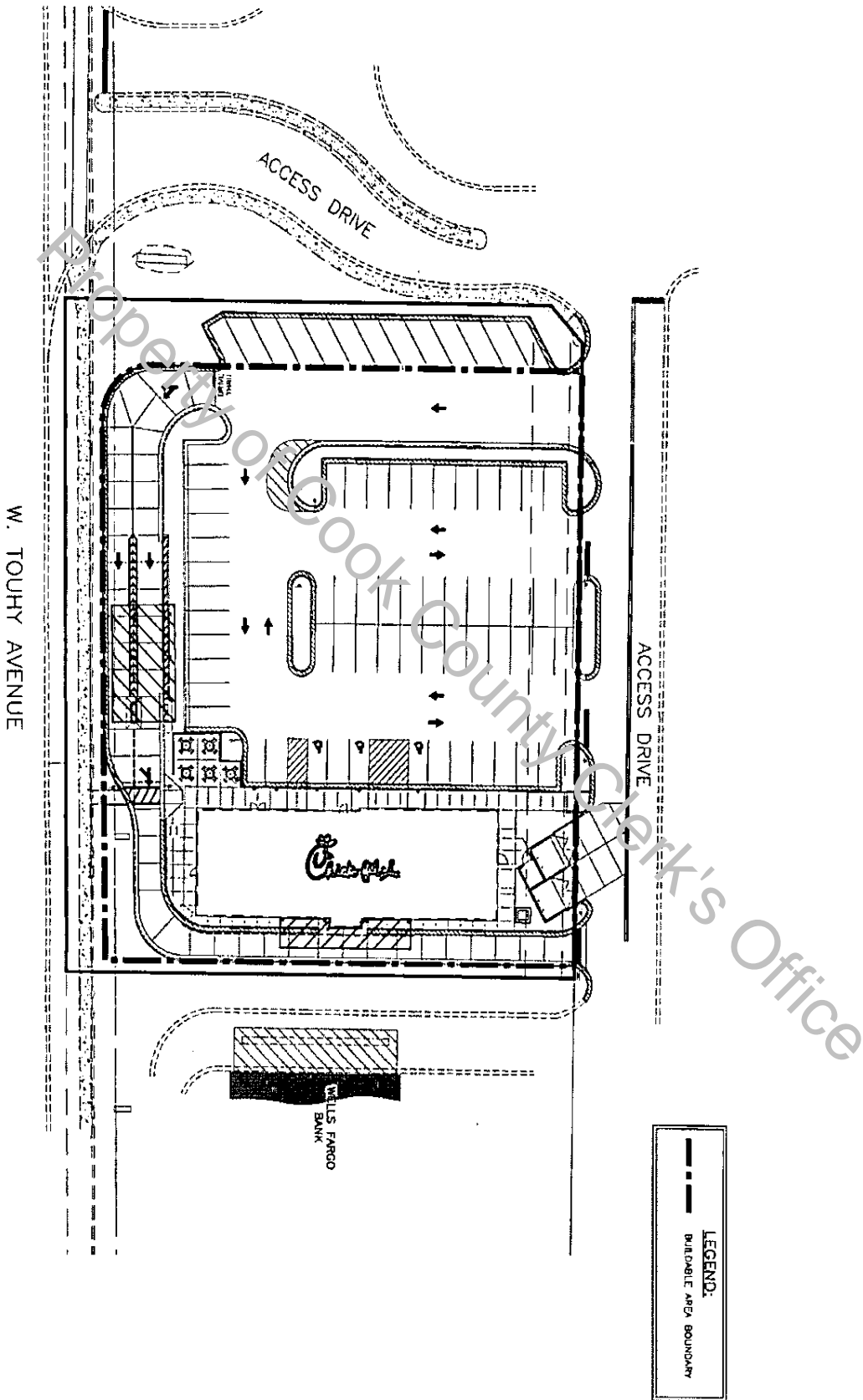
APN: 10-29-403-030-0000

Property of Cook County Clerk's Office



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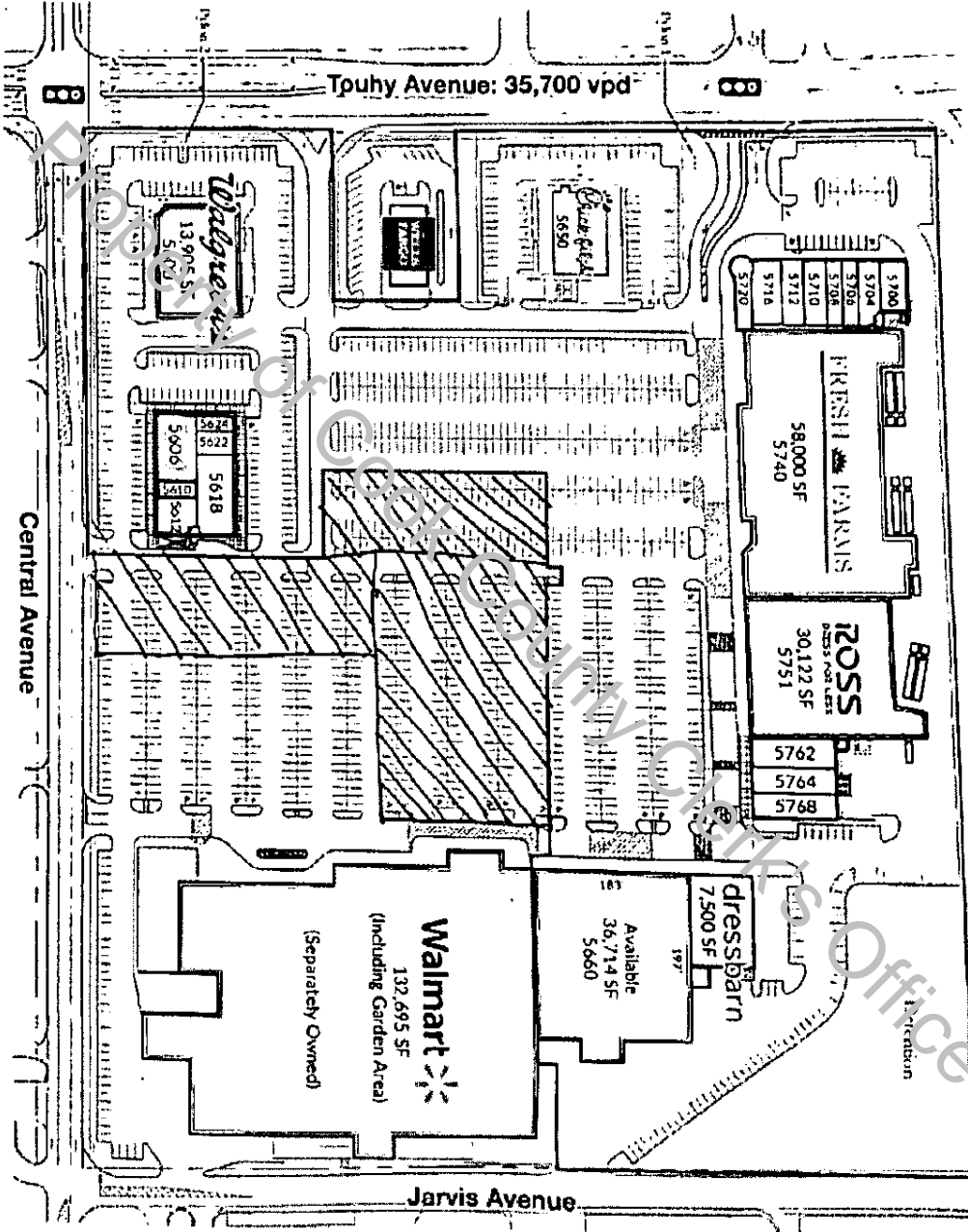
## EXHIBIT A-1 Site Plan for Outlot A



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351263-3-12162.0299000

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36704745  
3512635-3-12162.0299000



**EXHIBIT A-2**  
**No Pickup Zone**

**UNOFFICIAL COPY**EXHIBIT BDESCRIPTION AND DEPICTION OF ADJOINING PROPERTY

## Adjoining Property Legal Description:

Lots 2, 3, 4, 5, 6, 9 and 10 in Pointe Plaza Subdivision, being a subdivision of Lot 2 in Annie Mullen Subdivision, being a subdivision of part of the south ¼ of Section 29, Township 41 North, Range 13, east of the Third Principal Meridian, according to the plat thereof recorded December 22, 1999 as Document No. 09188471 in Cook County, Illinois.

(Page 1 of 3)

5602 W Touhy Ave, Niles IL 60714  
PIN 10-29-403-033

5600 W Touhy Ave, Niles, IL 60714  
PIN 10-29-403-032

5606 W Touhy Ave, Niles IL 60714  
PIN 10-29-403-029

5740 W Touhy Ave, Niles IL 60714  
PIN 10-29-403-029

5670 W Touhy Ave, Niles IL 60714

PIN 10-29-403-027

PIN 10-29-403-025

5660 W Touhy Ave Niles IL 60714

PIN 10-29-403-024

5640 W Touhy Ave 1029403031 Niles Ill 60714

5630 W Touhy Ave 1029403024 Niles Ill 60714