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Prepared by, recording requested by,  
and when recorded return to:

Moore & Van Allen PLLC  
100 North Tryon Street, Suite 4700  
Charlotte, North Carolina 28202  
Attn: Timothy W. Corrigan, Esq.

Obligor No.: 8799477858  
Address: 4758 U.S. 280  
Birmingham, AL 35242

**NOTE REGARDING ALABAMA RECORDING TAX:** THE MORTGAGE RECORDING PRIVILEGE TAX DUE UPON THE RECORDATION OF THIS MORTGAGE IS SET FORTH IN THE MORTGAGE TAX ORDER DELIVERED SIMULTANEOUSLY HEREWITH.

THIS MORTGAGE IS FILED AS AND SHALL CONSTITUTE A FIXTURE FILING IN ACCORDANCE WITH THE PROVISIONS OF SECTION 7-9A-502(c) OF THE CODE OF ALABAMA.

STATE OF ALABAMA

COUNTY OF SHELBY

**MORTGAGE, ABSOLUTE ASSIGNMENT OF RENTS AND LEASES  
AND SECURITY AGREEMENT  
(AND FIXTURE FILING)**

This MORTGAGE, ABSOLUTE ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT (AND FIXTURE FILING) (this "**Mortgage**"), dated as of December 29, 2021 (the "**Effective Date**"), is executed by NET LEASE SUDS III LLC, a Delaware limited liability company, and NET LEASE SUDS IV LLC, a Delaware limited liability company (together, jointly and severally, "**Mortgagor**"), with an office at c/o Orion Real Estate Group, 200 S Biscayne Blvd., Seventh Floor, Miami, Florida 33131, Attn: Kevin J. Sanz, in favor of WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association (together with its successors and assigns, "**Mortgagee**" or "**Lender**"), with a mailing address of 1808 Aston Avenue, Suite 250, Carlsbad, California 92008, Attn: Loan Administration.

**RECITALS:**

- A. Mortgagor, OPF SI SPE LLC, a Delaware limited liability company, and OPF SV SPE LLC, a Delaware limited liability company (collectively, jointly and severally, "**Borrowers**") propose to borrow from Mortgagee, and Mortgagee proposes to lend to Borrowers, the total principal sum of SEVENTY-FIVE MILLION FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$75,500,000.00) (the "**Loan**") and bearing interest at a variable rate as described in and pursuant to the terms of that certain Loan Agreement dated of even date herewith, executed by and between Lender and Borrowers (as the same may be amended, restated, supplemented or otherwise modified from time to time, the

**"Loan Agreement"**). The Loan is evidenced by that certain Secured Promissory Note (Variable Rate) of even date herewith, in the principal amount of the Loan, executed by Borrowers in favor of Lender (as the same may be amended, restated, supplemented or otherwise modified from time to time, the **"Note"**).

- B. The loan documents include this Mortgage, the Note, the Loan Agreement, and the other documents described in the Loan Agreement as Loan Documents (collectively, the **"Loan Documents"**).

## ARTICLE 1 – MORTGAGE

1.1 **GRANT.** Upon the terms and conditions of this Mortgage, Mortgagor absolutely and irrevocably mortgages, grants, bargains, warrants, sells, conveys and assigns to Mortgagee (and to any of Mortgagee's affiliates, if applicable in respect of a "Swap Agreement" (defined below)), all estate, right, title and interest in which Mortgagor now has or may hereafter acquire in, to, under or derived from any or all of the following:

- (a) That real property ("**Land**") located in Shelby County, Alabama, and more particularly described on **Exhibit A** attached hereto;
- (b) All appurtenances, easements, rights of way, water and water rights, pumps, pipes, flumes and ditches and ditch rights, water stock, ditch and/or reservoir stock or interests, royalties, development rights and credits, air rights, minerals, oil rights, and gas rights, now or later used or useful in connection with, appurtenant to or related to the Land;
- (c) All buildings, structures, facilities, other substantial improvements (if any), and fixtures now or hereafter located on the Land;
- (d) All apparatus, equipment, machinery and appliances and all accessions thereto and renewals and replacements thereof and substitutions therefor used in the operation or occupancy of the Land, it being intended by the parties that all such items shall be conclusively considered to be a part of the Land, whether or not attached or affixed to the Land;
- (e) All land lying in the right-of-way of any street, road, avenue, alley or right-of-way opened, proposed or vacated, and all sidewalks, strips and gores of land adjacent to or used in connection with the Land;
- (f) All additions and accretions to the property described above;
- (g) All Leases and Payments (in each case as defined below);
- (h) All licenses, authorizations, certificates, variances, consents, approvals and other permits now or hereafter pertaining to the Land and all estate, right, title and interest of Mortgagor in, to, under or derived from all trade names or business names relating to the Land or the present or future development, construction, operation or use of the Land; and
- (i) All proceeds of any of the foregoing.

All of the property described above is hereinafter collectively defined as the **"Property."**  
The listing of specific rights or property shall not be interpreted as a limitation of general terms.





20220110000010390 3/37 \$131.00  
Shelby Cnty Judge of Probate, AL  
01/10/2022 10:53:38 AM FILED/CERT

TO HAVE AND TO HOLD, said Property unto Mortgagee, its successors and assigns forever.

## ARTICLE 2 – OBLIGATIONS SECURED

2.1 **OBLIGATIONS SECURED.** Mortgagor makes the foregoing grant and assignment and those set forth in **Articles 3 and 4** hereof and elsewhere herein for the purpose of securing, on a pari passu basis, the following obligations (the "**Secured Obligations**"):

- (a) Full and punctual payment to Mortgagee of all sums at any time owing under the Note;
- (b) Payment and performance of all covenants and obligations of Mortgagor under this Mortgage including, without limitation, indemnification obligations and advances made to protect the Property;
- (c) Payment and performance of all additional covenants and obligations of Mortgagor under the Loan Documents;
- (d) Payment and performance of all covenants and obligations, if any, which any rider attached as an exhibit to this Mortgage recites are secured hereby;
- (e) Payment and performance of all future advances and other obligations that the then record owner of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Mortgagee, when the obligation is evidenced by a writing which recites that it is secured by this Mortgage;
- (f) Payment and performance under, and any and all other obligations of Mortgagor under or in connection with, any swap, interest rate cap agreement, derivative, foreign exchange or hedge transaction or arrangement or similar transaction or arrangement howsoever described or defined, including any swap agreement (as defined in 11 U.S.C. § 101), at any time entered into between Mortgagor and Lender or any of its affiliates in connection with the Note ("**Swap Agreement**").
- (g) All interest and charges on all obligations secured hereby including, without limitation, prepayment charges, late charges and loan fees;
- (h) All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; and (ii) modifications, extensions or renewals at a different rate of interest whether or not any such modification, extension or renewal is evidenced by a new or additional promissory note or notes; and
- (i) Payment and performance of any other obligations which are defined as "**Secured Obligations**" in the Note. The rate of interest on one or more Secured Obligation may vary from time to time, as may be expressly provided in the Loan Documents.

2.2 **OBLIGATIONS.** The term "obligations" used herein shall be deemed to include, without limitation, all interest and charges, prepayment charges, late charges and loan fees at any time





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Shelby Cnty Judge of Probate, AL  
01/10/2022 10:53:38 AM FILED/CERT

accruing or assessed on any of the Secured Obligations pursuant to the terms of the Loan Documents.

2.3 **INTENTIONALLY DELETED.**

2.4 **INCORPORATION.** All terms and conditions of the documents which evidence any of the Secured Obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice that the rate of interest on one or more Secured Obligation may vary from time to time.

2.5 **FIXTURE FILING.** This Mortgage shall also constitute a "fixture filing" and a security agreement for the purposes of the Alabama Uniform Commercial Code (the "**UCC**") against all of the Property which is or is to become fixtures and by executing and delivering this Mortgage, and upon this Mortgage being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of the UCC upon such of the Property that is or may become fixtures and the proceeds thereof. Mortgagor covenants and agrees that the filing of this Mortgage in the real estate records of the city or county wherein such fixtures are situated shall also operate from the date of such filing as a fixture filing in accordance with Section 9A-501 and 9A-502(c) of the UCC. Mortgagor hereby authorizes, within the meaning of section 9-509 of the UCC, Mortgagee to file such financing statements in such jurisdictions required to perfect the security interest granted hereunder. In accordance with the above, Mortgagor hereby grants to Mortgagee a security interest in all right, title and interest of Mortgagor to any and all of the property so related to the Land as to be deemed fixtures or real property under the law of Alabama and in accordance with the applicable provisions of the UCC. Information concerning the security interest herein granted may be obtained at the addresses of Mortgagor and Mortgagee as set forth in the first paragraph of this Mortgage. To the extent that any of the Property may constitute Goods (as defined in the Code), this instrument shall constitute a security agreement, creating a security interest in such Goods, as collateral, in the Lender, as a Secured Party, and the Mortgagor, as Debtor, all in accordance with the Code. This Mortgage is intended to be a financing statement within the purview of Section 9A-502(b) of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Property. For purposes of such financing statement, the addresses of the Mortgagor (as Debtor) and the Lender (as Secured Party) are hereinbelow set forth. This Mortgage is to be filed for recording with the Recorder of Deeds of the county or counties where the Property are located. The Mortgagor is the record owner of the Property. The Mortgagor is the record owner of the Property. Mortgagor's organizational identification number is 7686237 for Net Lease Suds III LLC and 7738267 for Net Lease Suds IV LLC.

2.6 **PROTECTIVE ADVANCES.** During the continuance of a Default and after the expiration of any extensions or notice and grace or cure periods, Mortgagee shall have the right, but not the obligation, to make protective advances with respect to the Property for the payment of taxes, assessments, insurance premiums or actual costs incurred for the protection of the Property, and such protective advances, together with interest thereon at the default rate of interest under the Loan Documents from the date of each such advance until it is repaid in full, shall be secured by this Mortgage to the fullest extent and with the highest priority contemplated by applicable law.





### ARTICLE 3 - ABSOLUTE ASSIGNMENT OF RENTS AND LEASES

- 3.1 **ASSIGNMENT.** Mortgagor absolutely and irrevocably assigns to Mortgagee to the extent the same may be permitted to be subject to the lien of this Mortgage by applicable law, all of Mortgagor's right, title and interest in, to and under: (a) all present and future leases of the Property or any portion thereof, all licenses and agreements relating to the management, leasing or operation of the Property or any portion thereof, and all other agreements of any kind relating to the use or occupancy of the Property or any portion thereof, whether such leases, licenses and agreements are now existing or entered into after the date hereof, including, without limitation, the applicable ICWG Lease (as defined in the Loan Agreement) between Mortgagor, as landlord, and Boing US Holdco, Inc., a Delaware corporation ("**Tenant**" and the term "**Tenants**" is sometimes used to refer, collectively, to the Tenant under the ICWG Lease and the other tenants under any other Leases entered into in accordance with this Mortgage), as tenant (collectively with such ICWG Lease, any other lease regarding the Property, and any amendment of any of the foregoing, each as approved by Lender, collectively, the "**Leases**" and each individually a "**Lease**"); and (b) the rents, issues, deposits and profits of the Property, including, without limitation, all amounts payable and all rights and benefits accruing to Mortgagor under the Leases ("**Payments**"). The term "**Leases**" shall also include all guarantees of and security for the tenants' performance thereunder, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This is a present and absolute assignment, not an assignment for security purposes only, and, subject to the terms of this Mortgage, Mortgagee's right to the Leases and Payments is not contingent upon, and may be exercised without possession of, the Property.
- 3.2 **GRANT OF LICENSE.** Mortgagee confers upon Mortgagor a revocable license ("**License**") to collect and retain the Payments as they become due and payable, until the continuance of a Default (as hereinafter defined) and after the expiration of any extensions or notice and grace or cure periods. During the continuance of a Default and after the expiration of any extensions or notice and grace or cure periods, the License shall be automatically revoked and Mortgagee may collect and apply the Payments, except as otherwise required by law, pursuant to the terms hereof without notice and without taking possession of the Property. All Payments thereafter collected by Mortgagor shall be held by Mortgagor as trustee under a constructive trust for the benefit of Mortgagee. Mortgagor hereby irrevocably authorizes the tenants under the Leases to rely upon and comply with any notice or demand by Mortgagee for the payment to Mortgagee of any rental or other sums which may at any time become due under the Leases during the continuance of any Default and after the expiration of any extensions or notice and grace or cure periods, or for the performance of any of the tenants' undertakings under the Leases during the continuance of any Default and after the expiration of any extensions or notice and grace or cure periods, and the tenants shall have no right or duty to inquire as to whether any Default is continuing. Mortgagor hereby relieves the tenants from any liability to Mortgagor by reason of relying upon and complying with any such notice or demand by Mortgagee. Mortgagee shall apply, in its sole but reasonable discretion, any Payments so collected by Mortgagee against any Secured Obligation under any document or instrument related to or executed in connection with the Loan Documents, whether existing on the date hereof or hereafter arising. Collection of any Payments by Mortgagee shall not cure or waive any Default (unless applied against the full amount of any amounts then outstanding) or notice of Default or invalidate any acts done pursuant to such notice. If and when no Default is continuing, the License shall be deemed to be re-conferred upon Mortgagor by Mortgagee, without any further act or deed, until the continuance of another Default.





3.3 **EFFECT OF ASSIGNMENT.** The foregoing irrevocable assignment shall not cause Mortgagee to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; (c) responsible or liable for any waste committed on the Property by the tenants under any of the Leases or by any other parties; for any dangerous or defective condition of the Property; for any upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee, invitee or other person unless such loss or injury or death to any tenant, licensee, employee, invitee or other person is caused by the negligence, bad faith or willful misconduct of Mortgagee; or (d) responsible for or impose upon Mortgagee any duty to produce rents or profits. Mortgagee shall not directly or indirectly be liable to Mortgagor or any other person as a consequence of: (i) the exercise or failure to exercise any of the rights, remedies or powers granted to Mortgagee hereunder; or (ii) the failure or refusal of Mortgagee to perform or discharge any obligation, duty or liability of Mortgagor arising under the Leases.

3.4 **COVENANTS – LONG-TERM LEASES.** Mortgagor shall, at Mortgagor's sole cost and expense:

- (a) perform all obligations of the landlord under the Leases and use reasonable efforts to enforce performance by the tenants of all obligations of the tenants under the Leases;
- (b) use reasonable efforts to keep the Property leased at all times to tenants which Mortgagor reasonably and in good faith believes are creditworthy at rents not less than the fair market rental value (including, but not limited to, free or discounted rents to the extent the market so requires);
- (c) promptly upon Mortgagee's request, deliver to Mortgagee a copy of each requested Lease and all amendments thereto and waivers thereof;
- (d) promptly upon Mortgagee's request, execute and record any additional assignments of landlord's interest under any Lease to Mortgagee and specific subordinations of any Lease to this Mortgage, in form and substance reasonably satisfactory to Mortgagee (and with respect to the Tenant under any Lease, subject to the terms and conditions set forth in said Lease) and any direct agreement between Tenant and Lender;
- (e) promptly notify a tenant that it has failed to observe or perform any of the material covenants, conditions, or obligations of its Lease upon obtaining actual knowledge thereof if notice from the landlord is required in order for such failure to constitute an event of default by Tenant under its Lease; and
- (f) promptly deliver to Mortgagee copies of all notices that Mortgagor delivers to any Tenant of a default by such Tenant under its Lease.

Unless consented to in writing by Mortgagee in its sole and absolute discretion, which shall not be unreasonably withheld, conditioned or delayed, or otherwise permitted under any other provision of the Loan Documents or Leases, Mortgagor shall not:

- (g) except as provided in the Lease, grant any tenant under any of the Leases any option, right of first refusal or other right to purchase all or any portion of the Property under any circumstances;





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Shelby Cnty Judge of Probate, AL  
01/10/2022 10:53:38 AM FILED/CERT

- (h) grant any tenant under any of the Leases any right to prepay rent more than one (1) month in advance;
- (v) except upon Mortgagee's request, execute any assignment of landlord's interest in any of the Leases;
- (j) collect rent or other sums due under any of the Leases in advance, other than to collect rent one (1) month in advance of the time when it becomes due; or
- (k) consent to any material matter requiring the landlord's consent under any Leases including, without limitation, any such required consent pertaining to the assignment or subletting of all or any portion of the tenant's interest in any Lease, or pertaining to any matters that could reasonably be expected to have a material impact on the value or marketability of the Property, or on the amount of cash flow the tenant will generate at the Property.

Any such attempted action in violation of the provisions of this Section shall be null and void.

- 3.5 **RIGHT OF SUBORDINATION.** Mortgagee may at any time and from time to time by specific written instrument intended for the purpose unilaterally subordinate the lien of this Mortgage to any Lease, without joinder or consent of, or notice to, Mortgagor, any tenant or any other person. Notice is hereby given to each tenant under a Lease of such right to subordinate. No subordination referred to in this Section shall constitute a subordination to any lien or other encumbrance, whenever arising, or improve the right of any junior lienholder. Nothing herein shall be construed as subordinating this Mortgage to any Lease. Within ten (10) days after Mortgagor's written request from time to time, Mortgagee shall provide to Mortgagor and the Tenant specified by Mortgagor a commercially reasonable subordination, non-disturbance and attornment agreement regarding Tenant's Lease, executed by Mortgagee.

#### ARTICLE 4 - SECURITY AGREEMENT

- 4.1 **SECURITY INTEREST.** Mortgagor grants and assigns to Mortgagee a security interest to secure payment and performance of all of the Secured Obligations, in all of the following described personal property in which Mortgagor now or at any time hereafter has any interest, to the extent of such interest, which personal property pertains to or arises from the Property (collectively, the "**Collateral**"):

All goods, building and other materials, supplies, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property, wherever situated, which are or are to be incorporated into, used in connection with or appropriated for use on the Property; all rents, issues, deposits and profits of the Property (to the extent, if any, they are not subject to Article 3 hereof); all inventory, accounts, cash receipts, deposit accounts, impounds, accounts receivable, contract rights, general intangibles, software, chattel paper, instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the Property or any business now or hereafter conducted thereon by Mortgagor (in each case, to the extent such interest may be assigned under applicable law); all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Property; all deposits or other security now or hereafter made with or given to utility companies by Mortgagor with respect to the Property; all advance payments of insurance premiums made by Mortgagor with



respect to the ownership and use of the Property; all plans, drawings and specifications relating to the ownership and use of the Property; all loan funds held by Mortgagee, whether or not disbursed; all funds deposited with Mortgagee pursuant to any Loan Document, all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Property or any portion thereof, including, without limitation, all "**Impounds**" (as defined in the Cash Management Agreement); all of Mortgagor's right, title and interest, now or hereafter acquired, to the payment of money from Lender or any of its affiliates to Mortgagor under any Swap Agreement; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing, and all books, records and files relating to any of the foregoing, provided, however, that "Collateral" shall not include (nor shall Mortgagee have any security interest in) Mortgagor's Operating Account (as defined in the Cash Management Agreement) or any funds therein.

- 4.2 **COVENANTS.** Mortgagor agrees: (a) to execute and deliver such documents necessary to create, perfect and continue the security interests contemplated hereby; (b) not to change its name, and, as applicable, its chief executive offices, its principal residence, or the jurisdiction in which it is organized without giving Mortgagee at least thirty (30) days' prior written notice thereof; and (c) to cooperate with Mortgagee in perfecting all security interests granted herein and to make reasonable and good-faith efforts in obtaining such agreements from third parties necessary, proper or convenient in connection with the preservation, perfection or enforcement of any of Mortgagee's rights hereunder (and with respect to such third party being a tenant under any Lease, subject to the terms and conditions set forth in such Lease).
- 4.3 **RIGHTS OF MORTGAGEE.** In addition to Mortgagee's rights as a "Secured Party" under the UCC, Mortgagee may, but shall not be obligated to, at any time, after the occurrence and during the continuance of a Default and after the expiration of any extensions or notice and grace or cure periods: (a) give notice to any person of Mortgagee's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Mortgagee therein; and (c) inspect the Collateral (subject to the rights of any tenant at the Property). Notwithstanding the above, in no event shall Mortgagee be deemed to have accepted any property other than cash in satisfaction of any obligation of Mortgagor to Mortgagee unless Mortgagee shall make an express written election of said remedy under the UCC or other applicable law.
- 4.4 **RIGHTS OF MORTGAGEE UPON DEFAULT.** During the continuance of a Default and after the expiration of any extensions or notice and grace or cure periods, then in addition to all of Mortgagee's rights as a "Secured Party" under the UCC or otherwise at law:
- (a) **Disposition of Collateral.** Mortgagee may, without prior notice, enter upon the Property or other place where any of the Collateral may be located and take possession of the Collateral and take such other measures as Mortgagee may reasonably deem necessary for the care, preservation and protection of the Collateral, and any notice of sale (to the extent permitted by law), disposition or other intended action by Mortgagee with respect to the fixtures, equipment and/or the personal property sent to Mortgagor in accordance with the provisions hereof at least twenty (20) days prior to such action shall constitute commercially reasonable notice to Mortgagor thereof; and
  - (b) **Other Rights.** Mortgagee may, for the account of Mortgagor and at Mortgagor's expense:
    - (i) operate, use, consume, sell, lease, license or otherwise dispose of the Collateral as Mortgagee deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise or settlement including insurance





claims, which Mortgagee may deem desirable or proper with respect to the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Mortgagor in connection with or on account of the Collateral.

Mortgagor acknowledges and agrees that a disposition of the Collateral in accordance with Mortgagee's rights and remedies as heretofore provided (to the extent permitted by law) is a disposition thereof in a commercially reasonable manner and that twenty (20) days' prior notice of such disposition is commercially reasonable notice. Mortgagee shall have no obligation to process or prepare the Collateral for sale or other disposition. In disposing of the Collateral, Mortgagee may disclaim all warranties of title, possession, quiet enjoyment and the like. Any proceeds of any sale or other disposition of the Collateral may be applied by Mortgagee first to the reasonable expenses incurred by Mortgagee in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements, and then to the payment of the Secured Obligations subject to any grace or cure periods, in such order of application as Mortgagee may from time to time elect. Notwithstanding the foregoing, all acts which may or may not be taken, decisions or determinations which may or may not be made, and options which may or may not be exercised, by the Mortgagee, or any employees, agents, or affiliates of Mortgagee, hereunder or under any Loan Documents, shall be taken, not taken, made, not made, exercised, or not exercised, only after due consideration of and within the bounds of commercial reasonableness, in good faith and in fair dealing.

- 4.5 **POWER OF ATTORNEY.** During the continuance of a Default, Mortgagee shall be deemed appointed as Mortgagor's limited attorney-in-fact, and as such attorney-in-fact, Mortgagee may, without the obligation to do so, in Mortgagee's name or in the name of Mortgagor, prepare, execute, file and record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Mortgagee's security interests and rights in or to the Collateral; provided, however, that Mortgagee as such limited attorney-in-fact shall be accountable only for such funds as are actually received by Mortgagee.

## ARTICLE 5 - REPRESENTATIONS AND WARRANTIES

- 5.1 **REPRESENTATIONS AND WARRANTIES.** Mortgagor represents and warrants to Mortgagee that, to Mortgagor's current actual knowledge, the following statements are true and correct as of the Effective Date:

- (a) **Legal Status.** Mortgagor is duly formed and validly existing and in good standing under the laws of the state(s) in which Mortgagor is organized. Mortgagor is qualified or licensed or has filed all applications to qualify or be licensed to do business in all jurisdictions in which such qualification or licensing is required and is diligently pursuing the issuance by the applicable secretary of states of such certificates of authority or qualification.
- (b) **Permits.** Mortgagor possesses all permits, franchises and licenses and all rights to all trademarks, trade names, patents and fictitious names, if any, necessary to enable Mortgagor to conduct the business(es) in which Mortgagor is now engaged in material compliance with applicable law, excepting those permits, franchises, and licenses (i) being applied for in the ordinary course of business as of the date hereof, or (ii) where Mortgagor's failure to possess such permits, franchises, or licenses does not give rise to a Material Adverse Effect (as defined in **Section 6.3** hereof).



- (c) **Authorization and Validity.** The execution and delivery of the Loan Documents to which Mortgagor is a party have been duly authorized and the Loan Documents constitute valid and binding obligations of Mortgagor, enforceable in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, moratorium or other laws affecting the enforcement of creditors' rights, or by the application of rules of equity.
- (d) **Violations.** The execution, delivery and performance by Mortgagor of each of the Loan Documents does not materially violate any provision of any law or regulation, or result in any breach or default under any contract, obligation, indenture or other instrument to which Mortgagor is a party or by which Mortgagor is bound.
- (e) **Litigation.** Except as otherwise disclosed in that certain Disclosure Agreement Regarding Representations, Covenants and Warranties of even date herewith, executed by Mortgagor for the benefit of Mortgagee (the "**Disclosure Agreement**"), there are no pending or threatened (in writing) actions, claims, investigations, suits or proceedings before any governmental authority, court or administrative agency which, if adversely determined, would reasonably be expected to adversely affect the financial condition or operations of Mortgagor other than those previously disclosed in writing by Mortgagor to Mortgagee.
- (f) **Financial Statements.** The Financial Statements (as such term is defined in the Disclosure Agreement) of Mortgagor, and of each of the parties that executed the Limited Indemnity, previously delivered by Mortgagor to Mortgagee: (i) are materially complete and correct; (ii) present fairly the financial condition of such party; and (iii) have been prepared in accordance with the same accounting standard used by such party to prepare the financial statements delivered to and approved by Mortgagee in connection with the making of the Loan, or other accounting standards approved by Mortgagee. Since the date of such Financial Statements, there has been no material adverse change in such financial condition, except as disclosed in the Disclosure Agreement.
- (g) **Reports.** All reports, documents, instruments and information delivered by Mortgagor to Mortgagee or otherwise prepared by, for or at the direction of Mortgagor and delivered to Mortgagee in connection with the Loan: (i) are correct and sufficiently complete to give Mortgagee accurate knowledge of their subject matter; and (ii) do not contain any misrepresentation of a material fact or omission of a material fact which omission makes the provided information misleading.
- (h) **Income Taxes.** There are no pending assessments or adjustments of Mortgagor's income tax payable with respect to any year.
- (i) **Subordination.** There is no agreement or instrument to which Mortgagor is a party or by which Mortgagor is bound that would require the subordination in right of payment of any of Mortgagor's obligations under the Note to an obligation owed to another party.
- (j) **Title.** Mortgagor lawfully holds and possesses title to the Property, without limitation on the right to encumber same. This Mortgage is a first lien on the Property prior and superior to all other liens and encumbrances on the Property except: (i) liens for real estate taxes and assessments not yet due and payable; (ii) senior exceptions previously approved by Mortgagee and shown in the title insurance policy insuring the lien of this Mortgage; and (iii) other matters, if any, as disclosed in the Disclosure Agreement.





20220110000010390 11/37 \$131.00  
Shelby Cnty Judge of Probate, AL  
01/10/2022 10:53:38 AM FILED/CERT

- (k) **Mechanics' Liens.** Except as disclosed in the Disclosure Agreement, there are no mechanics' or similar liens or claims which have been filed for work, labor or material affecting the Property which are or may be prior to or equal to the lien of this Mortgage. Except as disclosed in the Disclosure Agreement, there are no rights outstanding that under law could give rise to any liens affecting the Property which are or may be prior to or equal to the lien of this Mortgage.
- (l) **Encroachments.** Except as shown in the survey for the Property subject of this Mortgage issued in connection with the closing of the Loan and previously delivered to Mortgagee, none of the buildings or other improvements which were included for the purpose of determining the appraised value of the Property lies outside of the boundaries or building restriction lines of the Property and no buildings or other improvements located on adjoining properties encroach upon the Property.
- (m) **Collateral.** Mortgagor has good title to the existing Collateral, free and clear of all liens and encumbrances except: (i) liens for real estate taxes and assessments not yet due and payable; (ii) senior exceptions previously approved by Lender and shown in the title insurance policy insuring the lien of this Mortgage; and (iii) other matters, if any, disclosed in the Disclosure Agreement.
- (n) **Condition of Property.** Except as set forth in the Environmental Reports (as such term is defined in the Disclosure Agreement), or as otherwise set forth in the Disclosure Agreement, the Property is in good condition and repair, except for normal wear and tear, and is free from any substantial damage that would materially and adversely affect the value of the Property as security for the Loan or the intended use of the Property.
- (o) **Wetlands.** Except as shown on any survey of the Property issued in connection with the closing of the Loan that has been delivered to Mortgagee, no part of the Property consists of or is classified as wetlands, tidelands or swamp and overflow lands.
- (p) **Compliance With Laws.** Except as reflected in the Environmental Reports, or as otherwise set forth in the Disclosure Agreement, all federal, state and local laws, rules and regulations applicable to the Property, including, without limitation, all zoning and building requirements and all requirements of the Americans With Disabilities Act of 1990, as amended from time to time (42 U.S.C. Section 12101 *et seq.*) have been satisfied or complied with in all material respects and any non-compliance will not materially and adversely affect the value of the Property as security for the Loan or the intended use of the Property. All material certificates of occupancy and other licenses, permits and authorizations are valid and in full force and effect.
- (q) **Property Taxes and Other Liabilities.** All taxes, governmental assessments, insurance premiums, water, sewer and municipal charges, and ground rents, if any, which previously became due and owing in respect of the Property have been paid or arrangements, reasonably acceptable to Mortgagee, have been made for their payment contemporaneously with the execution of this Mortgage.
- (r) **Condemnation.** There is no proceeding pending or overtly threatened for the total or partial condemnation of the Property.





- (s) **Homestead.** There is no homestead or other exemption available to Mortgagor which would materially interfere with the right to sell the Property or the right to foreclose this Mortgage (or if there is such an exemption available, Mortgagor hereby waives its rights relating to such exemption that would materially interfere with the right to sell the Property or the right to foreclose this Mortgage).
- (t) **Solvency.** None of the transactions contemplated by the Loan will be or have been made with an actual intent to hinder, delay or defraud any present or future creditors of Mortgagor, and Mortgagor, on the Effective Date, will have received fair and reasonably equivalent value in good faith for the grant of the liens or security interests effected by the Loan Documents. On the Effective Date, Mortgagor will be solvent and will not be rendered insolvent by the transactions contemplated by the Loan Documents. Mortgagor is able to pay its debts as they become due.
- (u) **Separate Tax Parcel(s).** The Property is assessed for real estate tax purposes as one or more wholly independent tax parcels, separate from any other real property, and no other real property is assessed and taxed together with the Property or any portion thereof.
- (v) **Utilities; Water; Sewer.** The Property is served by public or private utilities (including water and sewer systems) required and adequate for the current or contemplated use thereof.
- (w) **ERISA Matters.** During the term of this Mortgage, unless Mortgagee shall have previously consented in writing, Mortgagor is not an employee benefit plan as defined in Section 3.(3) of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), which is subject to Title I of ERISA, nor a plan as defined in Section 4975(e)(1) of the Internal Revenue Code of 1986, as amended (each of the foregoing hereinafter referred to individually and collectively as a "**Plan**"). Mortgagor's assets do not constitute "plan assets" of any plan within the meaning of Department of Labor Regulation Section 2510.3-101 or to the extent any of the assets of Mortgagor constitute "plan assets" the Loan will not constitute a non-exempt prohibited transaction under ERISA. Mortgagor will not transfer or convey the Property to a Plan or to a person or entity whose assets constitute such "plan assets", and Mortgagor will not be reconstituted as a Plan or as an entity whose assets constitute "plan assets". To Mortgagor's knowledge, no Lease is with a Plan or an entity whose assets constitute such "plan assets," and Mortgagor will not enter into any Lease with a Plan or an entity whose assets constitute such "plan assets." With respect to the Loan, Mortgagor is acting on Mortgagor's own behalf and not on account of or for the benefit of any Plan.

As used in this Mortgage, to "Mortgagor's current actual knowledge," "to Mortgagor's knowledge," "known to Mortgagor," "to the best of Mortgagor's knowledge," and similar phrases shall have the same meaning as "to Borrower's knowledge" as set forth in the Loan Agreement.

## ARTICLE 6 - RIGHTS AND DUTIES OF THE PARTIES

- 6.1 **MAINTENANCE AND PRESERVATION OF THE PROPERTY.** Mortgagor shall (or shall use commercially reasonable efforts to cause any Tenant under a Lease) to: (a) keep the Property in good condition and repair except for normal wear and tear; (b) complete or restore promptly and in workmanlike manner the Property or any part thereof which may be substantially damaged or destroyed; (c) comply or cause the Property to materially comply with, (i) all applicable laws,



ordinances, regulations and standards, in each case to avoid a Material Adverse Effect, (ii) all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character and (iii) all requirements of insurance companies and any bureau or agency which establishes standards of insurability, which laws, covenants or requirements affect the Property and pertain to acts committed or conditions existing thereon, including, without limitation, any work of alteration, improvement or demolition as such laws, covenants or requirements mandate; (d) operate and manage the Property at all times in a professional manner and do all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value (subject to any requirements of any Lease); (e) promptly after execution, deliver to Mortgagee a copy of any management agreement concerning the Property and all amendments thereto and waivers thereof; and (f) execute and acknowledge all further reasonable documents, instruments and other papers necessary to preserve, continue, perfect and enjoy the benefits of this Mortgage and perform Mortgagor's obligations, including, without limitation, statements of the amount secured hereby then owing and statements of no offset. Mortgagor shall not: (A) remove or demolish all or any material part of the Property except in connection with any remedial or other action required to comply with applicable Hazardous Materials Laws, or reconstruction after casualty or condemnation, provided that any Property removed shall be removed in accordance with any applicable laws and such Property be replaced with property of equal or greater value; (B) alter either (i) the exterior of the Property in a manner which materially and adversely affects the value of the Property or (ii) the roof or other structural elements of the Property in a manner which requires a building permit except for tenant improvements required under the Leases; (C) initiate or acquiesce in any change in any zoning or other land classification which affects the Property; (D) materially alter the type of occupancy or use of all or any part of the Property; or (E) commit or permit waste of the Property. Mortgagee acknowledges Tenant's rights to take actions referenced in clauses (A), (B), (C), and (D) of the immediately preceding sentence subject to the terms and conditions regarding such matters set forth in the ICWG Lease, and any such actions taken by Tenant in accordance with the ICWG Lease are deemed approved hereunder and shall not be a violation of this Mortgage.

- 6.2 **TENANTS IN COMMON.** Mortgagor shall not file a complaint or institute any proceeding at law or in equity to have the Property partitioned. Mortgagor expressly waives any and all lien rights it may have under that certain Tenant-In-Common Agreement dated December 17, 2019 (the "**Tenancy in Common Agreement**"). Mortgagor hereby agrees that the Tenancy in Common Agreement and any and all rights and liens created thereby (including without limitation, rights to the payment of monies, rights of indemnity, lien rights, rights of first refusal, options to purchase or other rights of acquisition) are and shall be in all respects subordinate and inferior to the lien, security interest and terms of this Mortgage, the Note and the other Loan Documents. Mortgagor shall not amend or modify in any respect, or terminate, the Tenancy in Common Agreement without the prior written consent of Mortgagee.
- 6.3 **COMPLIANCE WITH LAWS.** Mortgagor shall materially comply, or use commercially reasonable efforts to cause compliance (in each case to avoid a Material Adverse Effect), with all federal, state and local laws, rules and regulations applicable to the Property, including, without limitation, all zoning and building requirements and all requirements of the Americans With Disabilities Act of 1990 (42 U.S.C. Section 12101 *et seq.*), as amended from time to time. Mortgagor shall possess and maintain or use commercially reasonable efforts to cause Mortgagor's tenant to possess and maintain in full force and effect at all times, in each case to avoid a Material Adverse Effect: (a) all certificates of occupancy and other licenses, permits and authorizations required by applicable law for the existing use of the Property and (b) all permits, franchises and





licenses and all rights to all trademarks, trade names, patents and fictitious names, if any, required by applicable law for Mortgagor to conduct the business(es) in which Mortgagor is now engaged. The term "**Material Adverse Effect**" means (a) a material and adverse effect on (i) five percent (5%) or more of the Properties (as defined in the Loan Agreement) as security for the Loan or (ii) the intended use of five percent (5%) or more of the Properties (as defined in the Loan Agreement), (b) resulting fines in excess of \$500,000.00, (c) resulting penalties or sanctions that could actually impair the business, operations, properties, assets or condition (financial or otherwise) of Tenant when considered with respect to five percent (5%) or more of the Properties (as defined in the Loan Agreement), (d) material impairment of the ability of Tenant to perform its obligations under the ICWG Lease, (e) material impairment of the landlord's rights under the ICWG Lease, or (f) imposition of liens upon the Property (not promptly removed or bonded as provided in this Mortgage and in the ICWG Lease). In determining whether any individual event would result in a Material Adverse Effect, notwithstanding that such event does not of itself have such effect, a Material Adverse Effect shall be deemed to have occurred if the cumulative effect of such event and all other then occurring events and existing conditions would result in a Material Adverse Effect.

- 6.4 **LITIGATION.** Mortgagor shall make reasonable and good-faith efforts to promptly notify Mortgagee in writing of any litigation pending or threatened against Mortgagor claiming damages in excess of \$250,000.00 and of all pending or threatened litigation against Mortgagor if the aggregate damage claims against Mortgagor exceed \$500,000.00.
- 6.5 **MERGER, CONSOLIDATION, TRANSFER OF ASSETS.** Mortgagor shall not: (a) merge or consolidate with any other entity; (b) make any substantial change in the nature of Mortgagor's business or structure; (c) acquire all or substantially all of the assets of any other entity after the date hereof; or (d) sell, lease, assign, transfer or otherwise dispose of a material part of Mortgagor's assets except in the ordinary course of Mortgagor's business or in accordance with **Section 6.15** of this Mortgage or as otherwise expressly permitted under the Loan Documents..
- 6.6 **ACCOUNTING RECORDS.** Mortgagor shall maintain adequate books and records in accordance with the same accounting standard used by Mortgagor to prepare the financial statements delivered to and approved by Mortgagee in connection with the making of the Loan, if any, or other accounting standards approved by Mortgagee. Mortgagor shall permit an authorized representative of Mortgagee, at any reasonable time and from time to time, at a reasonable time with reasonable advance notice, to inspect, audit and examine such books and records and make copies of same.
- 6.7 **COSTS, EXPENSES AND ATTORNEYS' FEES.** Mortgagor shall pay to Mortgagee the full amount of all actual and reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and expenses, incurred by Mortgagee in connection with: (a) appraisals and inspections of the Property or Collateral required by Mortgagee as a result of (i) a Transfer or proposed Transfer (as defined below), or (ii) a Default; (b) appraisals and inspections of the Property or Collateral required by applicable law, including, without limitation, federal or state regulatory reporting requirements; and (c) any acts performed by Mortgagee at Mortgagor's request or wholly or partially for the benefit of Mortgagor (including, without limitation, the preparation or review of amendments, assumptions, waivers, releases or reconveyances). In connection with appraisals and inspections, Mortgagor specifically (but not by way of limitation) acknowledges that: (aa) a formal written appraisal of the Property by a state certified or licensed appraiser may be required by federal regulatory reporting requirements on an annual or more frequent basis; and (bb)





Mortgagee may require inspection of the Property by an independent supervising architect, a cost engineering specialist, or both. Mortgagor is entitled to a copy of said appraisals and reports. Mortgagor shall pay all indebtedness arising under this Section within fifteen (15) days of demand by Mortgagee.

- 6.8 **LIENS, ENCUMBRANCES AND CHARGES.** Mortgagor shall make reasonable and good-faith efforts to promptly discharge by bonding or otherwise any lien, charge or other encumbrance which attaches to the Property in violation of this Mortgage or the other Loan Documents. Subject to Mortgagor's right to contest such matters under this Mortgage or as expressly permitted in the Loan Documents, Mortgagor shall pay when due or cause to be paid when due all obligations secured by or reducible to liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Property or any interest therein, whether senior or subordinate hereto, including, without limitation, all claims for work or labor performed, or materials or supplies furnished, in connection with any work of demolition, alteration, repair, improvement or construction of or upon the Property, except such as Mortgagor may in good faith contest or as to which a bona fide dispute may arise (provided provision is made to the satisfaction of Mortgagee for eventual payment thereof in the event that Mortgagor is obligated to make such payment and that any recorded claim of lien, charge or other encumbrance against the Property is immediately discharged by bonding or otherwise). So long as it complies with the provisions of this **Section 6.8** and any other relevant provisions of a Lease, a Tenant under a Lease shall have the right to perform Mortgagor's obligations under this **Section 6.8** (as such obligations may be modified pursuant to the terms of the Lease and the Loan Agreement).
- 6.9 **TAXES AND OTHER LIABILITIES.** Subject to the rights to contest such taxes and assessments under **Section 8.4** of this Mortgage or as expressly permitted in the other Loan Documents or the ICWG Lease, Mortgagor shall pay and discharge or cause to be paid and discharged when due any and all indebtedness, obligations, assessments and taxes, both real and personal and including federal and state income taxes and state and local property taxes and assessments subject to any applicable extension, notice or grace periods. Mortgagor shall promptly provide to Mortgagee copies of all tax and assessment notices pertaining to the Property received by Mortgagor. Mortgagor hereby authorizes Mortgagee to obtain, at Mortgagor's expense, a tax service contract which shall provide tax information on the Property to Mortgagee for the term of the Loan and any extensions or renewals of the Loan.
- 6.10 **INSURANCE COVERAGE.** Mortgagor's obligations with respect to insurance are as set forth in the Agreement Regarding Required Insurance.
- 6.11 **CONDEMNATION AND INSURANCE PROCEEDS.**
- (a) **Assignment of Claims.** Subject to **Section 6.11(d)**, and any restrictions contained in, and any rights of any Tenant under, any Lease, Mortgagor absolutely and irrevocably assigns to Mortgagee all of the following rights, claims and amounts (collectively, "**Claims**"), all of which shall be paid to Mortgagee: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Property; (ii) all other claims and awards for damages to or decrease in value of all or any part of, or any interest in, the Property; (iii) all proceeds of any insurance policies payable by reason of loss sustained to all or any part of the Property; and (iv) all interest which may accrue on any of the foregoing; any such awards, proceeds, interest and other sums of the Claims herein collectively called, "**Proceeds**." Mortgagor shall make reasonable and good-faith





efforts to give Mortgagee prompt written notice of the occurrence of any casualty affecting, or the institution of any proceedings for eminent domain or for the condemnation of, the Property or any portion thereof. So long as no Default is continuing at the time and beyond any extensions or notice and grace or cure periods (and subject to any restrictions contained in, and rights of any Tenant under, any Lease), (i) Mortgagor shall have the right to adjust, compromise and settle any Claim or group of related Claims of \$500,000.00 or less without the participation or consent of Mortgagee and (ii) Mortgagee shall have the right to participate in and consent to any adjustment, compromise or settlement of any Claim or group of related Claims exceeding \$500,000.00. If a Default is continuing at the time and beyond any extensions or notice and grace or cure periods (and subject to any restrictions contained in, and rights of any Tenant under, any Lease), Mortgagor hereby irrevocably empowers Mortgagee, in the name of Mortgagor, as Mortgagor's true and lawful attorney in fact, to commence, appear in, defend, prosecute, adjust, compromise and settle all Claims; provided, however, Mortgagee shall not be responsible for any failure to undertake any or all of such actions regardless of the cause of the failure. Subject to any restrictions contained in, and rights of any Tenant under, any Lease, Proceeds shall be payable to Mortgagee.

(b) **Application of Proceeds; No Default.** Subject to **Section 6.11(d)**, so long as no Default is continuing at the time of Mortgagee's receipt of the Proceeds and no Default continues thereafter, said Default being subject to any extensions or notice and grace or cure periods outlined in the Note and Loan Agreement the following provisions shall apply (subject to any restrictions contained in, and rights of any Tenant under any Lease):

- (i) **Condemnation.** If the Proceeds are the result of Claims described in **clauses 6.11(a) (i) or (ii)** above, or interest accrued thereon, Mortgagee shall apply the Proceeds in the following order of priority: First, to Mortgagee's expenses in settling, prosecuting or defending the Claims; Second, to the repair or restoration of the portion of the Property, if any, not condemned or proposed for condemnation and not otherwise the subject of a claim or award; and Third, to the Secured Obligations in any order without suspending, extending or reducing any obligation of Mortgagor to make installment payments.
- (ii) **Casualty and Other Insurance.** If the Proceeds are the result of Claims described in **clause 6.11(a) (iii)** above or interest accrued thereon, Mortgagee shall apply the Proceeds in the following order of priority: First, to Mortgagee's expenses in settling, prosecuting or defending the Claims; Second, to the repair or restoration of the Property; and Third, (aa) if the repair or restoration of the Property has been completed and all costs incurred in connection with the repair or restoration have been paid in full, to Mortgagor or (bb) in all other circumstances, to the Secured Obligations in any order without suspending, extending or reducing any obligation of Mortgagor to make installment payments.
- (iii) **Restoration.** Notwithstanding the foregoing **Sections 6.11(b)(i) and (ii)** (and subject to any restrictions contained in, and rights of any Tenant under, any Lease), Mortgagee shall have no obligation to make any Proceeds available for the repair or restoration of all or any portion of the Property unless and until all the following conditions have been satisfied then Mortgagee will be required to pay such amounts to Mortgagor: (aa) delivery to Mortgagee of the Proceeds plus any





additional amount which is needed to pay all costs of the repair or restoration (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (bb) establishment of an arrangement for lien releases and disbursement of funds acceptable to Mortgagee; (cc) delivery to Mortgagee in form and content reasonably acceptable to Mortgagee of all of the following: (1) plans and specifications for the work; (2) a contract for the work, signed by a contractor acceptable to Mortgagee; (3) a cost breakdown for the work; (4) if required by Mortgagee, a payment and performance bond for the work; (5) evidence of the continuation of all "Leases" (as defined in the Loan Agreement) unless consented to in writing by Mortgagee; (6) evidence that, upon completion of the work, the size, capacity, value, and income coverage ratios for the Property will be at least as great as those which existed immediately before the damage or condemnation occurred; (7) evidence that the work can reasonably be completed on or before that date which is 3 months prior to the Maturity Date; and (8) evidence of the satisfaction of any additional conditions that Mortgagee may reasonably establish are necessary to protect Mortgagee's security.

- (c) **Application of Proceeds; Default.** Subject to **Section 6.11(d)**, if a Default is continuing at the time of Mortgagee's receipt of the Proceeds or if a Default is continuing at any time thereafter, Mortgagee may, subject to applicable law governing use of the Proceeds, apply all or any of the Proceeds to Mortgagee's expenses in settling, prosecuting or defending the Claims and then apply the balance to the Secured Obligations in any order without suspending, extending or reducing any obligation of Mortgagor to make installment payments, and may release all or any part of the Proceeds to Mortgagor upon any conditions Mortgagee chooses.
- (d) **Lease Controls.** Notwithstanding any other provision of this Mortgage or the other Loan Documents, Mortgagee and Mortgagor agree that the terms of any Lease (including, without limitation, the ICWG Lease) shall govern the use and disposition of Proceeds and their availability for restoration, rebuilding or other work at the Property.
- 6.12 **IMPOUNDS.** Subject to **Section 6.11(d)** above, Mortgagor shall deposit and fund the Impounds in accordance with the terms of the Loan Agreement to be held and disbursed pursuant to the terms of the Cash Management Agreement.
- 6.13 **DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS.** Mortgagor shall make reasonable and good-faith efforts to protect, preserve and defend the Property and title to and right of possession of the Property (subject to the rights and obligations of a Tenant under any Lease), the security of this Mortgage and the rights and powers of Mortgagee hereunder at Mortgagor's sole expense against all adverse claims, whether the claim: (a) is against a possessory or non-possessory interest; (b) arose prior or subsequent to the Effective Date; or (c) is senior or junior to Mortgagor's or Mortgagee's rights. Mortgagor shall give Mortgagee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of the occurrence of any damage to the Property and of any condemnation offer or action.
- 6.14 **RIGHT OF INSPECTION.** Subject to any restrictions contained in, and rights of any Tenant under, any Lease, Mortgagee and its independent contractors, agents and employees may enter the Property from time to time at any reasonable time upon reasonable prior written notice to Mortgagor for the purpose of inspecting the Property and ascertaining Mortgagor's compliance with the terms of this Mortgage. Mortgagee shall use reasonable efforts to assure that Mortgagee's





entry upon and inspection of the Property shall not materially and unreasonably interfere with the business or operations of Mortgagor or Mortgagor's tenants on the Property, and such inspections shall not take place more than two (2) times per calendar year unless a Default has occurred and is continuing. The rights contained herein shall only exist until the Loan obligation has been fully paid.

- 6.15 **DUE ON SALE/ENCUMBRANCE.** The Loan is subject to the due on sale, transfer and encumbrance provisions contained in **Article 4** of the Loan Agreement. In determining whether or not to make the Loan, the Lender evaluated the background and experience of the Mortgagor and its officers in owning and operating property such as the Property, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Property which is the Lender's security for the Note. The Mortgagor and its officers are well experienced in borrowing money and owning and operating property such as the Property, were ably represented by a licensed attorney at law in the negotiation and documentation of the Loan and bargained at arm's length and without duress of any kind for all of the terms and conditions of the Loan, including this provision. The Mortgagor recognizes that any secondary junior financing placed upon the Property (i) may divert funds which would otherwise be used to pay the Note; (ii) could result in acceleration and foreclosure by any such junior encumbrancer which would force the Lender to take measures and incur expenses to protect its security; (iii) would detract from the value of the Property should the Lender come into possession thereof with the intention of selling same; and (iv) would impair the Lender's right to accept a deed in lieu of foreclosure, as a foreclosure by the Lender would be necessary to clear the title to the Property. In accordance with the foregoing and for the purposes of (a) protecting the Lender's security, both of repayment and of value of the Property; (b) giving the Lender the full benefit of its bargain and contract with the Mortgagor; (c) allowing the Lender to raise the interest rate and collect assumption fees; and (d) keeping the Property free of subordinate financing liens, the Mortgagor agrees that if **Article 4** of the Loan Agreement is deemed a restraint on alienation, that it is a reasonable one.
- 6.16 **EXCULPATION.** Mortgagee shall not directly or indirectly be liable to Mortgagor or any other person as a consequence of: (a) the exercise of the rights, remedies or powers granted to Mortgagee in this Mortgage; (b) the failure or refusal of Mortgagee to perform or discharge any obligation or liability of Mortgagor under any agreement related to the Property or under this Mortgage; or (c) any loss sustained by Mortgagor or any third party resulting from Mortgagee's failure to lease the Property during the continuance of a Default (hereafter defined) or from any other act or omission of Mortgagee in managing the Property during the continuance of a Default and no such liability shall be asserted or enforced against Mortgagee, all such liability being expressly waived and released by Mortgagor, unless in each case such liability is caused by the gross negligence, bad faith, or willful misconduct of Mortgagee.
- 6.17 **INDEMNITY.** Without in any way limiting any other indemnity contained in this Mortgage or in any of the other Loan Documents, Mortgagor agrees to defend, indemnify and hold harmless the Lender Group (hereinafter defined) from and against any claim, loss, damage, actual and reasonable cost, actual expense or liability directly or indirectly arising out of: (a) the making of the Loan, except for violations of banking laws or regulations by the Lender Group; (b) this Mortgage, including, without limitation, all recording costs, taxes, documentary stamp taxes, intangible taxes, and costs of title insurance endorsements; (c) the execution of this Mortgage or the performance of any act required or permitted hereunder or by law; (d) any failure of Mortgagor to perform Mortgagor's obligations under this Mortgage or the other Loan Documents; (e) any alleged obligation or undertaking on the Lender Group's part to perform or discharge any of the Mortgagor's





representations, warranties, conditions, covenants or other obligations contained in any other document related to the Property; or (f) any act or omission by Mortgagor or any contractor, agent, employee or representative of Mortgagor with respect to the Property. This indemnity shall include, without limitation: (aa) all consequential damages (including, without limitation, any third party tort claims or governmental claims, fines or penalties against the Lender Group); and (bb) all actual and reasonable court costs and reasonable attorneys' fees (including, without limitation, expert witness fees) paid or incurred by the Lender Group. The foregoing to the contrary notwithstanding, this indemnity shall not include any claim, loss, damage, cost, expense or liability directly or indirectly arising out of the gross negligence, bad faith, or willful misconduct of any member of the Lender Group; any consequential, punitive, or special damages; any income, franchise or similar tax imposed on any member of the Lender Group; or any claim, loss, damage, cost, expense or liability incurred by the Lender Group arising from any act or incident on the Property occurring after the full reconveyance and release of the lien of this Mortgage on the Property. "**Lender Group**", as used herein, shall mean (1) Mortgagee (including, without limitation, any participant in the Loan), (2) any entity controlling, controlled by or under common control with Mortgagee, (3) the directors, officers, employees and agents of Mortgagee and such other entities, and (4) the successors, heirs and assigns of the entities and persons described in foregoing **clauses (1) through (3)**. Mortgagor shall pay within thirty (30) days after Mortgagee's demand any amounts owing under this indemnity together with interest from the date the indebtedness is due until paid at the rate of interest applicable to the principal balance of the Note as specified therein. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE SATISFACTION AND RELEASE OF THIS MORTGAGE, BUT MORTGAGOR'S LIABILITY UNDER THIS INDEMNITY SHALL BE SUBJECT TO THE PROVISIONS OF THE SECTION IN THE LOAN AGREEMENT ENTITLED "BORROWER'S LIABILITY".

IN NO EVENT SHALL MORTGAGOR BE LIABLE TO LENDER FOR ANY PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES, EXCEPT AND TO THE EXTENT LENDER IS OTHERWISE LIABLE FOR SUCH DAMAGES PURSUANT TO A THIRD-PARTY CLAIM AND SUCH THIRD-PARTY CLAIM IS INDEMNIFIED BY MORTGAGOR HEREUNDER. IN ADDITION, IN NO EVENT SHALL MORTGAGOR HAVE ANY INDEMNITY OBLIGATIONS HEREUNDER TO THE EXTENT THAT THE SUBJECT MATTER IS CAUSED OR CONTRACTED FOR BY ANY LENDER PARTY OR THAT IT ARISES FROM CONDITIONS OR EVENTS FIRST OCCURRING AFTER MORTGAGOR CEASES TO HAVE CONTROL OF THE APPLICABLE PROPERTY.

- 6.18 **RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY**. Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Property or in any manner obligated under the Secured Obligations ("**Interested Parties**"), Mortgagee may, from time to time: (a) fully or partially release any person or entity from liability for the payment or performance of any Secured Obligation; (b) extend the maturity of any Secured Obligation; (c) make any agreement with Mortgagor increasing the amount or otherwise altering the terms of any Secured Obligation; (d) accept additional security for any Secured Obligation; or (e) release all or any portion of the Property, Collateral and other security for any Secured Obligation. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of this Mortgage upon the Property.



- 6.19 **SUBROGATION.** Mortgagee shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Mortgagee pursuant to this Mortgage or by the proceeds of any loan secured by this Mortgage.

## ARTICLE 7 - DEFAULT; REMEDIES

- 7.1 **DEFAULT.** For all purposes hereof, "**Default**" shall mean either an "**Optional Default**" or an "**Automatic Default**", as such terms are defined in the Loan Agreement.
- 7.2 **RIGHTS AND REMEDIES.** In addition to the rights and remedies set forth in the Loan Agreement, at any time during the continuance of a Default, without notice or demand (except as may be required by applicable law), Mortgagee shall have all of the following rights and remedies:
- (a) declare the entire unpaid amount due under the Note (the "**Debt**") to be immediately due and payable;
  - (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Mortgage under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
  - (c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Mortgage for the balance of the Debt not then due, unimpaired and without loss of priority;
  - (d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;
  - (e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, the Loan Agreement or in the other Loan Documents;
  - (f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Mortgage or the other Loan Documents;
  - (g) seek and obtain the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Mortgagor, any guarantor or indemnitor under the Loan or any other person liable for the payment of the Debt;
  - (h) the license granted to Mortgagor under **Section 3.2** hereof shall automatically be revoked and Mortgagee may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Mortgagor and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Mortgagor agrees to surrender possession of the Property and of such





books, records and accounts to Mortgagee upon demand, and thereupon Mortgagee may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Mortgagee deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Mortgagor with respect to the Property, whether in the name of Mortgagor or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all rents of the Property and every part thereof; (v) require Mortgagor to pay monthly in advance to Mortgagee, or any receiver appointed to collect the rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Mortgagor; (vi) require Mortgagor to vacate and surrender possession of the Property to Mortgagee or to such receiver and, in default thereof, Mortgagor may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Mortgagee shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, other charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Mortgagee, its counsel, agents and employees;

- (i) apply any sums then deposited or held in escrow or otherwise by or on behalf of Mortgagee in accordance with the terms of the Loan Agreement, this Mortgage or any other Loan Document to the payment of the following items in any order in its sole discretion: (i) taxes and other charges; (ii) insurance premiums; (iii) interest on the unpaid principal balance of the Debt; and (iv) all other sums payable pursuant to the Note, the Loan Agreement, this Mortgage and the other Loan Documents, including without limitation advances made by Mortgagee pursuant to the terms of this Mortgage;
- (j) surrender the insurance policies maintained pursuant to the Loan Agreement, collect the unearned insurance premiums for such insurance policies and apply such sums as a credit on the Debt in such priority and proportion as Mortgagee in its discretion shall deem proper, and in connection therewith, Mortgagor hereby appoints Mortgagee as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Mortgagor to collect such insurance premiums;
- (k) apply the undisbursed balance of any deposit made by Mortgagor with Mortgagee in connection with the restoration of the Property after a casualty thereto or condemnation thereof, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Mortgagee shall deem to be appropriate in its discretion; and/or
- (l) pursue such other remedies as Mortgagee may have under applicable law.

In the event of a sale, by foreclosure or otherwise, of less than all of the Property, this Mortgage shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority.

**7.3 ADDITIONAL RIGHTS AND REMEDIES.** In addition to the rights and remedies set forth in **Section 7.2** above and the Loan Agreement, at any time during the continuation of a Default, Mortgagee shall have all of the following rights and remedies:

Mortgage (Alabama)  
Wells Fargo/Net Lease Suds III  
Obligor No.: 8799477858





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- (a) **Multiple Foreclosures.** To resort to and realize upon the security hereunder and any other security now or later held by Mortgagee concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both, and to apply the proceeds received upon the Secured Obligations all in such order and manner as Mortgagee determines in its sole discretion;
- (b) **Rights to Collateral.** To exercise all rights Mortgagee may have with respect to the Collateral under this Mortgage, the UCC or otherwise at law;
- (c) **Other Rights.** To exercise such other rights as Mortgagee may have at law or in equity or pursuant to the terms and conditions of this Mortgage or any of the other Loan Documents; and
- (d) **Uniform Commercial Code.** Without limitation of Mortgagee's rights of enforcement with respect to the Collateral or any part thereof in accordance with the procedures for foreclosure of real estate, Mortgagee may exercise its rights of enforcement with respect to the Collateral or any part thereof under the UCC (or under the Uniform Commercial Code in force in any other state to the extent the same is applicable law) and in conjunction with, in addition to or in substitution for those rights and remedies: (1) Mortgagee may enter upon Mortgagor's premises to take possession of, assemble and collect the Collateral or, to the extent and for those items of the Collateral permitted under applicable law, to render it unusable; (2) Mortgagee may require Mortgagor to assemble the Collateral and make it available at a place Mortgagee designates which is mutually convenient to allow Mortgagee to take possession or dispose of the Collateral; (3) written notice mailed to Mortgagor as provided herein at least twenty (20) days prior to the date of public sale of the Collateral or prior to the date after which private sale of the Collateral will be made shall constitute reasonable notice; (4) omitted; (5) in the event of a foreclosure sale, whether made by a trustee under the terms hereof, or under judgment of a court, the Collateral and the other Property may, at the option of Mortgagee, be sold as a whole; (6) it shall not be necessary that Mortgagee take possession of the Collateral or any part thereof prior to the time that any sale pursuant to the provisions of this Section is conducted and it shall not be necessary that the Collateral or any part thereof be present at the location of such sale; (7) with respect to application of proceeds from disposition of the Collateral under **Section 7.2.e** hereinabove, the costs and expenses incident to disposition shall include the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and the reasonable attorneys' fees and legal expenses incurred by Mortgagee; (8) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the Secured Obligations or as to the occurrence of any default, or as to Mortgagee having declared all of such indebtedness to be due and payable, or as to notice of time, place and terms of sale and of the properties to be sold having been duly given, or as to any other act or thing having been duly done by Mortgagee, shall be taken as prima facie evidence of the truth of the facts so stated and recited; and (9) Mortgagee may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Mortgagee, including the sending of notices and the conduct of the sale, but in the name and on behalf of Mortgagee.

In connection with any sale or sales hereunder, Mortgagee may elect to treat any of the Property which consists of a right in action or which is property that can be severed from the Property





(including, without limitation, any improvements forming a part thereof) without causing structural damage thereto as if the same were personal property or a fixture, as the case may be, and dispose of the same in accordance with applicable law, separate and apart from the sale of the Property.

- 7.4 **WAIVER OF MARSHALING RIGHTS.** Mortgagor, for itself and for all parties claiming through or under Mortgagor, and for all parties who may acquire a lien on or interest in the Property or the Collateral, hereby waives all rights to a sale in inverse order of alienation or to have the Property, including, without limitation, the Collateral which is now or later may be security for any Secured Obligation, marshaled upon any foreclosure of this Mortgage or on a foreclosure of any other security for any of the Secured Obligations.
- 7.5 **NO WAIVER.** Mortgagee's acceptance of late payment or performance of any Secured Obligation shall not be construed to waive Mortgagee's right to require prompt payment or performance in the future. Mortgagee's failure to exercise any right or remedy hereunder during the continuance of a Default shall not be construed to prejudice Mortgagee's rights or remedies during the continuance of any other Default. No delay by Mortgagee in exercising any such right or remedy shall preclude Mortgagee from the exercise thereof at any time while that Default is continuing. Mortgagee's delivery of any notice or demand to Mortgagor shall not of itself entitle Mortgagor to any notice or demand in similar circumstances.
- 7.6 **EXCULPATION.** Subject to the terms of **Section 8.7** of this Mortgage and except in each case to the extent caused by Mortgagee's gross negligence or willful misconduct, Mortgagee shall not be directly or indirectly liable to Mortgagor or any other person as a consequence of: (a) the exercise or failure to exercise any of the rights or remedies granted to Mortgagee in this Mortgage; (b) the failure or refusal of Mortgagee to perform or discharge any obligation or liability of Mortgagor under any agreement related to the Property or under any Loan Document; (c) any loss, claim, cause of action, liability, indebtedness, damage or injury to any person or property arising from the occupancy or use of the Property by Mortgagor or any other person or entity; or (d) any loss resulting from any act or omission of Mortgagee in managing the Property during the continuance of a Default.
- 7.7 **PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES.** Subject to the terms of **Section 8.7**, Mortgagor agrees to pay to Mortgagee within fifteen (15) days of demand all actual and reasonable costs and expenses incurred by Mortgagee in the enforcement of the terms and conditions of this Mortgage (including, without limitation, actual court costs and reasonable attorneys' fees); provided, however, that Mortgagor shall not have any obligation to indemnify, hold harmless or defend Mortgagee to the extent that any such loss, liability, cost, expense, claim, action, procedure or suit arises from the gross negligence or willful misconduct of Mortgagee or any of its agents, employees, officers or affiliates or first arises after Mortgagee or its designee takes possession or control of the Mortgaged Property or any part thereof (whether by foreclosure, deed-in-lieu of foreclosure or otherwise pursuant to Mortgagee's remedies under the Loan Documents).
- 7.8 **POWER TO FILE NOTICES AND CURE DEFAULTS.** During the continuance of any Default and after the expiration of any extensions or notice and grace or cure periods, Mortgagor shall be deemed to appoint Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, to perform any obligation of Mortgagor hereunder, **provided, however**, that: (a) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (b) Mortgagee shall not be liable to Mortgagor or any other person or entity for any failure to act under this Section.





- 7.9 **REMEDIES CUMULATIVE.** All rights and remedies of Mortgagee under this Mortgage and the other Loan Documents are cumulative and are in addition to all rights and remedies provided by applicable law. Mortgagee may enforce any one or more remedies or rights under the Loan Documents either successively or concurrently.

## **ARTICLE 8 - MISCELLANEOUS PROVISIONS**

- 8.1 **ADDITIONAL PROVISIONS.** The Loan Documents contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The Loan Documents grant further rights to Mortgagee and contain further agreements and affirmative and negative covenants by Mortgagor which apply to this Mortgage and to the Property and such further rights and agreements are incorporated herein by this reference.
- 8.2 **NON-WAIVER.** By accepting payment of any amount secured hereby after its due date or late performance of any other Secured Obligation, Mortgagee shall not waive its right against any person obligated directly or indirectly hereunder or on any Secured Obligation, either to require prompt payment or performance when due of all other sums and obligations so secured or to declare default for failure to make such prompt payment or performance. No exercise of any right or remedy by Mortgagee hereunder shall constitute a waiver of any other right or remedy herein contained or provided by law. No failure by Mortgagee to exercise any right or remedy hereunder arising during the continuance of any Default shall be construed to prejudice Mortgagee's rights or remedies during the continuance of any other or subsequent Default. No delay by Mortgagee in exercising any such right or remedy shall be construed to preclude Mortgagee from the exercise thereof at any time while that Default is continuing. No notice to nor demand on Mortgagor shall of itself entitle Mortgagor to any other or further notice or demand in similar or other circumstances.
- 8.3 **CONSENTS AND APPROVALS.** Wherever Mortgagee's consent, approval, acceptance or satisfaction is required under any provision of this Mortgage or any of the other Loan Documents, such consent, approval, acceptance or satisfaction shall not be unreasonably withheld, conditioned or delayed by Mortgagee unless such provision expressly so provides.
- 8.4 **PERMITTED CONTESTS.** After prior written notice to Mortgagee, Mortgagor may contest, if allowed by applicable law, by appropriate legal or other proceedings conducted in good faith and with due diligence, the amount, validity or application, in whole or in part, of any lien, levy, tax or assessment, or any lien of any laborer, mechanic, materialman, supplier or vendor, or the application to Mortgagor or the Property of any law or the validity thereof, the assertion or imposition of which, or the failure to pay when due, would constitute a Default; provided that (a) Mortgagor pursues the contest diligently, in a manner which Mortgagee determines is not prejudicial to Mortgagee, and does not impair the lien of this Mortgage; (b) the Property, or any part hereof or estate or interest therein, shall not be in any danger of being sold, forfeited or lost by reason of such proceedings; (c) in the case of the contest of any law or other legal requirement, Mortgagee shall not be in any danger of any civil or criminal liability; and (d) if required by Mortgagee, Mortgagor deposits with Mortgagee any funds or other forms of assurance (including a bond or letter of credit) satisfactory to Mortgagee to protect Mortgagee from the consequences of the contest being unsuccessful. Mortgagor's right to contest pursuant to the terms of this provision shall in no way relieve Mortgagor of its obligations under the Loan or to make payments to Mortgagee as and when due. Notwithstanding the foregoing, Tenant shall be permitted to pursue all contests of such matters as described in and subject to the ICWG Lease, and so long as Tenant is in compliance with the terms and conditions of the ICWG Lease related to any such contest,





Mortgagor shall be deemed in compliance with the terms and conditions of the Loan Documents regarding such contest, including without limitation this **Section 8.4**.

- 8.5 **RELATIONSHIP OF PARTIES.** The relationship of Mortgagor and Mortgagee under the Loan Documents is, and shall at all times remain, solely that of borrower and lender.
- 8.6 **FURTHER ASSURANCES.** Mortgagor shall, upon demand by Mortgagee, execute, acknowledge (if appropriate) and deliver any and all documents and instruments and do or cause to be done all further acts reasonably necessary or appropriate to effectuate the purposes of the Loan Documents and to perfect any assignments contained therein; provided, in no event shall Mortgagor be required to execute, acknowledge or deliver any act, deed, conveyance, deed of trust, mortgage, assignment, notice of assignment, transfer or assurance that materially increases Mortgagor's obligations or materially reduces Mortgagor's rights under the Loan Documents except those in confirmation of the Loan Documents.
- 8.7 **ATTORNEYS' FEES.** If any legal action, suit or proceeding is commenced between Mortgagor and Mortgagee regarding their respective rights and obligations under this Mortgage or any of the other Loan Documents, the prevailing party shall be entitled to recover, in addition to damages or other relief, actual and reasonable costs and expenses incurred, reasonable attorneys' fees and court costs (including, without limitation, expert witness fees). As used herein the term "prevailing party" shall mean the party which obtains the principal relief it has sought, whether by compromise settlement or judgment. If the party which commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.
- 8.8 **MORTGAGOR AND MORTGAGEE DEFINED.** The term "**Mortgagor**" includes both the original Mortgagor and any subsequent owner or owners of any of the Property, and the term "**Mortgagee**" includes the original Mortgagee and any future owner or holder, including assignees, pledges and participants, of the Note or any interest therein.
- 8.9 **NO LIABILITY.** Except to the extent caused by the gross negligence, bad faith, or willful misconduct of Mortgagee, Mortgagee shall not be directly or indirectly liable or responsible for any loss, claim, cause of action, liability, indebtedness, damage or injury of any kind or character to any person or property arising from any construction on, or occupancy or use of, the Property, whether caused by or arising from: (i) any defect in any building, structure, grading, fill, landscaping or other improvements thereon or in any on-site or off-site improvement or other facility therein or thereon; (ii) any act or omission of Mortgagor or any of Mortgagor's agents, employees, independent contractors, licensees or invitees; (iii) any accident in or on the Property or any fire, flood or other casualty or hazard thereon; (iv) the failure of Mortgagor or any of Mortgagor's licensees, employees, invitees, agents, independent contractors or other representatives to maintain the Property in a safe condition; or (v) any nuisance made or suffered on any part of the Property
- 8.10 **SEVERABILITY.** If any term of this Mortgage or any other Loan Document, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Mortgage or such other Loan Document, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Mortgage or such other Loan Document shall be valid and enforceable to the fullest extent permitted by law.





- 8.11 **RELATIONSHIP OF ARTICLES.** The rights, remedies and interests of Mortgagee under this Mortgage established by **Article 1** and the security agreement established by **Article 4** are independent and cumulative, and there shall be no merger of any lien created by this Mortgage with any security interest created by the security agreement. Mortgagee may elect to exercise or enforce any of its rights, remedies or interests under either or both this Mortgage or the security agreement as Mortgagee may from time to time deem appropriate. The absolute assignment of rents and leases established by **Article 3** is similarly independent of and separate from the Mortgage and the security agreement.
- 8.12 **MERGER.** No merger shall occur as a result of Mortgagee's acquiring any other estate in, or any other lien on, the Property unless Mortgagee consents to a merger in writing.
- 8.13 **OBLIGATIONS OF MORTGAGOR, JOINT AND SEVERAL LIABILITY.** If more than one person has executed this Mortgage as "Mortgagor", the obligations of all such persons hereunder shall be joint and several.
- 8.14 **SEPARATE AND COMMUNITY PROPERTY.** Any married person who executes this Mortgage as a "Mortgagor" agrees that any money judgment which Mortgagee obtains pursuant to the terms of this Mortgage or any other obligation of that married person secured by this Mortgage may be collected by execution upon any separate property or community property of that person.
- 8.15 **INTEGRATION; INTERPRETATION.** The Loan Documents contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated therein and supersede all prior negotiations or agreements, written or oral. The Loan Documents shall not be modified except by written instrument executed by all parties. Any reference in any of the Loan Documents to the Property or Collateral shall include all or any part of the Property or Collateral. Any reference to the Loan Documents includes any amendments, renewals or extensions now or hereafter approved by Mortgagee in writing. When the identity of the parties or other circumstances make it appropriate, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.
- 8.16 **CAPITALIZED TERMS.** Capitalized terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement.
- 8.17 **SUCCESSORS IN INTEREST.** The terms, covenants and conditions contained herein and in the other Loan Documents shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties. The foregoing sentence shall not be construed to permit Mortgagor to assign the Loan except as otherwise permitted under the Note or the other Loan Documents.
- 8.18 **GOVERNING LAW.** This Mortgage was accepted by Mortgagee in the state of New York, which state the parties agree has a substantial relationship to the parties and to the underlying transaction embodied hereby. Accordingly, in all respects, including, without limiting the generality of the foregoing, matters of construction, validity, enforceability and performance, this Mortgage, the Note and the other Loan Documents and the obligations arising hereunder and thereunder shall be governed by, and construed in accordance with, the laws of the state of New York applicable to contracts made and performed in such state and any applicable law of the United States of America, except that at all times the provisions for enforcement of all remedies granted hereunder and the creation, perfection and enforcement of the liens and security interests created pursuant hereto and to the other Loan Documents in any Collateral which is located in the state where the Land is located shall be governed by and construed according to the law of the state where the Land is





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located except to the extent that under the UCC perfection may be governed by the laws of a different jurisdiction. Except as provided in the immediately preceding sentence, Mortgagor hereby unconditionally and irrevocably waives, to the fullest extent permitted by law, any claim to assert that the law of any jurisdiction other than New York governs this Mortgage, the Note and other Loan Documents.

- 8.19 **CONSENT TO JURISDICTION.** Mortgagor irrevocably submits to the jurisdiction of: (a) any state or federal court sitting in the county of New York, state of New York over any suit, action, or proceeding, brought by Mortgagor against Mortgagee, arising out of or relating to this Mortgage, the Note or the Loan; (b) any state or federal court sitting in the state where the Land is located or the state in which Mortgagor's principal place of business is located over any suit, action or proceeding, brought by Mortgagee against Mortgagor, arising out of or relating to this Mortgage, the Note or the Loan; and (c) any state court sitting in the county of the state where the Property is located over any suit, action, or proceeding, brought by Mortgagee to enforce its rights with respect to the Collateral. Mortgagor irrevocably waives, to the fullest extent permitted by law, any objection that Mortgagor may now or hereafter have to the laying of venue of any such suit, action, or proceeding brought in any such court and any claim that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.
- 8.20 **EXHIBITS.** Exhibit A is incorporated into this Mortgage by this reference as if fully set forth herein.
- 8.21 **ADDRESSES; REQUEST FOR NOTICE.** All notices and other communications that are required or permitted to be given to a party under this Mortgage shall be in writing, refer to the Loan number, and shall be sent to such party, either by personal delivery, by overnight delivery service, by certified first class mail, return receipt requested or otherwise (including by email) as set forth in the Loan Agreement, to the parties set forth on Page 1 of this Mortgage and the additional parties set forth below. All such notices and communications shall be effective upon receipt of such delivery or by email or otherwise as set forth in the Loan Agreement.

**Mortgagee:**

Wells Fargo Bank, National Association  
1808 Aston Avenue, Suite 250  
Carlsbad, California 92008  
Attn: Loan Administration  
Telephone: (760) 918-2700

**With a copy to:**

Moore & Van Allen PLLC  
100 North Tryon Street, Suite 4700  
Charlotte, North Carolina 28202  
Attn: Timothy W. Corrigan, Esq.  
Telephone: (704) 331-1019  
Email: [timcorrigan@mvalaw.com](mailto:timcorrigan@mvalaw.com)

**Mortgagor:**

c/o Orion Real Estate Group

Mortgage (Alabama)  
Wells Fargo/Net Lease Suds III  
Obligor No.: 8799477858





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Shelby Cnty Judge of Probate, AL  
01/10/2022 10:53:38 AM FILED/CERT

200 S Biscayne Blvd.  
Seventh Floor  
Miami, Florida 33131  
Attn: Kevin J. Sanz  
Telephone: (305) 960-8998  
Email: ksanz@orionmiami.com

With a copy to:

DarrowEverett LLP  
One Turks Head Place, 12<sup>th</sup> Floor  
Providence, Rhode Island 02903  
Attention: Eric R. Everett, Esq.  
E-mail: eeverett@darroverett.com

Mortgagor's principal place of business is at the address set forth on Page 1 of this Mortgage.

Mortgagor hereby requests that a copy of notice of default and notice of sale be delivered to it as described in this **Section 8.21**. Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by giving thirty (30) days' notice to the other parties in the manner set forth above.

- 8.22 **COUNTERPARTS.** This Mortgage may be executed in any number of counterparts, each of which, when executed and delivered, will be deemed an original and all of which taken together, will be deemed to be one and the same instrument.
- 8.23 **CROSS DEFAULT; CROSS-COLLATERALIZATION.** This Mortgage secures not only the indebtedness and Secured Obligations evidenced by the Note, the Loan Agreement, and any of the other Loan Documents securing or executed in connection with the Note (collectively, the "**Subject Loan Documents**"), but also the indebtedness and Secured Obligations evidenced by any other note, mortgage or deed of trust, security agreement or loan document or agreement hereafter executed in connection with or as security for the indebtedness evidenced by the Note (collectively, the "**Cross Pledged and Defaulted Loan Documents**"). The continuance of a Default under this Mortgage (after the expiration of any applicable notice and cure periods) shall be deemed and shall constitute a default under the Cross Pledged and Defaulted Loan Documents (without any further notice by Mortgagee to Mortgagor or further cure rights, each of which is hereby specifically waived by Mortgagor for all purposes). Notwithstanding the foregoing, Mortgagee reserves the right (in its sole discretion), to undo (in whole or in part) the cross default and/or cross collateralization provisions contained in this Mortgage. In connection therewith, Mortgagor shall cooperate with the reasonable requests of Mortgagee, including agreeing to enter into such amendments to this Mortgage as may be requested in order to facilitate the undoing of the cross default and/or cross collateralization provisions of this Mortgage and to take such other actions to facilitate the same as Mortgagee shall request, in each case without materially impairing Mortgagor's rights or materially increasing Mortgagor's obligations with respect to the Secured Obligations.
- 8.24 **WAIVER OF JURY TRIAL.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, MORTGAGEE AND MORTGAGOR HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN





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RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF MORTGAGEE OR MORTGAGOR. THIS PROVISION IS A MATERIAL INDUCEMENT FOR MORTGAGEE TO ENTER INTO THIS MORTGAGE.

8.25 **SPECIAL STATE PROVISIONS.** To the extent of any conflict between the terms and provisions of this paragraph and the terms and provisions otherwise contained in this Mortgage, the terms and provisions of this paragraph shall govern and control the rights and obligations of the parties.

(a) **Power of Sale Foreclosure.** Upon the occurrence of any Default, or at any time thereafter, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages, and Lender shall be authorized, at its option, whether or not possession of the Property is taken, under the power of sale which is hereby given to Lender, after giving notice by publication once a week for three (3) consecutive weeks of the time, place and terms of each such sale, together with a description of the Property to be sold, by publication in a newspaper published in the county or counties wherein the Property or any part thereof is located, to sell the Property (or such part or parts thereof as Lender may from time to time elect to sell) in front of such county's main or front courthouse door, at public outcry, to the highest bidder for cash. The sale shall not occur until after the date that is thirty (30) days after the date the last of such three (3) consecutive weekly notices is published. The sale shall be held between the hours of 11:00 a.m. and 4:00 p.m. (Birmingham, Alabama time) on the day designated for the exercise of the power of sale hereunder. Lender, its successors and assigns, may bid at any sale or sales had under the terms of this Mortgage and may purchase the Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. At any foreclosure sale, any part or all of the Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, Mortgagor hereby waiving the application of any doctrine of marshaling or like proceeding. In case the Lender, in the exercise of the power of sale herein given, elects to sell the Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Property not previously sold shall have been sold or all the Secured Obligations shall have been paid in full. To the extent permitted by applicable law, Mortgagor hereby authorizes and empowers Lender or the auctioneer at any foreclosure sale had hereunder, for and in the name of Mortgagor, to execute and deliver to the purchaser or purchasers of any of the Property sold at foreclosure good and sufficient deeds of conveyance or bills of sale thereto.

(b) The date of this Mortgage is intended as a date for the convenient identification of this Mortgage and is not intended to indicate that this Mortgage was executed and delivered on that date.

(c) **Defeasance and Mortgage and Security Agreement Release and Satisfaction.** If and when Mortgagor has paid and performed all of the Secured Obligations this Mortgage shall become null and void and Mortgagor shall be entitled to a release and satisfaction to be provided by Lender as to this Mortgage and any filed financing statements shall be terminated. Upon the request of Mortgagor for the release of the Property secured by this Mortgage in accordance with the terms of the Loan Agreement, Lender will provide a release of the Property from the lien of this Mortgage and termination statements for any filed financing statements to Mortgagor. Mortgagor shall be responsible for the recordation of such release and the payment of any recording and filing





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Shelby Cnty Judge of Probate, AL  
01/10/2022 10:53:38 AM FILED/CERT

costs. Upon the recording of such release and the filing of such termination statements, the absolute assignments set forth in Article 3 shall automatically terminate and become null and void.

[Signature page follows]





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Shelby Cnty Judge of Probate, AL  
01/10/2022 10:53:38 AM FILED/CERT

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the day written above.

**MORTGAGOR:**

NET LEASE SUDS III LLC,  
a Delaware limited liability company

By: LEE  
Name: Eric Everett  
Title: Authorized Signatory

NET LEASE SUDS IV LLC,  
a Delaware limited liability company

By: EE  
Name: Eric Everett  
Title: Authorized Signatory

STATE OF Rhode Island )  
COUNTY OF Providence )

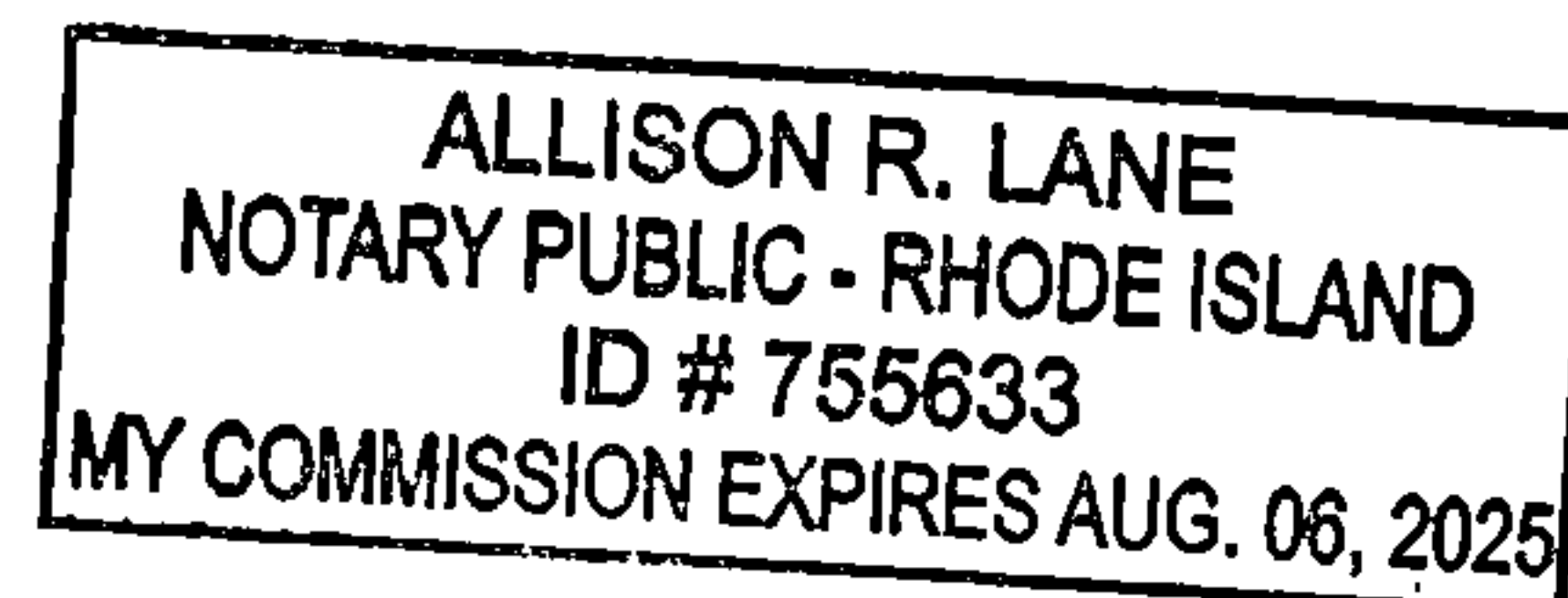
I, the undersigned, a notary public in and for said county in said state, hereby certify that Eric Everett, whose name as Authorized Signatory of NET LEASE SUDS III LLC, a Delaware limited liability company, and NET LEASE SUDS IV LLC, a Delaware limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he or she, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability companies.

Given under my hand and official seal this 22 day of December, 2021.

[Signature]  
Notary Public

[NOTARIAL SEAL]

My commission expires: \_\_\_\_\_







20220110000010390 32/37 \$131.00  
Shelby Cnty Judge of Probate, AL  
01/10/2022 10:53:38 AM FILED/CERT

This Instrument Prepared By And Upon Recordation Return To:

Moore & Van Allen PLLC  
100 North Tryon Street, Suite 4700  
Charlotte, North Carolina 28202-4003  
Attention: Timothy W. Corrigan, Esq.

Mortgage (Alabama)  
Wells Fargo/Net Lease Suds III  
Obligor No.: 8799477858





20220110000010390 33/37 \$131.00  
Shelby Cnty Judge of Probate, AL  
01/10/2022 10:53:38 AM FILED/CERT

EXHIBIT A

LEGAL DESCRIPTION

Parcel 1:

All that lot, tract or parcel of land lying, situate and being located in part of the Northwest 1/4 of the Southeast 1/4 of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, and being more particularly shown and identified as LOT "B", according to the plat of survey of SPECTRUM – 280 SUBDIVISION, recorded in Map Book 32, page 111, in the Probate Office of Shelby County, Alabama.

Parcel 2 (Appurtenant Easement No. 1):

TOGETHER WITH an Easement for the benefit of Parcel 1 as created by that certain Easement Agreement between Spectrum Realty, Inc., and DLR Associates, LLC, dated May 2, 2005, and recorded May 4, 2005, in Instrument No. 20050504000212310, in the Probate Office of Shelby County, Alabama.

Parcel 3 (Appurtenant Easement No. 2):

FURTHER TOGETHER WITH a non-exclusive easement for ingress only for the benefit of Parcel 1 contained in Warranty Deed between Dewberry Real Estate Company, Inc. (Grantor) and Gulf Oil Corporation (Grantee) dated June 28, 1979, and recorded July 2, 1979, in Book 320, page 427, as affected by Waiver of Restriction and Further Imposition of Restrictions dated February 11, 2005, and recorded May 4, 2005, in Instrument No. 20050504000212330, Agreement between Southhall of Hoover, LLC; The Industrial Board of the City of Vincent; and DLR Associates, LLC, dated May 2, 2005, and recorded May 4, 2005, in Instrument No. 20050504000212340, in the Probate Office of Shelby County, Alabama.

Address: 4758 U.S. 280  
Birmingham, AL 35242



20220110000010390 34/37 \$131.00  
Shelby Cnty Judge of Probate, AL  
01/10/2022 10:53:38 AM FILED/CERT

BEFORE THE ALABAMA DEPARTMENT OF REVENUE

In re:	)	A Proceeding Authorized
	)	by Section 40-22-2,
OPF SI SPE LLC	)	Code of Alabama 1975
Net Lease Suds III LLC	)	
Net Lease Suds IV LLC	)	
	)	
Petitioners.	)	

MORTGAGE TAX ORDER

Comes now OPF SI SPE LLC, a Delaware limited liability company, Net Lease Suds III LLC, a Delaware limited liability company, and Net Lease Suds IV LLC, a Delaware limited liability company, and asks the Alabama Department of Revenue to fix and determine the amount of mortgage recording tax due pursuant to Section 40-22-2, *Code of Alabama 1975*, for the privilege of recording eight substantially identical mortgages (the “Mortgages”) executed by the Petitioners, that secures the indebtedness as described in the Petition (the “Indebtedness”), which along with other security documents (the “Security Documents”), covers real and personal property and fixtures located both inside and outside the State of Alabama.

Upon consideration of the Petition and evidence offered in support thereof, the Alabama Department of Revenue finds as follows:

1. The Mortgages and the Security Documents secure a maximum principal indebtedness in the amount of \$75,500,000.00.
2. The value of the real property and fixtures conveyed by the Mortgage and located inside the State of Alabama is \$20,840,000.00, and the value of all the real property, personal property and fixtures described in and conveyed by the Mortgages and the Security Documents in all states (including the State of Alabama) is \$115,560,000.00.
3. The percentage of the real property and fixtures conveyed by the Mortgages that is located inside the State of Alabama is 18.03%.
4. The amount of the Indebtedness secured by the Mortgages and subject to the Alabama mortgage recording tax is \$13,612,650.00 (rounded up to \$13,612,700.00).
5. Mortgage recording tax in the amount of \$20,419.05 will be due on the Indebtedness secured by the Mortgages under Section 40-22-2, *Code of Alabama 1975*, as amended, upon the filing for record of the Mortgages in the first Alabama county in which the Mortgages are recorded, and thereafter allocated by the Judge of Probate of said county to the other Alabama counties in which the properties and fixtures covered by the Mortgages are located, in accordance with the percentages set forth in Exhibit A attached hereto.



6. So long as the aggregate principal amount of Indebtedness at any one time outstanding as secured by the Mortgages does not exceed \$75,500,000.00, no additional mortgage recording tax will be due.

IT IS, THEREFORE, ORDERED that mortgage recording tax in the amount of \$20,419.05, plus any recording fees which may be due, shall be paid to the Judge of Probate of the first Alabama county in which a Mortgages are filed for record, and thereafter allocated by the Judge of Probate of said county to the other Alabama counties in which a Mortgage is recorded for the purpose of encumbering, of record, the properties and fixtures located in such other counties, all in accordance with the percentages set forth in Exhibit A, and no additional mortgage recording tax will be due so long as the maximum principal amount of such indebtedness secured by the Mortgages does not exceed \$75,500,000.00.

DONE this 27<sup>th</sup> day of December, 2021.

DEPARTMENT OF REVENUE

By: Michael D. Goble  
Deputy Commissioner of Revenue

K. Elizabeth Jehle  
Legal Division: K. Elizabeth Jehle

Maya P. Mitchell

as Secretary





20220110000010390 36/37 \$131.00  
Shelby Cnty Judge of Probate, AL  
01/10/2022 10:53:38 AM FILED/CERT

**EXHIBIT A**

<b>COUNTY</b>	<b>VALUE</b>	<b>PERCENTAGE OF TOTAL VALUE WITHIN ALABAMA</b>
Baldwin	\$1,600,000.00	7.678%
Butler	\$1,620,000.00	7.774%
Etowah	\$1,390,000.00	6.670%
Jefferson	\$4,280,000.00	20.537%
Lee	\$2,730,000.00	13.099%
Madison	\$4,040,000.00	19.386%
Montgomery	\$1,550,000.00	7.438%
Shelby	\$3,630,000.00	17.418%
<i>TOTAL:</i>	<i>\$20,840,000.00</i>	<i>100%</i>





JEFFERSON COUNTY PROBATE COURT  
BIRMINGHAM DIVISION

JAMES P. NAFTEL II, PROBATE JUDGE  
716 RICHARD ARRINGTON BLVD NORTH  
BIRMINGHAM, AL 35203  
(205) 325-5411



20220110000010390 37/37 \$131.00  
Shelby Cnty Judge of Probate, AL  
01/10/2022 10:53:38 AM FILED/CERT

To: Judge of Probate

Shelby County

I, James P. Naftel II, Judge of Probate of Jefferson County, Alabama, do hereby certify that on the 16<sup>th</sup> day of JANUARY, 2022, this office collected a total tax of \$ 20,419.05 on a mortgage/deed from \* Net Lease SUDS III LLC to Wells Fargo Bank NA, and recorded as Instrument No. 2022001955. If you have questions or need additional information, please do not hesitate to contact my office.

James P. Naftel, II.  
Judge of Probate

\* Net Lease SUDS IV LLC