
20110208000044790 1/18 \$63.00
Shelby Cnty Judge of Probate, AL
02/08/2011 10:30:35 AM FILED/CERT

**This instrument was prepared by
and after recording return to:**

Lewis A. Burleigh, Esq.
Dechert LLP
200 Clarendon Street, 27th Floor
Boston, MA 02116

ASSIGNMENT OF LEASE AND RENTS

SCP 2010-C36-002 LLC,
Assignor

to

WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION, as Trustee,
Assignee

Dated as of December 1, 2010



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ASSIGNMENT OF LEASE AND RENTS

ASSIGNMENT OF LEASE AND RENTS (herein, together with all modifications, supplements and amendments hereto, called this "Assignment"), dated as of the Effective Date set forth on **Schedule A** attached hereto and made a part hereof (the "Effective Date") made by the Borrower set forth on **Schedule A** attached hereto and made a part hereof ("Assignor") to WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION, as Trustee, having a principal place of business at 299 South Main Street, 12th Floor, MAC: U1228-120, Salt Lake City, Utah 84111 ("Assignee").

WITNESSETH:

WHEREAS, Assignor and the Lessee set forth on **Schedule A** attached hereto and made a part hereof ("Lessee") have heretofore entered into the Lease described on **Schedule A** attached hereto and made a part hereof (herein, as it may from time to time be modified, supplemented or amended, called the "Lease") covering Assignor's interest in the lot(s) or parcel(s) of land described in **Exhibit A** annexed hereto and made a part hereof, together with the easements, rights and appurtenances appertaining thereto (the "Land"), all buildings and other improvements now or hereafter located thereon (the "Improvements") and the machinery and equipment which is owned by Assignor and attached to the Improvements (the "Equipment"), all as more particularly described in the Security Instrument (as hereinafter defined) (the Land, the Improvements and the Equipment (excluding "trade fixtures" as defined in the Lease) are hereinafter referred to collectively as the "Mortgaged Property");

WHEREAS, Assignor has received an absolute and unconditional guaranty of payment and performance of the Lease from CVS Caremark Corporation ("Lease Guarantor") and dated as of the date of the Lease (the "Lease Guaranty");

WHEREAS, simultaneously with the execution and delivery of this Assignment, Assignee is making a mortgage loan to Assignor (the "Loan") as evidenced by a certain Promissory Note dated as of the Effective Date by Assignor to Assignee (the "Note") and secured by the Security Instrument (as defined in the Note) (the Note, the Security Instrument and any and all other documents evidencing, securing or pertaining to the Loan are collectively referred to as the "Loan Documents"); and

WHEREAS, Assignor has agreed to execute and deliver this Assignment for the purpose of securing the following (collectively, the "Obligations"): (i) the payment of the principal of, interest on, premium (if any) and all other amounts payable in respect of the Note and the Security Instrument; and (ii) the performance of the covenants and agreements contained herein and in the Note and the Security Instrument.

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Assignor, as security for the Obligations, has assigned, transferred, conveyed and set over, and by these presents does hereby presently, unconditionally and irrevocably assign, transfer, convey and set over to Assignee, all of Assignor's estate, right, title and

interest in, to and under the Lease and the Lease Guaranty (excluding, however, the Excepted Rights and the Excepted Payments as specifically set forth herein), together with all rights, powers, privileges, options and other benefits of Assignor, as the lessor under the Lease and as beneficiary under the Lease Guaranty (excluding, however, the Excepted Rights and Excepted Payments as specifically set forth herein) and together with any and all other leases, subleases, if and to the extent that Assignor has an interest therein pursuant to the Lease, licenses, rental agreements and occupancy agreements of whatever form now or hereafter affecting all or any part of the Mortgaged Property, including, without limitation, the immediate and continuing right:

- (a) except with respect to Fixed Rent that is prepaid on the Lease Commencement Date (or, if later, the date the proceeds of the Loan are initially advanced), to make claim for, receive and collect (and to apply the same to the payment of the Obligations) all rents (including all Fixed Rent and Additional Rent as such terms are defined in the Lease), income, revenues, issues, profits, insurance proceeds, condemnation proceeds, moneys, security deposits, and damages payable to or receivable by Assignor under the Lease or pursuant to any of the provisions thereof (such rents, income, revenues, issues, profits, proceeds, moneys, security deposits or damages, collectively, the "Rents") (excluding, however, the Excepted Payments as specifically set forth herein);
 - (b) as provided in the Security Instrument, to accept or reject (i) any offer by Lessee pursuant to the Lease to purchase the Mortgaged Property or any part thereof, or (ii) any condemnation proceeds or insurance proceeds payable in connection with a loss or destruction thereof as provided in and subject to the Lease, excluding, however, the Excepted Rights and Excepted Payments as specifically set forth herein;
 - (c) to make all waivers and agreements of any kind (except as herein provided) pursuant to the Lease; and
 - (d) to give all notices, consents, approvals, releases and other instruments including the right to serve Lessee with Section 45(b) Notices (as defined in the Lease) pursuant to Part II Section 45(b) of the Lease and notice of acceptance or rejection of any purchase offer to be given under the Lease, excluding, however, the Excepted Rights and Excepted Payments as specifically set forth herein.
2. (a) Assignor and Assignee agree that, so long as no Event of Default under the Security Instrument has occurred and is continuing, Assignor may take any action with respect to the premises demised under the Lease without the prior written consent of Assignee, so long as such action is taken in good faith and as permitted by the Loan Documents or by law (provided, however, that, Assignee shall have the exclusive right to give any notice of default under the Loan Documents to Lessee or Assignor, and provided further that only with the prior written consent of Assignee, and subject to the terms and conditions hereof, Assignor may exercise its remedies under the Lease, subject, however, to Assignor's rights to

send Notices of Breach in accordance with paragraph 2(b)(i) below, which shall not require Assignee's consent); and

- (b) Assignor agrees that it shall not:
- (i) declare a default under the Lease or terminate, modify, amend, waive or accept a surrender of, or offer or agree to any termination, modification, consent, amendment, waiver or surrender of, or give or withhold any consent with respect to, exercise any right or option or take any other action required or contemplated by, the Lease or any term or provision thereof, or reject any rejectable offer made by the Tenant pursuant to the Lease (unless Assignor pays off the Note) or, subject to the provisos at the end of this clause, exercise any claims, rights, or remedies under the Lease, provided that, Assignor shall have the non-exclusive right to send Notices of Breach (as defined in the Lease) so long as any such Notice of Breach, by itself or with the passage of time, does not result in an Event of Default under the Lease or the termination of the Lease or the acceleration of rent payable thereunder, and so long as a copy of such Notice of Breach is delivered simultaneously to Assignee, and provided further that, Assignor may make demand and sue Lessee for breaches of the Lease, and exercise any other rights and remedies available to Assignor, as they relate to Excepted Rights or Excepted Payments so long as such demand, suit, other remedy or any notice (and passage of time, if applicable) in connection therewith is conducted so as not to result in the existence of an Event of Default under the Lease, the termination of the Lease or acceleration of rent thereunder; or
 - (ii) receive or collect, or permit the receipt or collection of any payment of, Rents (excepting only such amounts as shall be within the definition of Excepted Payments, and during the continuance of an Event of Default, Assignor may only receive Excepted Payments consisting of proceeds of public liability insurance), purchase proceeds or avails, insurance proceeds (excepting only such amounts as shall be within the definition of Excepted Payments, and during the continuance of an Event of Default, Assignor may only receive Excepted Payments consisting of proceeds of public liability insurance) or condemnation awards, subject to the terms of the Lease, or assign, transfer or hypothecate (other than to Assignee) any payment of Rents, purchase proceeds or avails, insurance proceeds or condemnation awards, then due or to accrue in the future under the Lease, or take any action or give any notice with respect to Excepted Rights or Excepted Payments that would have the effect of declaring an Event of Default, terminating the Lease, dispossessing the Lessee, or causing the Lease not to be in full force and effect, in each case without the prior written consent of Assignee. As used herein, "Excepted Payments" means the following described payments or amounts:

- (1) Fixed Rent not exceeding an amount equal to the Fixed Rent under the Lease from the closing date of the Loan through January 2011, that is prepaid on the Lease Commencement Date, and all payments by Lessee pursuant to any indemnity under the Lease or in payment or reimbursement of costs and expenses which by the terms thereof are payable to Assignor or its owners, successors, permitted assigns, employees, officers, directors, shareholders, members, managers, trustees, beneficial owners, partners, servants, agents and affiliates thereof for their respective accounts; and
- (2) any insurance proceeds to the extent payable under general public liability policies maintained by Lessee pursuant to Section 32 of Part II of the Lease or pursuant to the Ground Lease, which, by the terms of such policies, are payable directly to Assignor or its owners, successors, permitted assigns, employees, officers, directors, shareholders, members, managers, trustees, beneficial owners, partners, servants, agents and affiliates thereof, in each such case for their own respective accounts.

As used herein, "Excepted Rights" means the following rights, interests and privileges:

- (1) the right of the Assignor, but not to the exclusion of Assignee, (a) to receive from Lessee certificates and other documents and information that Lessee is required to give or furnish to Assignor pursuant to the Lease, (b) to inspect the premises demised under the Lease and all books and records relating thereto, (c) to undertake repairs and maintenance of the premises demised under the Lease, (d) to send Notices of Breach (so long as any such Notice of Breach, by itself or with the passage of time, does not result in an Event of Default under the Lease or the termination of the Lease or the acceleration of rent payable thereunder, and so long as a copy of such Notice of Breach is delivered simultaneously to Assignee) and to sue for damages or to enforce performance or observance by Lessee and/or the Lease Guarantor under the Lease Guaranty of the applicable covenants and terms of the Lease and Lease Guaranty as allowed by law, equity, the Lease or the Lease Guaranty (so long as such suit, together with the passage of time, if applicable, in connection therewith is conducted so as not to result in the existence of an Event of Default under the Lease, the termination of the Lease or acceleration of rent thereunder), (e) to execute and deliver such powers of attorney and other documents granting the Lessee the rights to execute, acknowledge and deliver tax returns, statements and other tax related instruments, and pay any Taxes (as defined in the Security Instrument) with respect to the Mortgaged Property, and (f) to execute applications for liquor licenses and other licenses, permits,

authorizations and approvals and take other actions which may be required by the Assignor (in its capacity as landlord under the Lease) to cooperate with the Lessee pursuant to Section 30(b) of Part II of the Lease; and,

the right of Assignor, on its behalf only, to consent or approve or refuse to consent or approve of any options or other rights to terminate the Lease and/or to acquire the Mortgaged Property or the net award payable to Assignor in a Major Condemnation (as defined in the Lease) and any cause of action in connection with a Major Condemnation (subject to any conditions thereto as are otherwise specifically contained in the Loan Documents) provided that on such consent Assignor states conspicuously that Assignor's consent does not signify a necessary consent of Assignee, and (subject to any conditions otherwise contained in the Loan Documents) that no consent or approval of Assignor shall be valid or effective unless and until Assignee's written consent is obtained.

3. This Assignment is executed as collateral security and the execution and delivery hereof shall not in any way impair or diminish the obligations of Assignor under the Lease, nor shall any of the obligations contained in the Lease be imposed upon Assignee (unless and until Assignor's fee or leasehold estate, as applicable, to the Mortgaged Property is transferred to Assignee pursuant to a foreclosure of the Security Instrument or other exercise by Assignee of its remedies under the Security Instrument). Upon the payment of the Obligations in full in immediately available funds, this Assignment and all rights herein assigned to Assignee shall automatically cease and terminate and all estate, right, title and interest of Assignor in and to the Lease shall revert to Assignor, and Assignee shall, at the request and at the expense of Assignor, deliver to Assignor an instrument in recordable form canceling this Assignment and reassigning the Lease without recourse, representation or warranty, to Assignor.
4. Assignor hereby presently, unconditionally and irrevocably designates Assignee to receive, and directs Lessee and Lease Guarantor to pay to Assignee or its designated servicer, all payments (except for Excepted Payments) payable or receivable under both the Lease and any new lease permitted under the Lease including, without limitation, all payments of Fixed Rent and Additional Rent (as such terms are defined in the Lease), and other sums payable to the lessor under Lease (excluding, however, the Excepted Rights and Excepted Payments as specifically set forth herein), and no such payment by Lessee under the Lease shall be effective to discharge the obligation of Lessee under the Lease to make such payment unless made to Assignee in accordance with such designation and direction. Assignor agrees that any Rents (other than Excepted Payments as specifically set forth herein) received by Assignor shall be held in trust by Assignor for the sole and exclusive benefit of Assignee pursuant to the terms of the Loan Documents and shall be delivered by Assignor to Assignee within one (1) business day after receipt of the same. Upon and during the continuance of an Event of Default (as defined in the Security Instrument), and if and to the extent that Assignor has any interest or rights in any subleases(s) of the premises demised under the Lease, Assignor designates Assignee to

receive, and directs Lessee to pay to Assignee or its designated servicer, all payments payable or receivable under any such subleases(s). Assignor hereby designates Assignee to receive duplicate original copies of all notices, undertakings, demands, statements, offers, documents and other instruments and communications which Lessee is or may be required or permitted to give, make, deliver to or serve upon Assignor under the Lease. Assignor hereby directs Lessee to deliver to Assignee, at its address set forth below or at such other address as Assignee shall designate to Assignor, duplicate original copies of all such notices, undertakings, demands, statements, documents and other communications. No delivery thereof by Lessee shall be of any force or effect unless made to Assignee and Assignor.

5. Assignor represents and warrants to Assignee that, as of the date hereof, (a) the Lease and the Lease Guaranty are in full force and effect and no default by Assignor exists thereunder; (b) Assignor is the sole owner of the entire lessor's interest in the Lease; (c) Assignor has delivered to Assignee a true, correct and complete copy of the Lease and the Lease Guaranty as amended to the date hereof; (d) Assignor has full power and authority to execute and deliver this Assignment; (e) Assignor has not executed any other assignment of the subject matter of this Assignment; (f) none of the Rents reserved in the Lease have been assigned or otherwise pledged or hypothecated; (g) none of the Rents have been collected for more than one (1) month in advance of the due date thereof; and (h) to Assignor's knowledge, there exist no offsets or defenses to the payment of any portion of the Rents.
6. Assignor shall not take any action as the lessor under the Lease or otherwise which is inconsistent with this Assignment or the Security Instrument, or make any other assignment, designation or direction inconsistent herewith or therewith, and any assignment, designation or direction inconsistent herewith or therewith shall be void. Assignor shall, from time to time upon the request of Assignee, execute all reasonable instruments of further assurance and all such supplemental instruments with respect to the transactions contemplated hereby as Assignee may specify.
7. Assignor further agrees with Assignee that Assignor (a) shall observe and perform all the obligations imposed upon the lessor under the Lease and shall not do or, subject to the provisions of the Lease, permit to be done anything to impair the value of the Lease or the Lease Guaranty as security for the Obligations; (b) except as otherwise provided in the Security Instrument, shall not execute any other assignment of lessor's interest in the Lease or the Lease Guaranty; (c) shall not alter, modify or change the terms of the Lease without the prior written consent of Assignee, or cancel or terminate the Lease or accept a surrender thereof or convey or transfer or suffer or permit a conveyance or transfer of the Mortgaged Property or of any interest therein so as to effect a merger of the estates and rights of, or termination or diminution of the obligations of Lessee thereunder; (d) shall not alter, modify or change the terms of the Lease Guaranty or cancel or terminate the Lease Guaranty without the prior written consent of Assignee; (e) shall not consent to any assignment of or subletting under the Lease not in accordance with the Lease terms, without the prior consent of Assignee; and (f) except as provided for in the Excepted Rights and Excepted Payments and then subject to the limitations of paragraph 2 hereof, shall not pursue any remedies under the Lease or the Lease Guaranty or obligations of the

Lease Guarantor, without the prior written agreement of Assignee, which will not be unreasonably withheld, conditioned or delayed.

8. Upon and during the continuance of an Event of Default (as defined in the Security Instrument), Assignee may, at its option, to the extent permitted by applicable law, without waiving such Event of Default, without notice and without regard to the adequacy of the security for the Obligations, either in person or by agent or servicer, with or without bringing any action or proceeding, or by a receiver appointed by a court, enforce its interest in the Lease and Rents and take possession of the Mortgaged Property and have, hold, manage, lease and operate the Mortgaged Property on such terms and for such period of time as Assignee may deem proper and either with or without taking possession of the Mortgaged Property in its own name, demand, sue for or otherwise collect and receive all Rents (other than the Excepted Payments) which are currently due or past due and unpaid with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may be permitted under the Lease and as may seem proper to Assignee and shall apply the Rents to the payment of the following in such order and proportion as Assignee in its sole discretion may determine, any law, custom or use to the contrary notwithstanding: (a) all reasonable and necessary expenses of managing and securing the Mortgaged Property, including, without being limited thereto, the salaries, fees and wages of a managing agent and such other employees or agents as Assignee may deem necessary or desirable and all expenses of operating and maintaining the Mortgaged Property, including, without being limited thereto, all taxes, charges, claims, assessments, water charges, sewer rents and any other liens, and premiums for all insurance which Assignee may deem necessary or desirable, and the cost of all alterations, renovations, repairs or replacements permitted under the Lease, and all expenses incident to taking and retaining possession of the Mortgaged Property; (b) the Obligations, together with all costs and reasonable attorneys' fees; and (c) after payment in full of the amounts under (a) and (b) of this sentence, to Assignor. In addition to the rights which Assignee may have herein, upon the occurrence and during the continuation of an Event of Default, Assignee, at its option, may either require Assignor to pay monthly in advance to Assignee or the designee of Assignee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Mortgaged Property as may be in possession of Assignor or may require Assignor to vacate and surrender possession of the Mortgaged Property to Assignee or to such receiver and, in default thereof, Assignor may be evicted by summary proceedings or otherwise. For purposes of this paragraph, Assignor grants to Assignee and the designee of Assignee its irrevocable power of attorney, coupled with an interest, to take any and all of the aforementioned actions and any or all other actions designated by Assignee for the proper management and preservation of the Mortgaged Property, which power of attorney Assignee agrees not to exercise unless and until the occurrence and during the continuation of an Event of Default. The exercise by Assignee of the option granted it in this paragraph and the collection of the Rents and the application thereof as herein provided shall not be considered a waiver of any default by Assignor under the Note, the Security Instrument, the Lease, this Assignment or any of the other Loan Documents.

9. Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Mortgaged Property after an Event of Default or from any other act or omission of Assignee in managing the Mortgaged Property after any Event of Default unless such loss is caused by the willful misconduct, gross negligence or bad faith of Assignee. Assignee shall not be obligated to perform or discharge any obligation, duty or liability under the Lease or under or by reason of this Assignment (unless and until Assignor's fee or leasehold estate, as applicable, to the Mortgaged Property is transferred to Assignee pursuant to a foreclosure of the Security Instrument or other exercise by Assignee of its remedies under the Security Instrument) and Assignor shall, and hereby agrees, subject to paragraph 22 hereof, to indemnify Assignee for, and to hold Assignee harmless from, any and all liability, loss or damage which is incurred under the Lease or under or by reason of this Assignment and from any and all claims and demands whatsoever, including the defense of any such claims or demands which may be asserted against Assignee by reason of any alleged obligations and undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Lease (except to the extent caused by the gross negligence, willful misconduct or bad faith of Assignee). Should Assignee incur any such liability, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby and by the Security Instrument and the other Loan Documents and Assignor shall reimburse Assignee therefor within five (5) days following demand and upon the failure of Assignor so to do Assignee may, at its option, declare all sums secured hereby and by the Note, the Security Instrument and the other Loan Documents immediately due and payable. This Assignment shall not operate to place any obligation or liability for the control, care, management or repair of the Mortgaged Property upon Assignee, nor for the carrying out of any of the terms and conditions of the Lease; nor shall it operate to make Assignee responsible or liable for any waste committed on the Mortgaged Property by Lessee or any other parties (except to the extent caused by the gross negligence, willful misconduct or bad faith of Assignee), or for any dangerous or defective condition of the Mortgaged Property, including without limitation the presence of any Hazardous Substances (as defined in the Security Instrument) (except to the extent caused by the gross negligence, willful misconduct or bad faith of Assignee), or for any negligence in the management, upkeep, repair or control of the Mortgaged Property resulting in loss or injury or death to any tenant, licensee, employee or stranger (except to the extent caused by the gross negligence, willful misconduct or bad faith of Assignee).
10. Assignee may, to the extent permitted by applicable law, take or release other security for the payment of the Debt, may release any party primarily or secondarily liable therefor and may apply any other security held by it to the reduction or satisfaction of the Debt without prejudice to any of its rights under this Assignment.
11. Nothing contained in this Assignment and no act done or omitted by Assignee pursuant to the power and rights granted to Assignee hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under the Note, the Security Instrument or the other Loan Documents and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Assignee under the terms thereof. The right of Assignee to collect the Debt and to enforce any other security therefor held by it may, to

the extent permitted by applicable law, be exercised by Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

12. Nothing herein contained shall be construed as constituting Assignee a "mortgagee in possession" in the absence of the taking of actual possession of the Mortgaged Property by Assignee. In the exercise of the powers herein granted Assignee, no liability shall be asserted or enforced against Assignee, all such liability being expressly waived and released by Assignor.
13. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Assignment may be used interchangeably in singular or plural form and the word "Assignor" shall mean "each Assignor and any subsequent owner or owners of the Mortgaged Property or any part thereof or any interest therein (unless such party has been released by Assignee from its obligations)", the word "Assignee" shall mean "Assignee and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by the Security Instrument," the word "person" shall include an individual, corporation, partnership, limited liability company, trust, unincorporated association, government, governmental authority, and any other entity, the words "Mortgaged Property" shall include any portion of the Mortgaged Property and any interest therein, and the word "Debt" shall mean the principal balance of the Note with interest thereon as provided in the Note and the Security Instrument and all other sums due pursuant to the Note, the Security Instrument, this Assignment and the other Loan Documents; whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.
14. The failure of Assignee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Assignment. Assignor shall not be relieved of Assignor's obligations hereunder by reason of (i) failure of Assignee to comply with any request of Assignor or any other party to take any action to enforce any of the provisions hereof or of the Security Instrument, the Note or the other Loan Documents, (ii) the release from the Security Instrument, regardless of consideration, of any part of the Mortgaged Property, or (iii) any agreement or stipulation by Assignee extending the time of payment or otherwise modifying or supplementing the terms of this Assignment, the Note, the Security Instrument or the other Loan Documents. Assignee may, to the extent permitted by applicable law, resort for the payment of the Debt to any other security held by Assignee in such order and manner as Assignee, in its discretion, may elect. Assignee may take any action to recover the Debt, or any portion thereof or to enforce any covenant hereof without prejudice to the right of Assignee thereafter to enforce its rights under this Assignment. The rights of Assignee under this Assignment shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Assignee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.
15. Assignor hereby consents to, and hereby agrees to direct Lessee and the Lease Guarantor as follows:

- (a) Lessee and Lease Guarantor shall consent to this Assignment and agree to pay and deliver to Assignee all rentals and other sums assigned to Assignee pursuant to this Assignment in accordance with the terms and provisions of the Lease and/or the Lease Guaranty (as applicable), without offset, deduction, defense, deferment or abatement. Neither Lessee nor Lease Guarantor shall for any reason whatsoever seek to recover from Assignee any moneys paid to Assignee by virtue of this Assignment. All sums payable to Assignee pursuant to this Assignment shall be paid to Assignee in immediately available funds on the due date thereof at such address and/or account as shall be designated by Assignee by written notice to Lessee. No payment made by Lessee and/or Lease Guarantor shall be effective to discharge the obligations of Lessee and/or Lease Guarantor under the Lease or the Lease Guaranty, as applicable, to make such payments or be of any other force or effect unless paid to Assignee. Lessee and Lease Guarantor shall deliver to Assignee duplicate original copies of all notices, undertakings, demands, statements, offers, documents and other instruments or communications which it is or may be required or permitted to give, make, serve or deliver pursuant to the Lease and/or the Lease Guaranty, as applicable.
- (b) Lessee shall not enter into any agreement amending, modifying, waiving any provision of, or terminating the Lease without the prior consent of Assignee, nor shall Lessee sublease all or any part of the Mortgaged Property except in accordance with the terms of the Lease. Any attempted amendment, modification, waiver, or termination of the Lease without Assignee's consent shall be void. If the Lease shall be amended as herein permitted, the Lease as so amended shall continue to be subject to this Assignment without the necessity of any further act by any of the parties hereto. Lessee shall remain obligated under the Lease in accordance with its terms, and shall not take any action to terminate (except as expressly permitted by the Lease), rescind or avoid the Lease, notwithstanding any action with respect to the Lessee which may be taken by any trustee or receiver of Assignor or of any assignee of Assignor or by any court in any bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution or other proceeding affecting Assignor or any assignee of Assignor. Lessee acknowledges and agrees to be bound by the license and right of access granted to Assignee and its agents, employees, contractors, engineers, architects, nominees, attorneys and other representatives pursuant to Paragraph 23(b) of the Security Instrument.
16. If any term or provision of this Assignment or any application hereof shall be invalid or unenforceable, the remainder of this Assignment and any other application of such term or provision shall not be affected thereby.
17. Any notice, demand, statement, request or consent made hereunder shall be effective and valid only if in writing, referring to this Assignment, signed by the party giving such notice, and delivered either personally to such other party, or sent by nationally recognized overnight courier delivery service or by certified mail addressed to the other party at such party's Notice Address as set forth in **Schedule A** attached hereto and made

a part hereof (or to such other address or person as either party or person entitled to notice may by notice to the other party specify).

Unless otherwise specified, notices shall be deemed given as follows: (i) if delivered personally, when delivered; (ii) if delivered by nationally recognized overnight courier delivery service, on the business day following the day such material is sent; or (iii) if sent by certified mail, three (3) business days after such notice has been sent by Assignor or Assignee.

18. This Assignment cannot be modified, changed or discharged except by an agreement in writing, duly acknowledged in form for recording, signed by the party against whom enforcement of such modification, change or discharge is sought.
19. This Assignment shall bind and inure to the benefit of the parties hereto and their respective successors and assigns and shall run with the Mortgaged Property.
20. This Assignment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. This Assignment and any documents, certificates or instruments provided in connection with this Assignment may be reproduced by the parties hereto by any photographic, photostatic, microfilm, microcard, digital, miniature photographic or other similar process. To the extent permitted by applicable law, any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business) and any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence.
21. This Assignment shall be governed by and construed in accordance with the laws of the State or Commonwealth in which the Mortgaged Property is located.
22. The limitation of liability as against the Assignor (and its trustees, beneficial owners, members, partners, managers, economic beneficial owners and other constituent parties and other Released Parties (as defined in the Security Instrument)) contained within the Security Instrument is hereby incorporated into this Assignment.
23. If the Mortgaged Property is located in the State of Florida, the following provision shall apply:

Notwithstanding anything to the contrary, this Assignment is intended to, and does constitute, an assignment of rents as security for the repayment of indebtedness as contemplated in Florida Statutes Section 697.07. Assignee shall be entitled to the remedies provided in said Section 697.07, in addition to all rights and remedies, whether procedural or substantive, in effect at the time of execution or enforcement of this Assignment.
24. If the Mortgaged Property is located in the State of Louisiana, the following provisions (a) and (b) shall apply:

- (a) The Note has a maturity date of January 10, 2033.
- (b) The maximum amount of the Debt that may be outstanding at any time and from time to time that this Assignment secures, including all principal, interest and any expenses incurred by the Lender, and all other amounts included as Debt, is \$20,000,000.00.

25. If the Mortgaged Property is located in the State of Michigan the following provision shall apply:

With respect to Rents, Assignee shall be entitled to all the rights and benefits conferred by ACT No. 210 of the Michigan Public Acts of 1953, as amended by Act No. 151 of the Michigan Public Acts of 1966 (MCLA § 554.231 et seq.), and Act No. 228 of the Michigan Public Acts of 1925, as amended by Act No. 55 of the Michigan Public Acts of 1933 (MCLA § 554.211 et seq.). All earnings, revenues, rents, issues, profits and income of the Mortgaged Property or any part thereof are hereby assigned to Assignee and, in the case of the happening and continuation of an Event of Default hereunder or as defined in the Security Instrument, Assignee shall be entitled to collect and receive all such earnings, revenues, rents, issues, profits and income personally or through a receiver as long as any such Event of Default shall exist and during the pendency of any foreclosure proceedings and during any redemption period, and the collection of such earnings, revenues, rents, issues, profits and income by Assignee shall in no way waive the right of Assignee to foreclose the Security Instrument in the event of such an Event of Default. Assignor agrees to consent to a receiver if this is believed necessary or desirable by Assignee to enforce its rights hereunder.

26. If the Mortgaged Property is located in the State of Mississippi, the following provisions shall apply:

- (a) For purposes of Miss. Code Ann. § 89-5-19, the final maturity date of the Note is January 10, 2033
- (b) For purposes of Miss. Code Ann. § 89-1-49 and Miss. Code Ann. § 89-5-21, this Assignment secures a line of credit.
- (c) This Assignment secures all future advances of the Obligations, regardless of whether such future advances are (a) optional or obligatory, (b) additional advances of principal or advances to protect the Mortgaged Property, (c) being advanced for the same purpose as advances previously made, (d) arising out of the same transaction as previous advances, or (e) currently within the contemplation of the parties. The priority of all such future advances shall relate back to the date of filing of this Assignment.
- (d) Upon payment and performance by Assignor of the Obligations, Assignee will cancel this Assignment by filing or delivering to Assignor an authority to cancel this Assignment in the office of the Chancery Clerk of each county (and each judicial district, if applicable) in which the Mortgaged Property is located as provided in Miss. Code Ann. § 89-5-21. This authority to cancel shall be in

recordable form. Assignor will pay Assignee's costs of preparing and filing this cancellation, including attorneys' fees.

27. If the Mortgaged Property is located in the State of Nebraska, the following provision shall apply:

This Assignment shall constitute a security instrument in the Lease and Rents, including all future or after-arising leases and rents, and shall secure the Debt, all as provided in Neb. Rev. Stat. §§ 52-1701 to 52-1708.

28. If the Mortgaged Property is located in the State of New Jersey, the following provisions (a) through (d) shall apply:

- (a) The word "securing" shall be deleted from the fourth "WHEREAS" clause hereof;
- (b) The words "as security for the Obligations" shall be deleted from paragraph 1 hereof;
- (c) The words "This Assignment is executed as collateral security and" shall be deleted from paragraph 3 hereof; and
- (d) With respect to the Mortgaged Property covered hereby, this document is deemed an absolute assignment and not as security for any obligation.

(BALANCE OF PAGE INTENTIONALLY LEFT BLANK.)



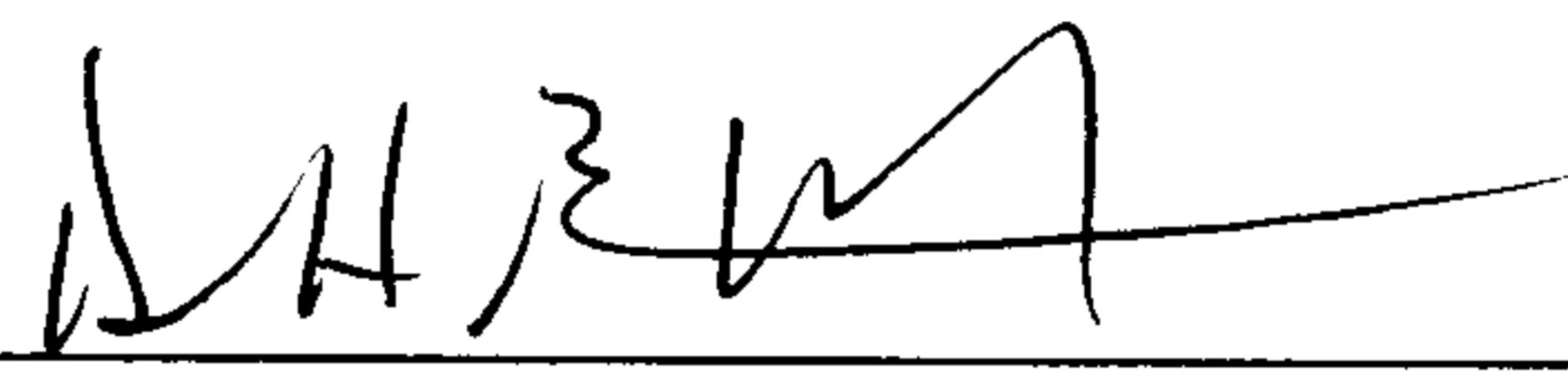
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Shelby Cnty Judge of Probate, AL
02/08/2011 10:30:35 AM FILED/CERT

IN WITNESS WHEREOF, the foregoing instrument has been executed by the undersigned as of the day and year first written above.

LANDLORD:

[CORPORATE SEAL]

SCP 2010-C36-002 LLC, a Delaware limited liability company

By: 

Name: David H. Baldauf
Title: President


ACKNOWLEDGEMENT

STATE OF MASSACHUSETTS)
) ss.
COUNTY OF SUFFOLK)

I, the undersigned Notary Public in and for said County, in said STATE, hereby certify that David H. Baldauf, whose name as President of SCP 2010-C36-002 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, acting in his capacity as such officer and with full authority executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 8 day of December, 2010.

[Notarial Seal]



Notary Public

My commission expires:



Lauren E. Fator
Notary Public
Commonwealth of Massachusetts
My Commission Expires
October 25, 2013



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Shelby Cnty Judge of Probate, AL
02/08/2011 10:30:35 AM FILED/CERT

**SCHEDULE A
MASTER SCHEDULE**

Effective Date:	December 1, 2010
Borrower:	SCP 2010-C36-002 LLC, a Delaware limited liability company
Address of (1) Borrower's principal place of business; (2) Guarantor's principal place of business; and (3) Borrower Notice Address	c/o Benderson Property Development, Inc., 8441 Cooper Creek Boulevard, University Park, Florida 34201, Attn: Randy Benderson With a copy to: David H. Baldauf, General Counsel Benderson Property Development, Inc. 570 Delaware Avenue Buffalo, New York 14202
Borrower's Taxpayer Identification Number:	27-2161068
Loan Amount:	\$3,427,726.43
Security Instrument:	Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing
Guarantor:	OBSVC Colum, LLC, a Delaware limited liability company
Lease:	Lease, dated as of December 1, 2010, between Borrower, as landlord, and Lessee, as tenant
Lessee:	Alabama CVS Pharmacy, L.L.C., an Alabama limited liability company



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Lender Notice Address:

Wells Fargo Bank Northwest, National
Association, as Trustee
299 South Main Street
MAC: U1228-120, 12th Floor
Salt Lake City, Utah 84111
Attn.: Corporate Trust Services/Val T. Orton
Fax: (801) 246-5053

With a copy to:

Dechert LLP
200 Clarendon Street, 27th floor
Boston, Massachusetts 02116
Attn: Lewis A. Burleigh, Esq.
Fax: (617) 426-6567

Lessee Notice Address:

Alabama CVS Pharmacy, L.L.C.
c/o CVS Corporation
One CVS Drive
Woonsocket, Rhode Island 02895
Attn: Property Administration Dept./Store #
4866
Fax: (401) 770-7887

With a copy to:


Mintz, Levin, Cohn, Ferris, Glovsky and
Popeo, P.C.
One Financial Center
Boston, Massachusetts 02111
Attn.: Andrew R. Urban, Esq.
Fax: (617) 542-2241

[End of Schedule A Master Schedule]

Store No. 4866
Columbiana, AL

EXHIBIT A

All that certain tract of land as shown as "CVS Tract" on the plat entitled "Consolidation Plat for CVS 4886 AL., L.L.C.", dated April 19, 2010 and recorded in Map Book 41, page 128, in the Probate Office of Shelby County, Alabama.



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