

Return to:
Von Crook
First National Financial Title Services, LLC
3301 Windy Ridge Parkway, Suite 300
Atlanta, GA 30339
770-916-4347
File No. AL251910057V


20200109000013740 1/31 \$3402.40
Shelby Cnty Judge of Probate, AL
01/09/2020 04:01:14 PM FILED/CERT

PREPARED BY ~~AND~~
~~UPON RECORDATION RETURN TO:~~
Reed Smith LLP
225 Fifth Avenue
Pittsburgh, PA 15222
Attention: Jessica Rose

**THIS SECURITY INSTRUMENT SECURES DEBT IN THE ORIGINAL PRINCIPAL
AMOUNT OF \$2,193,548.00. THE MATURITY DATE OF THE NOTE IS DECEMBER
31, 2034.**

This is a purchase money mortgage.

**NET LEASE SUDS III LLC and NET LEASE SUDS IV LLC, collectively, as mortgagor
(Borrowers)**

to

**SCF RC FUNDING IV LLC, as mortgagee
(Lender)**

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

Dated: As of December 18, 2019

Location: 4734 US 280
Birmingham, AL

County: Shelby

Property ID No. 56940
Shelby County, AL

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

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "**Security Instrument**") is made as of December 18, 2019, by **NET LEASE SUDS III LLC**, a Delaware limited liability company, and **NET LEASE SUDS IV LLC**, a Delaware limited liability company, both having their principal place of business at c/o Grant & Epstein CPAs, LLP, 100 Merrick Road, Suite 202 East, Rockville Centre, New York 11570, collectively, as mortgagor ("**Borrowers**" and each a "**Borrower**") to **SCF RC FUNDING IV LLC**, a Delaware limited liability company, having an address at 902 Carnegie Center Blvd., Suite 520, Princeton, New Jersey 08540, in its capacity as Lender ("**Lender**"), as mortgagee.

RECITALS:

The capitalized terms used in the Security Instrument, if not elsewhere defined in the first paragraph above or in Article I of this Security Instrument shall have the meaning given such terms in the Loan Agreement (defined below). Net Lease Suds III LLC owns twenty five percent (25%) of the fee simple title to the Property (defined below) as a tenant in common. Net Lease Suds IV LLC owns seventy five percent (75%) of the fee simple title to the Property (defined below) as tenant in common.

ARTICLE I- GRANTS OF SECURITY

Section 1.1 Property Mortgaged. Each Borrower does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Lender and its successors and assigns all of each Borrower's respective right, title, and interest in and to the following property, rights, interests and estates now owned, or hereafter acquired by Borrower as a tenant in common (collectively, the "**Property**"):

(a) **Land.** The real property described in Exhibit A attached hereto and made a part hereof (the "**Land**");

(b) **Additional Land.** All additional lands, estates and development rights hereafter acquired by either Borrower for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Security Instrument;

(c) **Improvements.** The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (collectively, the "**Improvements**");

(d) **Easements.** All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way

now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of either Borrower of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) Equipment. All “goods” and “equipment,” as such terms are defined in Article 9 of the Uniform Commercial Code (as hereinafter defined), now owned or hereafter acquired by either Borrower, which is used at or in connection with the Improvements or the Land or is located thereon or therein (including, but not limited to, all machinery, equipment, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by either Borrower and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (collectively, the “**Equipment**”);

(f) Fixtures. All Equipment now owned, or the ownership of which is hereafter acquired, by either Borrower which is so related to the Land and Improvements forming part of the Property that it is deemed fixtures or real property under the law of the particular state in which the Equipment is located, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including, but not limited to, engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of each Borrower’s interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the “**Fixtures**”). Notwithstanding the foregoing, “Fixtures” shall not include any property which tenants are entitled to remove pursuant to leases except to the extent that either Borrower shall have any right or interest therein;

(g) Personal Property. All furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, general intangibles, contract rights (to the extent assignable), accounts, accounts receivable, franchises (to the extent assignable), licenses (to the extent assignable), certificates and permits (to the extent assignable), and all other personal property of any kind or character whatsoever (to the extent assignable) as defined in and subject to the

provisions of the Uniform Commercial Code, other than Fixtures, which are now or hereafter owned by either Borrower and which are located within or about the Land and the Improvements, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the “**Personal Property**”), and the right, title and interest of either Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (as amended from time to time, the “**Uniform Commercial Code**”), superior in lien to the lien of this Security Instrument and all proceeds and products of the above. Notwithstanding the foregoing, “Personal Property” shall not include any personal property which is owned by the tenants and which they are entitled to remove pursuant to leases except to the extent that either Borrower shall have any right or interest therein;

(h) **Leases and Rents.** (i) All leases, subleases or subsubleases, lettings, licenses, concessions or other agreements (whether written or oral and whether now or hereafter in effect) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into (collectively, the “**Leases**”, which Leases shall include, but not be limited to the Master Lease entered into by the Borrowers as Landlord, and Boing US Holdco, Inc., a Delaware limited liability company, as Tenant, whether before or after the filing by or against either Borrower of any petition for relief under the Bankruptcy Code, together with any extensions, renewals or replacements of same, (ii) all right, title and interest of either Borrower, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees, sublessees, and licensees of their obligations thereunder and all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements whether paid or accruing before or after the filing by or against either Borrower of any petition for relief under the Bankruptcy Code (collectively, the “**Rents**”) and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt (as defined below), (iii) all claims and rights (the “**Bankruptcy Claims**”) to the payment of damages arising from any rejection by a lessee of any Lease under the Bankruptcy Code, (iv) all lease guaranties, letters of credit and any other credit support (individually, a “**Lease Guaranty**”, and collectively, the “**Lease Guaranties**”) given by any guarantor in connection with any of the Leases or leasing commissions (individually, a “**Lease Guarantor**”, and collectively, the “**Lease Guarantors**”) to Borrowers, (v) all rights, powers, privileges, options and other benefits of Borrowers as the lessor under any of the Leases and the beneficiary under any of the Lease Guaranties, including without limitation, the immediate and continuing right to make claims for, and to receive, collect and acknowledge receipt for all Rents payable or receivable under the Leases and all sums payable under the Lease Guaranties or pursuant thereto (and to apply the same to the payment of the Debt or the Other Obligations (as defined below)), and to do all other things which Borrowers or any lessor is or may become entitled to do under any of the Leases or Lease Guaranties, (vi) all proceeds from the sale or other disposition of the Leases, the Rents, the

Lease Guaranties and/or the Bankruptcy Claims, and the right to receive and apply the same to the payment and performance of the Obligations, including the payment of the Debt, (vii) the right, subject to the provisions of the Loan Agreement, at Lender's option, upon revocation of the license granted herein, to enter upon the Property in person, by agent or by court-appointed receiver, to collect the Rents and (viii) any and all other rights of either Borrower in and to the items set forth in clauses (i) through (vii) above, and all amendments, modifications, replacements, renewals and substitutions thereof;

(i) Condemnation Awards. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(j) Insurance Proceeds. All proceeds Borrowers are entitled to receive in respect of the Property under any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property ("**Insurance Proceeds**");

(k) Tax Certiorari. All refunds, rebates or credits in connection with reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

(l) Conversion. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing including, without limitation, proceeds of insurance and condemnation awards, into cash or liquidation claims;

(m) Rights. The right, subject to the terms and provisions contained in this Security Instrument in the name and on behalf of Borrowers, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Lender in the Property;

(n) Agreements. To the extent assignable, all agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting or pertaining to any business or activity conducted on the Land and any part thereof and all respective right, title and interest of Borrowers therein and thereunder, including, without limitation, the right, upon the happening and during the continuance of any default hereunder (following notice on the expiration of any cure period), to receive and collect any sums payable to Borrowers thereunder;

(o) Intellectual Property. All tradenames, trademarks, servicemarks, logos, copyrights, goodwill, URLs or other online media, books and records and all other general intangibles relating to or used in connection with the operation of the Property by Borrowers (if at all); provided that, there shall be no security interest in tradenames, trademarks, servicemarks,

logos, copyrights, goodwill, URLs or other online media, books and records and all other general intangibles of tenants under the Leases unless expressly granted to Borrowers by such tenants;

(p) Accounts. All reserves, escrows and deposit accounts maintained by either Borrower, together with all deposits or wire transfers made to such accounts, all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof;

(q) Letter of Credit. All letter-of-credit rights either Borrower now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.1;

(r) Tort Claims. All commercial tort claims either Borrower now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.1;

(s) Uniform Commercial Code Property. All documents, instruments, chattel paper and intangibles, as the foregoing terms are defined in the Uniform Commercial Code, and general intangibles relating to the Property;

(t) Minerals. All minerals, crops, timber, trees, shrubs, flowers and landscaping features now or hereafter located on, under or above Land;

(u) Land Use Permits, Etc. To the extent transferrable, all federal, state, and local land use permits, licenses or approvals benefitting the Property;

(v) Proceeds. All proceeds of any of the foregoing, including, without limitation, proceeds of insurance and condemnation awards, whether in cash or in liquidation or other claims, or otherwise; and

(w) Other Rights. Any and all other respective rights of Borrowers in and to the items set forth in Subsections (a) through (v) above.

AND without limiting any of the other provisions of this Security Instrument, to the extent permitted by applicable law, Borrowers, collectively as debtor, expressly grants to Lender, as secured party, a security interest in the portion of the Property which is or may be subject to the provisions of the Uniform Commercial Code which are applicable to secured transactions; it being understood and agreed that the Improvements and Fixtures are part and parcel of the Land (the Land, the Improvements and the Fixtures collectively referred to as the "Real Property") appropriated to the use thereof and, whether affixed or annexed to the Real Property or not, shall for the purposes of this Security Instrument be deemed conclusively to be real estate and mortgaged hereby.

Section 1.2 Assignment of Rents

(a) Borrowers hereby absolutely and unconditionally assigns to Lender all of each Borrower's respective right, title and interest in and to all current and future Leases, Rents and all other property described in Section 1.1(h) above; it being intended by Borrowers that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of the Loan Agreement, Lender grants to each Borrower a license, revocable only upon and during the continuance of an Event of Default, to collect, receive, use and enjoy the Rents, as well as any sums due under the Lease Guaranties.

(b) Borrowers hereby authorize and direct the lessees named in the Leases, any other future lessees or occupants of the Property and all Lease Guarantors to pay over to Lender or to such other party as Lender directs all Rents and all sums due under any Lease Guaranties, upon receipt from Lender of written notice to the effect that Lender is then the holder of this Security Instrument; provided, however, Lender may only send such notices, and take such actions relative to such Rents and sums due under any Lease Guaranties, as are expressly permitted relative thereto pursuant to the terms of the Loan Agreement. Such Rents shall be disbursed and/or applied in accordance with the terms of the Loan Agreement.

Section 1.3 Security Agreement. This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other respective rights and interests, whether tangible or intangible in nature, of each Borrower in the Property. By executing and delivering this Security Instrument, Borrowers, collectively, as debtor, hereby grants to Lender, as secured party, as security for the Obligations, a security interest in all of each Borrower's right, title and interest in, to and under the following property, whether now owned or existing or hereafter acquired or arising and wheresoever located, (i) any accounts, chattel paper, inventory, equipment, instruments, investment property, documents, deposit accounts, commercial tort claims, letter-of-credit rights, goods, general intangibles and supporting obligations (each term in this clause (i) having the meaning given to it under the Uniform Commercial Code), (ii) the Property to the full extent that the Property may be subject to the Uniform Commercial Code, including, without limitation, the Fixtures, the Equipment and the Personal Property, (iii) all renewals, replacements of any of the aforementioned items, or articles in substitution therefor or in addition thereto and (iv) all proceeds and products of the foregoing (said property described in clauses (i) through (iv) is hereinafter referred to collectively as the "**UCC Collateral**"). The foregoing sentence is intended to grant in favor of Lender a first priority continuing lien and security interest in all of each Borrower's assets. Borrowers authorize Lender and its counsel to file UCC financing statements in form and substance satisfactory to Lender, describing the collateral as "all assets of each Borrower, whether now owned or existing or hereafter acquired or arising and wheresoever located, including all accessions thereto and products and proceeds thereof, including, without limitation, all fixtures on the Land", or using words to that effect, and any limitations on such collateral description, notwithstanding that such collateral description may be broader in scope than the UCC Collateral described in this Security Instrument. If an Event of Default shall occur and be continuing, Lender, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take



possession of the UCC Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the UCC Collateral. Upon request or demand of Lender after the occurrence and during the continuance of an Event of Default, each Borrower shall, at its expense, assemble the UCC Collateral and make it available to Lender at a convenient place (at the Land if tangible property) reasonably acceptable to Lender. Borrowers shall pay to Lender on demand any and all actual and reasonable expenses, including reasonable legal expenses and attorneys' fees, incurred or paid by Lender in protecting its interest in the UCC Collateral and in enforcing its rights hereunder with respect to the UCC Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or other intended action by Lender with respect to the UCC Collateral sent to either Borrower in accordance with the provisions hereof at least ten (10) business days prior to such action, shall, except as otherwise provided by applicable law or the Loan Agreement, constitute reasonable notice to Borrowers. The proceeds of any disposition of the UCC Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper. Borrowers' (debtor's) principal place of business is as set forth on page one hereof and the address of Lender (secured party) is as set forth on page one hereof.

Section 1.4 Fixture Filing. Certain of the Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land, and this Security Instrument, upon 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 naming Borrowers as the Debtor and Lender as the Secured Party filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures.

Section 1.5 Pledges of Monies Held. Each Borrower hereby pledges to Lender all of each Borrower's respective right, title, and interests in and to any and all monies now or hereafter held by Lender, including, without limitation, any sums deposited into any accounts required under the Loan Documents, all Insurance Proceeds, condemnation proceeds and liquidation proceeds, as additional security for the Obligations until expended or applied as provided in this Security Instrument or the Loan Agreement.

CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Lender and its successors and assigns, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrowers shall well and truly pay (or cause to be paid) to Lender the Debt at the time and in the manner provided in the Note, the Loan Agreement and this Security Instrument, shall well and truly perform the Other Obligations as set forth in this Security Instrument and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note, the Loan Agreement and the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void; provided, however, that each Borrower's obligation to indemnify and hold harmless Lender pursuant to the provisions hereof shall survive any such payment or release.

ARTICLE II - OBLIGATIONS SECURED

Section 2.1 Debt. This Security Instrument and the grants, assignments and transfers made in Article I are given for the purpose of securing the outstanding principal amount, interest and any other amounts set forth in, and evidenced by the Note, any other notes issued under the Loan Agreement (collectively, the "**Debt**").

Section 2.2 Other Obligations. This Security Instrument and the grants, assignments and transfers made in Article I are also given for the purpose of securing the following (the "**Other Obligations**"):

- (a) the performance of all other obligations of Borrowers contained herein;
- (b) the performance of each obligation of Borrowers contained in any other Loan Document; and
- (c) the performance of each obligation of Borrowers contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note or any other Loan Document.

Section 2.3 Debt and Other Obligations. The obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively herein as the "**Obligations**."

Section 2.4 Other Mortgages; No Election of Remedies.

(a) The Debt is now or may hereafter be secured by one or more other mortgages, deeds of trust and other security agreements (collectively, as the same may be amended and in effect from time to time, are herein collectively called the "**Other Mortgages**"), which cover or will hereafter cover other properties that are or may be located in various states (the "**Other Collateral**"). The Other Mortgages will secure the Debt and the performance of the other covenants and agreements of Borrower and others set forth in the Loan Documents. Upon the occurrence of an Event of Default, Lender may proceed under this Security Instrument and/or any or all the Other Mortgages against either the Property and/or any or all the Other Collateral in one or more parcels and in such manner and order as Lender shall elect. Borrowers each hereby irrevocably waive and release, to the extent permitted by law, and whether now or hereafter in force, any right to have the Property and/or the Other Collateral marshaled upon any foreclosure of this Security Instrument or any Other Mortgage.

(b) Without limiting the generality of the foregoing, and without limitation as to any other right or remedy provided to Lender in this Security Instrument or the other Loan Documents, in the case of an Event of Default (i) Lender shall have the right to pursue all of its rights and remedies under this Security Instrument and the Loan Documents, at law and/or in equity, in one proceeding, or separately and independently in separate proceedings from time to time, as Lender, in its sole and absolute discretion, shall determine from time to time, (ii) Lender shall not be required to either marshal assets, sell the Property and/or any Other Collateral in

any particular order of alienation (and may sell the same simultaneously and together or separately), or be subject to any "one action" or "election of remedies" law or rule with respect to the Property and/or any Other Collateral, (iii) the exercise by Lender of any remedies against any one item of Property and/or any Other Collateral will not impede Lender from subsequently or simultaneously exercising remedies against any other item of Property and/or Other Collateral, (iv) all liens and other rights, remedies or privileges provided to Lender herein shall remain in full force and effect until Lender has exhausted all of its remedies against the Property and all Property has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt, and (v) Lender may resort for the payment of the Debt to any security held by Lender in such order and manner as Lender, in its discretion, may elect and Lender may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Security Instrument.

(c) Without notice to or consent of Borrowers and without impairment of the lien and rights created by this Security Instrument, Lender may, at any time (in its sole and absolute discretion, but Lender shall have no obligation to), execute and deliver to Borrowers a written instrument releasing all or a portion of the lien of this Security Instrument as security for any or all of the obligations of Borrowers now existing or hereafter arising under or in respect of the Note, the Loan Agreement and each of the other Loan Documents, whereupon following the execution and delivery by Lender to Borrowers of any such written instrument of release, this Security Instrument shall no longer secure such obligations of Borrowers so released.

ARTICLE III – BORROWERS' COVENANTS

Borrowers covenant and agree that:

Section 3.1 Payment of Debt. Borrowers will pay the Debt at the time and in the manner provided in the Loan Agreement, the Note and this Security Instrument.

Section 3.2 Incorporation by Reference. All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Note and (c) all and any of the other Loan Documents are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

Section 3.3 Title. Borrowers, as tenants in common, have good and indefeasible fee simple title to the real property comprising part of the Property and good title to the balance of such Property, free and clear of all liens whatsoever except any Permitted Encumbrances (as defined in the Loan Agreement), such other liens as are permitted pursuant to the Loan Documents and the liens created by the Loan Documents. The Permitted Encumbrances in the aggregate do not materially and adversely affect the value, operation or use of the Property or Borrowers' ability to repay the Debt. There are no claims for payment for work, labor or materials affecting the Property which are owed by Borrowers and are past due and are or may become a lien prior to, or of equal priority with, the liens created by the Loan Documents unless such claims for payments are being contested in accordance with the terms and conditions of this Security Instrument.

Section 3.4 Letter of Credit Rights. If either Borrower is at any time a beneficiary under a letter of credit relating to the Property, rights, titles and interests referenced in Section 1.1 of this Security Instrument now or hereafter issued in favor of either Borrower, such Borrower shall promptly notify Lender thereof and, at the request and option of Lender, such Borrower shall, pursuant to an agreement in form and substance reasonably satisfactory to Lender, either (i) arrange for the issuer and any confirmer of such letter of credit to consent to an assignment to Lender of the proceeds of any drawing under the letter of credit or (ii) arrange for Lender to become the transferee beneficiary of the letter of credit, with Lender agreeing, in each case that the proceeds of any drawing under the letter of credit are to be applied as provided in Section 7.2 of this Security Instrument.

ARTICLE IV - OBLIGATIONS AND RELIANCES

Section 4.1 Relationship of Borrowers and Lender. The relationship between Borrowers and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with either Borrower, and no term or condition of any Note, this Security Instrument or the other Loan Documents shall be construed so as to deem the relationship between Borrowers and Lender to be other than that of debtor and creditor.

Section 4.2 No Reliance on Lender. The general partners, members, principals and (if either Borrower is a trust) beneficial owners of Borrowers are experienced in the ownership and operation of properties similar to the Property, and Borrowers and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Neither Borrower is relying on Lender's expertise, business acumen or advice in connection with the Property.

Section 4.3 No Lender Obligations. (a) Notwithstanding the provisions of Subsections 1.1(h) and (n) or Section 1.2, Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to this Security Instrument, the Note or the other Loan Documents, including, without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Lender; provided, however, no prepayment premium shall be due and payable in connection therewith.

Section 4.4 Reliance. Borrowers recognize and acknowledge that in accepting the Note, this Security Instrument and the other Loan Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in the Loan Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; that such reliance existed on the part of Lender prior to the date hereof, that the warranties and representations are a material inducement to Lender in

making the Loan; and that Lender would not be willing to make the Loan and accept this Security Instrument in the absence of the warranties and representations as set forth in the Loan Agreement.

ARTICLE V - FURTHER ASSURANCES

Section 5.1 Recording of Security Instrument, Etc. Borrowers forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the other Loan Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Borrowers will pay all taxes, filing, registration or recording fees, and all reasonable and actual expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument, the other Loan Documents, any note, deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

Section 5.2 Further Acts, Etc. Borrowers will, at the cost of Borrowers, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which either Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Legal Requirements. Borrowers, within ten (10) business days of receipt of written demand, will execute and deliver, and in the event it shall fail to so execute and deliver, hereby authorizes Lender to execute in the name of Borrowers or without the signature of Borrowers to the extent Lender may lawfully do so, one or more financing statements to evidence more effectively the security interest of Lender in the Property. Borrowers grant to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including without limitation, such rights and remedies available to Lender pursuant to this Section 5.2.

Section 5.3 Changes in Tax, Debt, Credit and Documentary Stamp Laws. (a) If any law is enacted or adopted or amended after the date of this Security Instrument which

deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Borrowers will pay the tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Borrowers would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury then Lender shall have the option by written notice of not less than one hundred eighty (180) days to declare the Debt immediately due and payable; provided, however, no prepayment premium shall be due and payable in connection therewith.

(b) Neither Borrower will claim or demand or be entitled to any credit or credits on account of the Debt for any part of the taxes assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, Lender shall have the option, by written notice of not less than one hundred eighty (180) days, to declare the Debt immediately due and payable.

(c) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note, this Security Instrument, or any of the other Loan Documents, or impose any other tax or charge on the same, other than income taxes or other taxes customarily paid by Lender, Borrowers will pay for the same, and, if timely notified and having not paid the same, with interest and penalties thereon, if any.

ARTICLE VI - DUE ON SALE/ENCUMBRANCE

Section 6.1 Lender Reliance. Borrowers acknowledges that Lender has examined and relied on the experience of Borrowers and each Borrower's general partners, members, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Borrowers' ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the Obligations. Borrowers acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrowers default in the repayment of the Debt or the performance of the Obligations, Lender can recover the Debt by a sale of the Property.

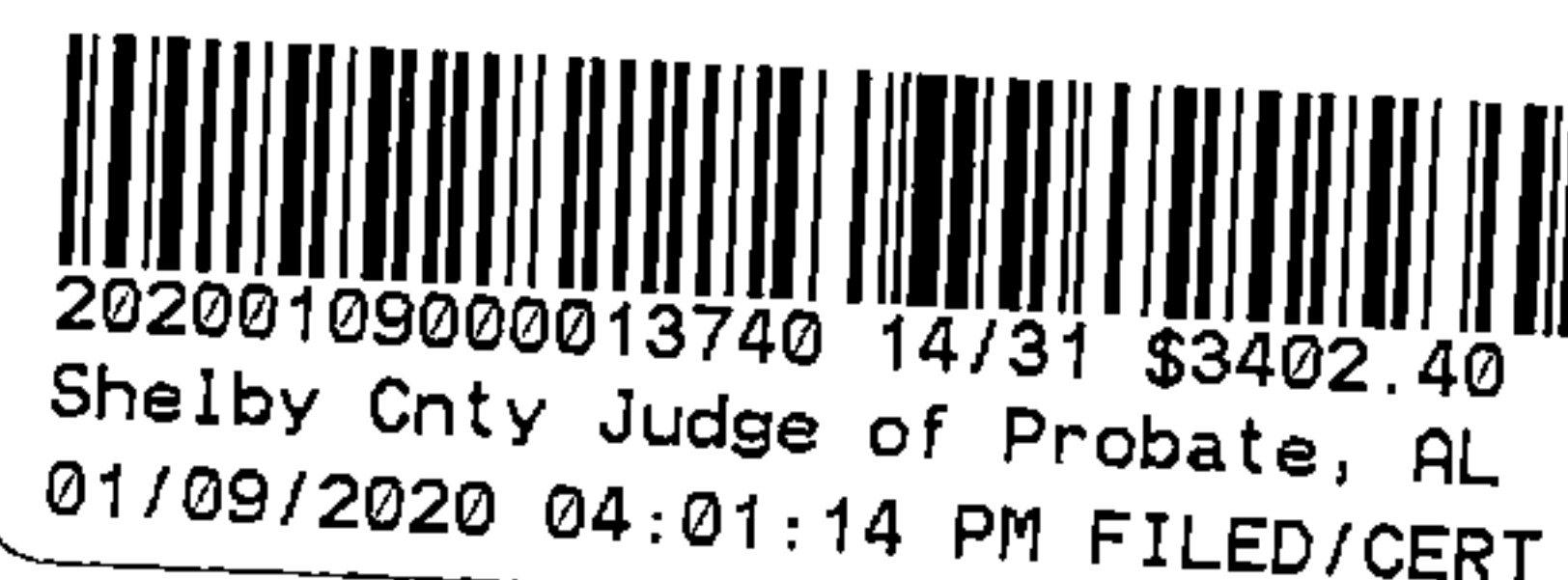
Section 6.2 No Sale/Encumbrance. Borrowers shall not transfer the Property or any part thereof or any of their respective interest therein nor permit or suffer the Property or any part thereof or any interest therein to be transferred other than as expressly permitted pursuant to the terms of the Loan Agreement.

ARTICLE VII - RIGHTS AND REMEDIES UPON DEFAULT

Section 7.1 Remedies. Upon the occurrence and during the continuance of any Event of Default, Borrowers agree that Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrowers and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently

or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

- (a) declare the Debt to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument 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 Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument 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 respective estate, claim, demand, right, title and interest of each Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, 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)
 - (i) In connection with any sale or sales hereunder, Lender shall be entitled to elect to treat any of the Property which consists of (x) a right in action, or (y) property that can be severed from the Real Property covered hereby, or (z) any improvements (without causing structural damage thereto), as if the same were personal property, and dispose of the same in accordance with applicable law, separate and apart from the sale of the Real Property. Where the Property consists of Real Property, Personal Property, Equipment or Fixtures, whether or not such Personal Property or Equipment is located on or within the Real Property, Lender shall be entitled to elect to exercise its rights and remedies against any or all of the Real Property, Personal Property, Equipment and Fixtures in such order and manner as is now or hereafter permitted by applicable law;
 - (ii) Lender shall be entitled to elect to proceed against any or all of the Real Property, Personal Property, Equipment and Fixtures in any manner permitted under applicable law; and if Lender so elects pursuant to applicable law, the power of sale herein granted shall be exercisable with respect to all or any of the Real Property, Personal Property, Equipment and Fixtures covered hereby, as designated by Lender and Lender is hereby authorized and empowered to conduct any such sale of any Real Property, Personal Property, Equipment and Fixtures in accordance with the procedures applicable to Real Property;
 - (iii) Should Lender elect to sell any portion of the Property which is Real Property or which is Personal Property, Equipment or Fixtures that the Lender has elected under applicable law to sell together with Real Property in accordance with the laws governing a sale of the Real Property, Lender shall give such notice of the occurrence of an Event of Default, if any, and its election to sell such Property, each as may then be required by law. Thereafter,



upon the expiration of such time and the giving of such notice of sale as may then be required by law, subject to the terms hereof and of the other Loan Documents, and without the necessity of any demand on Borrowers, Lender at the time and place specified in the notice of sale, shall sell such Real Property or part thereof at public auction to the highest bidder for cash in lawful money of the United States. Lender may from time to time postpone any sale hereunder by public announcement thereof at the time and place noticed for any such sale;

(iv) If the Property consists of several lots, parcels or items of property, Lender shall, subject to applicable law, (A) designate the order in which such lots, parcels or items shall be offered for sale or sold, or (B) elect to sell such lots, parcels or items through a single sale, or through two or more successive sales, or in any other manner Lender designates. Any Person, including Borrowers or Lender, may purchase the Property at any sale hereunder. Should Lender desire that more than one sale or other disposition of the Property be conducted, Lender shall, subject to applicable law, cause such sales or dispositions to be conducted simultaneously, or successively, on the same day, or at such different days or times and in such order as Lender may designate, and no such sale shall terminate or otherwise affect the lien of this Security Instrument on any part of the Property not sold until all the Obligations have been satisfied in full. In the event Lender elects to dispose of the Property through more than one sale, except as otherwise provided by applicable law, Borrowers agree to pay the costs and expenses of each such sale and of any judicial proceedings wherein such sale may be made;

(f) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note or in the other Loan Documents;

(g) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the Loan Agreement;

(h) apply for 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 either Borrower, any guarantor or any indemnitor with respect to the Note or of any Person liable for the payment of the Debt;

(i) the license granted to Borrowers under Section 1.2 hereof shall automatically be revoked and Lender shall immediately be entitled to possession of all Rents and all sums due under any Lease Guaranties, whether or not Lender enters upon or takes control of the Property. In addition, Lender may, at its option, without waiving any Event of Default, without regard to the adequacy of the security for the Obligations, either personally or by its agents, nominees or attorneys, with or without bringing any action or proceeding, or by a receiver appointed by a court, enter into or upon the Property and dispossess Borrowers and their agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrowers and their agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrowers agree to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) have, hold, use, operate, manage, lease, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat on such

terms and for such period of time as Lender may deem proper and, either with or without taking possession of the Property, in its own name, demand, sue for or otherwise collect and receive all Rents and all sums due under all Lease Guaranties, including, without limitation, those past due and unpaid (with all such Rents and all sums due under any Lease Guaranties to be deposited into any accounts to the extent and as required by the terms of the Loan Agreement), with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as Lender may deem proper; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of each Borrower with respect to the Property, whether in the name of such Borrower or otherwise, including, without limitation, the right to negotiate, execute, 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, and all sums due under any Lease Guaranties (with all such Rents and all sums due under any Lease Guaranties to be deposited into the accounts to the extent and as required by the terms of the Loan Agreement); (v) require Borrowers to pay monthly in advance to Lender, 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 Borrowers; (vi) require Borrowers to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrowers may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment and performance of the Obligations (including, without limitation, the payment of the Debt, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all reasonable and actual expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees;

(j) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Fixtures, the Equipment, the Personal Property or any part thereof, and to take such other measures as Lender may reasonably deem necessary for the care, protection and preservation of the Fixtures, the Equipment, the Personal Property, and (ii) request Borrowers at its expense to assemble the Fixtures, the Equipment, the Personal Property and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Fixtures, the Equipment, the Personal Property sent to Borrowers in accordance with the provisions hereof at least ten (10) business days prior to such action, shall constitute commercially reasonable notice to Borrowers;

(k) apply any sums then deposited or held in escrow or otherwise by or on behalf of Lender in accordance with the terms of the Loan Agreement, this Security Instrument or any other Loan Document to the payment of the following items in any order in its sole discretion: (i) Taxes; (ii) insurance premiums; (iii) interest on the unpaid principal balance of the Note; (iv) amortization of the unpaid principal balance of the Note; and (v) all other sums

payable pursuant to the Note, this Security Instrument and the other Loan Documents, including without limitation advances made by Lender pursuant to the terms of this Security Instrument;

(l) apply the undisbursed balance of any sums deposited or held constituting the deficiency in Insurance Proceeds or condemnation proceeds, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Lender shall deem to be appropriate in its discretion; or

(m) pursue such other remedies as Lender may have under applicable law.

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

Section 7.2 Application of Proceeds. The purchase money, proceeds and avails of any disposition of the Property, and or any part thereof, or any other sums collected by Lender pursuant to the Note, this Security Instrument or the other Loan Documents, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper.

Section 7.3 Right to Cure Defaults. Upon the occurrence and during the continuance of any Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrowers and without releasing Borrowers from any obligation hereunder, make any payment or do any act required of Borrowers hereunder in such manner and to such extent as Lender may deem reasonably necessary to protect the security hereof. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the reasonable and actual cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 7.3, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

Section 7.4 Actions and Proceedings. Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Borrowers, which Lender, in its reasonable discretion, if Borrowers are failing to do so, decides should be brought to protect its interest in the Property.

Section 7.5 Recovery of Sums Required To Be Paid. Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due,

and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrowers existing at the time such earlier action was commenced.

Section 7.6 Other Rights, Etc. (a) Nothing contained in this Security Instrument and no act done or omitted by Lender pursuant to the power and rights granted to Lender hereunder (including without limitation, the exercise by Lender of the option granted it in Section 1.2 of this Security Instrument and the collection of the Rents and the sums due under the Lease Guaranties and the application thereof as provided in the Loan Documents) shall be deemed to be a waiver by Lender of its rights and remedies under the Loan Agreement, the Note or the other Loan Documents, and this Security Instrument is made and accepted without prejudice to any of the rights and remedies possessed by Lender under the terms thereof. The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Borrowers shall not be relieved of Borrowers' obligations hereunder by reason of (i) the failure of Lender to comply with any request of Borrowers or any guarantor or any indemnitor with respect to the Loan to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Borrowers, and Lender shall have no liability whatsoever for decline in value of the Property, for failure to maintain any insurance policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Lender shall not be deemed an election of judicial relief if any such possession is requested or obtained with respect to any Property or collateral not in Lender's possession.

(c) Upon the occurrence and continuance of an Event of Default, Lender may resort for the payment and performance of the Obligations (including, but not limited to, the payment of the Debt) to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Security Instrument. The rights of Lender under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Upon the occurrence and continuance of an Event of Default, Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

Section 7.7 Right to Release Any Portion of the Property. Upon the occurrence and continuation of an Event of Default, Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position

of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

Section 7.8 Right of Entry. Upon the occurrence and continuation of an Event of Default, and upon reasonable prior written notice given by Lender to, Lender and its agents shall have the right to enter and inspect the Property at all reasonable times, subject to the rights of tenants under the Leases.

Section 7.9 Bankruptcy.

(a) Upon or at any time after the occurrence of an Event of Default, Lender shall have the right to proceed in its own name or in the name of Borrowers in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Borrowers, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code.

(b) If there shall be filed by or against either Borrower a petition under the Bankruptcy Code, and either Borrower, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then such Borrower shall give Lender not less than ten (10) days' prior notice of the date on which such Borrower shall apply to the bankruptcy court for authority to reject such Lease. Lender shall have the right, but not the obligation, to serve upon such Borrower within such ten (10) day period a notice stating that (i) Lender demands that such Borrower assume and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code, and (ii) Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Lender serves upon a Borrower the notice described in the preceding sentence, such Borrower shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after Lender's notice shall have been given, subject to the performance by Lender of the covenant provided for in clause (ii) of the preceding sentence.

ARTICLE VIII - PREPAYMENT

Section 8.1 Prepayment. The Debt may not be prepaid in whole or in part except in accordance with the express terms and conditions of the Loan Agreement.

ARTICLE IX - INDEMNIFICATION

Section 9.1 General Indemnification. The indemnification provisions set forth in the Loan Agreement are hereby incorporated by reference into this Security Instrument to the same extent and with the same force as if fully set forth herein. Any amounts payable to Lender by

reason of the application of this Section 9.1 shall become immediately due and payable and shall be secured by this Security Instrument.

Section 9.2 Mortgage and/or Intangible Tax. Borrowers shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless Lender and any Person claiming by or through Lender (collectively with Lender, the "**Indemnified Parties**") from and against any and all losses imposed upon or incurred by or asserted against Lender and any Person claiming by or through Lender and directly or indirectly arising out of or in any way relating to any mortgage, recording, stamp, intangible or other similar taxes required to be paid by any Person under applicable legal requirements in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of this Security Instrument or any of the Loan Documents (but excluding any income, franchise or other similar taxes).

ARTICLE X - WAIVERS

Section 10.1 Waiver of Counterclaim. To the extent permitted by applicable law, each Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with this Security Instrument, the Note, any of the other Loan Documents, or the Obligations.

Section 10.2 Marshalling and Other Matters. To the extent permitted by applicable law, each Borrower hereby waives the benefit of all appraisement, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, each Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of such Borrower, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by applicable law.

Section 10.3 Waiver of Notice. To the extent permitted by applicable law, Borrowers shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Security Instrument or the Loan Agreement specifically and expressly provides for the giving of notice by Lender to Borrowers and except with respect to matters for which Lender is required by applicable law to give notice, and each Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Security Instrument or the Loan Agreement do not specifically and expressly provide for the giving of notice by Lender to Borrowers.

Section 10.4 Waiver of Statute of Limitations. To the extent permitted by applicable law, each Borrower hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Debt or performance of its Other Obligations.


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Section 10.5 Waiver of Jury Trial. EACH PARTY HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND FOREVER WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST, WITH REGARD TO THE NOTE, THIS SECURITY INSTRUMENT OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY EACH PARTY AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY THE PARTIES.

ARTICLE XI - EXCULPATION

Section 11.1 Exculpation. The exculpatory provisions set forth in the Loan Agreement are hereby incorporated by reference into this Security Instrument to the same extent and with the same force as if fully set forth herein.

ARTICLE XII - NOTICES

Section 12.1 Notices. All notices or other written communications hereunder shall be delivered in accordance with the notice requirements set forth in the Loan Agreement.

ARTICLE XIII - APPLICABLE LAW

Section 13.1 Governing Law. THIS SECURITY INSTRUMENT SHALL BE DEEMED TO BE A CONTRACT ENTERED INTO PURSUANT TO THE LAWS OF THE STATE OF NEW YORK AND SHALL IN ALL RESPECTS BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, PROVIDED HOWEVER, THAT WITH RESPECT TO THE CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS OF THIS MORTGAGE, THE DETERMINATION OF DEFICIENCY JUDGMENTS, THE PROVISIONS OF THIS MORTGAGE REGARDING ASSIGNMENTS OF RENTS AND LEASES, AND THE EXERCISE OF REMEDIES PURSUANT TO THIS MORTGAGE, THE LAWS OF THE STATE WHERE THE PROPERTY IS LOCATED SHALL APPLY.

Section 13.2 Usury Laws. Notwithstanding anything to the contrary, (a) all agreements and communications between Borrowers and Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest, the interest contracted for, charged or received by Lender shall never exceed the maximum lawful rate or amount, (b) in calculating whether any interest exceeds the lawful maximum, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Borrowers to Lender, and (c) if through any contingency or event, Lender

receives or is deemed to receive interest in excess of the lawful maximum, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Borrowers to Lender, or if there is no such indebtedness, shall immediately be returned to Borrowers.

Section 13.3 Provisions Subject to Applicable Law. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

ARTICLE XIV - DEFINITIONS

Section 14.1 Definitions. All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "**Borrower**" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "**Property**" shall include any portion of the Property and any interest therein, and the phrases "**attorneys' fees**", "**legal fees**" and "**counsel fees**" shall include any and all attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

Section 14.2 Other Definitions. Unless the context otherwise specifies or requires, the following terms shall have the meanings specified (such definitions to be applicable equally to singular and plural nouns and verbs of any tense):

(a) "**Loan Agreement**" means that certain Loan Agreement, dated as of December __, 2019, among Net Lease Suds III LLC and Net Lease Suds IV LLC, collectively as Borrower, and the Lender, as lender, as the same may be amended, restated or supplemented from time to time, including but not limited to one or more supplements thereto that adds an additional borrower and financing agreements and/or Loan Agreements that may be entered into by the Borrowers or their affiliates, the Lender and/or a trustee.

(b) "**Loan**" means the loan evidenced by the Note and together with the loans made from time to time by a Lender to Borrowers under the terms of the Loan Agreement and which are evidenced by a note and intended to be secured by this Security Instrument under the terms of any cross-collateralization provisions in such Loan Agreement.

(c) "**Loan Documents**" means the Loan Agreement, the Note, this Security Instrument and any other document or instrument evidencing or securing the Loan.

(d) **"Note"** means, collectively, the note or notes executed by Borrowers evidencing the obligation to repay any part or all the financing pursuant to the Loan Agreement, and all other promissory notes executed from time to time and delivered by Borrowers or any other entity to or for the benefit of the Lender or its designee pursuant to a Loan Agreement and evidencing the Obligations secured, or intended to be secured, by this Security Instrument, and any amendment, extensions or modifications thereof, which may include, without limitation, notes issued by an issuer pursuant to a loan arrangement with Borrowers or any of their affiliates and/or one or more base Loan Agreements between an issuer and an Loan Agreement trustee and one or more supplemental Loan Agreements thereto, including all amendments and supplements to and restatements of any of the foregoing.

ARTICLE XV - MISCELLANEOUS PROVISIONS

Section 15.1 No Oral Change. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrowers or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 15.2 Successors and Assigns. This Security Instrument shall be binding upon and inure to the benefit of Borrowers and Lender and their respective successors and assigns forever.

Section 15.3 Inapplicable Provisions. If any term, covenant or condition of the Note, the Loan Agreement or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, Note, the Loan Agreement and this Security Instrument shall be construed without such provision, and the remaining provisions of this Security Instrument shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Security Instrument, unless such continued effectiveness of this Security Instrument, as modified, would be contrary to the basic understandings and intentions of the parties as expressed herein.

Section 15.4 Headings, Etc. The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 15.5 Number and Gender. 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.

Section 15.6 Subrogation. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with

the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of Borrowers' obligations hereunder, under the Loan Agreement, the Note and the other Loan Documents and the performance and discharge of the Other Obligations.

Section 15.7 Joint and Several Liability. The liability of all persons and entities comprising Borrowers hereunder and under any of the Loan Documents shall be joint and several.

Section 15.8 Tenancy-In-Common. Reference is hereby made to the Loan Agreement for certain additional provisions relating to the tenancy-in-common ownership of the Property and to the TIC Agreement (as defined in the Loan Agreement).

Section 15.9 Limitation on Lender's Responsibility. This Security Instrument shall not be construed to bind Lender to the performance of any of the covenants, conditions or provisions contained in any Lease or Lease Guaranty or otherwise impose any obligation upon Lender. Lender shall not be liable for any loss sustained by Borrowers resulting from Lender's failure to lease the Property after an Event of Default or from any other act or omission of Lender in managing the Property after an Event of Default unless such loss is caused by the gross negligence, willful misconduct or bad faith of Lender. Lender shall not be obligated to perform or discharge any obligation, duty or liability under the Leases or any Lease Guaranties or under or by reason of this Security Instrument. Should Lender incur any such liability, the amount thereof, including costs, expenses and reasonable attorneys' fees and costs, shall be secured by this Security Instrument and by the other Loan Documents and Borrowers shall reimburse Lender therefor within ten (10) days following written and upon the failure of Borrowers so to do Lender may, at its option, declare the Obligations to be immediately due and payable. No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession."

ARTICLE XVI - STATE SPECIFIC PROVISIONS

Section 16.1 State Specific Provisions. State specific provisions, if any, are outlined on Exhibit B attached hereto and incorporated herein.

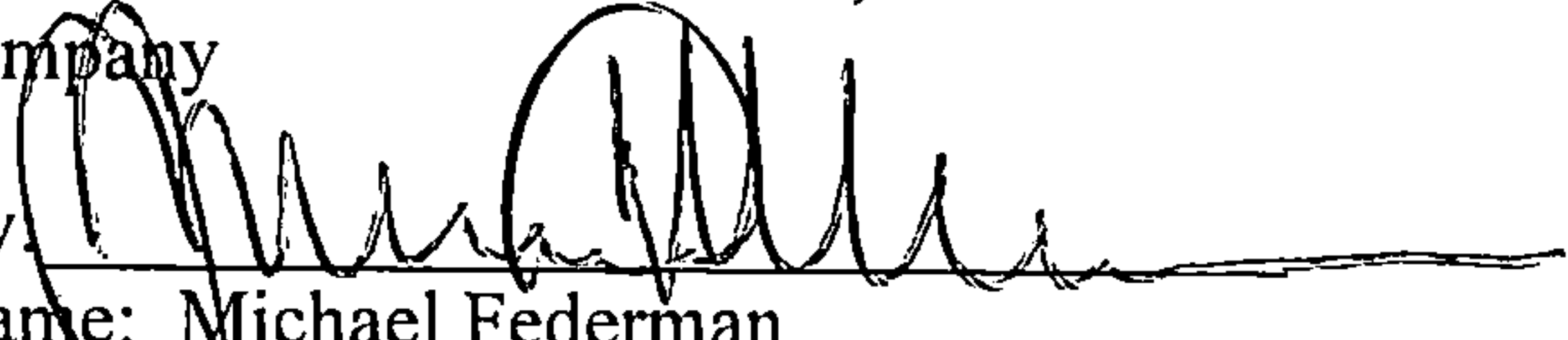
Section 16.2 Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Article 16 and the terms and conditions of this Security Instrument, the terms and conditions of this Article 16 shall control and be binding.


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IN WITNESS WHEREOF, the party hereto has caused this Security Instrument to be duly executed by its duly authorized representative, all as of the day and year first above written.

BORROWERS:

NET LEASE SUDS III LLC, a Delaware limited liability company

By: 

Name: Michael Federman

Its: Authorized Representative

NET LEASE SUDS IV LLC, a Delaware limited liability company

By: 

Name: Michael Federman

Its: Authorized Representative

[Signature Page for Mortgage, Assignment Of Leases And Rents, Security Agreement And Fixture Filing—Alabama]



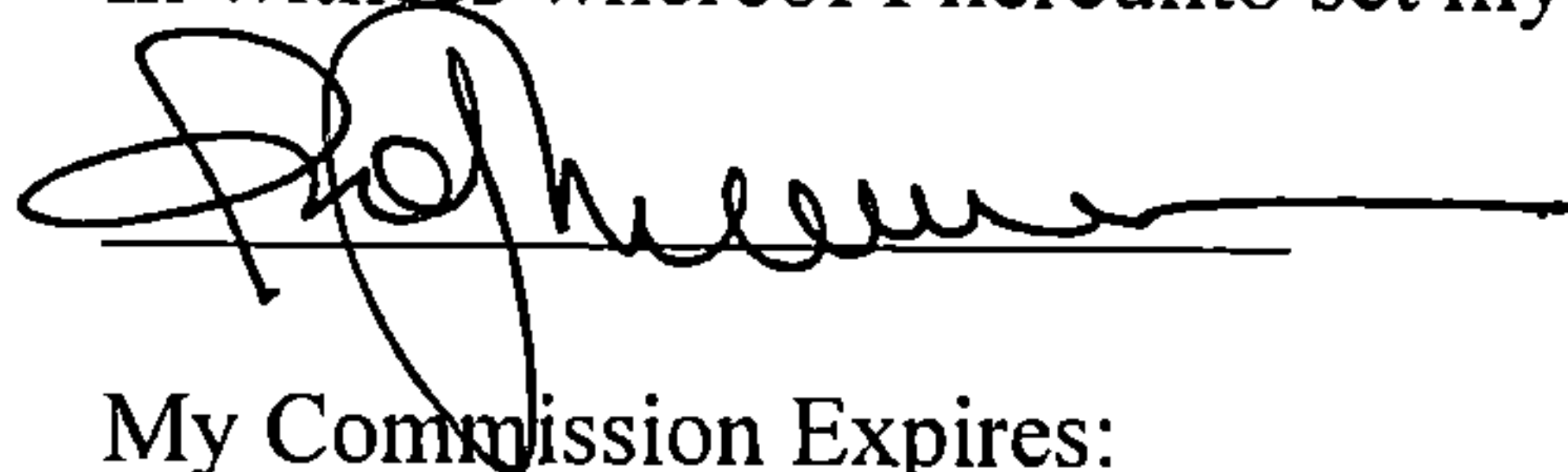
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State of New York

County of New York

On this the 16th day of December, 2019, before me, the undersigned officer, personally appeared Michael Federman, the Authorized Representative, of and on behalf of NET LEASE SUDS III LLC, a Delaware limited liability company, known to me (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand.



My Commission Expires:

1/9/2023

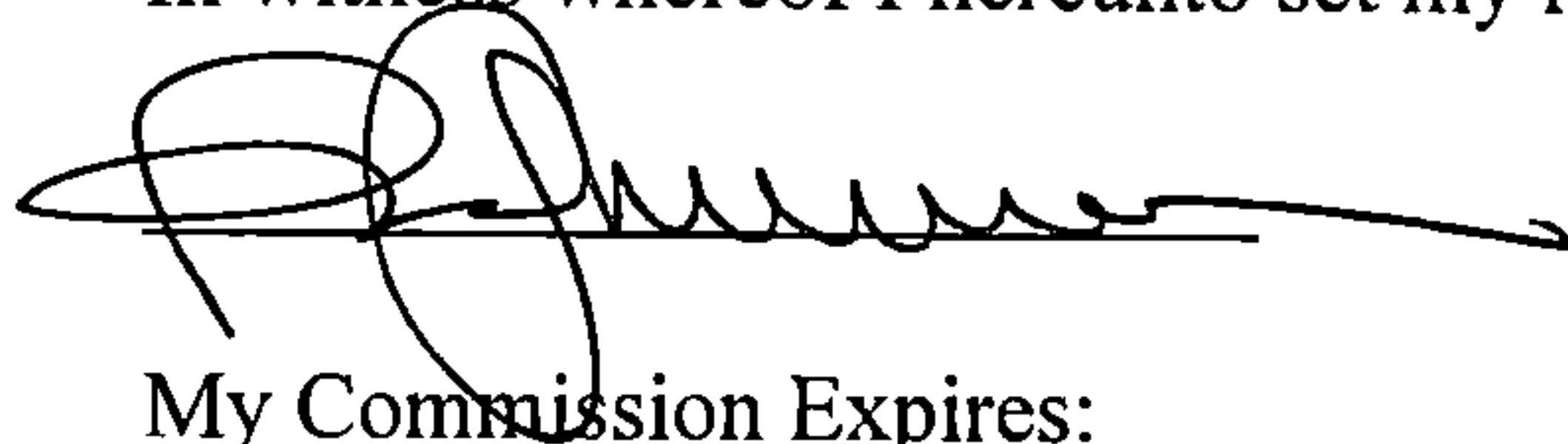
PETER JOSEPH MANNARINO
Notary Public, State of New York
No. 02MA6397626
Qualified in New York County
Commission Expires Sep 9, 2023

State of New York

County of New York

On this the 16th day of December, 2019, before me, the undersigned officer, personally appeared Michael Federman, the Authorized Representative, of and on behalf of NET LEASE SUDS IV LLC, a Delaware limited liability company, known to me (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand.



My Commission Expires:

1/9/2023

PETER JOSEPH MANNARINO
Notary Public, State of New York
No. 02MA6397626
Qualified in New York County
Commission Expires Sep 9, 2023

[Notary Page for Mortgage, Assignment Of Leases And Rents, Security Agreement And Fixture Filing—Alabama]


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MORTGAGOR'S ADDRESS:

NET LEASE SUDS III LLC
c/o Granito & Epstein CPAs, LLP
100 Merrick Road, Suite 202 East
Rockville Centre, New York 11570

NET LEASE SUDS IV LL
c/o Granito & Epstein CPAs, LLP
100 Merrick Road, Suite 202 East
Rockville Centre, New York 11570

MORTGAGEE'S ADDRESS:

SCF RC FUNDING IV LLC
902 Carnegie Center Blvd., Suite 520,
Princeton, New Jersey 08540



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EXHIBIT A

LEGAL DESCRIPTION

Parcel 1 (Fee Simple):

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", 56,750 SQ. FT. ±, 1.303 ACRES ± on that certain plat of survey entitled "SPECTRUM - 280 SUBDIVISION," dated April 29, 2003, prepared by Laurence D. Weygand, Reg. RE. & L.S. # 10373, which plat of survey was recorded on January 27, 2004, in Map Book 32, page 111, in the Office of the Probate Judge of Shelby County, Alabama, to which plat reference is made for the more particular description of said LOT B.

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, Shelby County, Alabama records.

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, aforesaid records, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to extent such covenants conditions or restrictions violate 42 USC 3604(c); as affected by Waiver of Restriction and Further Imposition of Restrictions dated February 11, 2005, and recorded May 4, 2005, in Instrument No. 20050504000212330, Shelby County Judge of Probate, Alabama records; as affected by 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, aforesaid records.

Being the same property conveyed from IMO US GEORGIA, LLC, a Delaware limited liability company, to NET LEASE SUDS III LLC, a Delaware limited liability company, and NET LEASE SUDS IV LLC, a Delaware limited liability company, as tenants in common, in that certain deed dated December 18, 2019 and recorded as Instrument No. 20200109000013730

APN/Parcel ID(s): 02.7.36.0.001.026.001


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EXHIBIT B

STATE SPECIFIC PROVISIONS

Section 16.2.1 Inconsistencies. In the event of any inconsistencies between the terms and conditions of this Section 16.2 and any other provision of this Security Instrument, the terms and conditions of this Section 16.2 shall control and be binding.

Section 16.2.2 Financing Statement for UCC Purposes. This Security Instrument also constitutes a financing statement for the purpose of the UCC and shall constitute a "fixture filing" under such statutes and shall be filed in the real estate records of the County in which the Land is located. For such purpose the names and addresses of the debtor and the secured party are as set forth below:

Name of Debtor: NET LEASE SUDS III LLC and NET LEASE SUDS IV LLC

Debtor's Mailing

Address: c/o Granito & Epstein CPAs, LLP
100 Merrick Road, Suite 202 East
Rockville Centre, New York 11570

Address of Property: See cover sheet of this Security Instrument

Name of Secured Party: SCF RC FUNDING IV LLC

Address of Secured

Party: 902 Carnegie Center Blvd., Suite 520,
Princeton, New Jersey 08540

Section 16.2.3 The first paragraph under Section 1.1 is hereby deleted in its entirety and substituted in lieu thereof is the following:

"Property Mortgaged. Borrowers, in consideration of the premises and the payment of the Note in the amount provided for in Section 16.2.5 hereof, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by these presents does hereby create a security interest in, mortgage, grant, bargain, sell, assign, pledge, give, transfer, set over and convey unto the Lender, its successors and assigns, all of each Borrower's respective estate, right, title and interest in, to and under the Land (hereinafter defined), the Improvements (hereinafter defined) and any and all of the following property, rights, interests and estates (together with the Land and the Improvements, collectively the **"Property"**), whether now owned or hereafter acquired, subject only to the Permitted Encumbrances (as defined in the Loan Agreement):"


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Section 16.2.4 Subparagraph (t) of Section 1.1 is hereby deleted in its entirety and substituted in lieu thereof is the following:

“(t) Minerals. To the extent of any interest the Borrowers may have, all minerals, crops, timber, trees, shrubs, flowers and landscaping features now or hereafter located on, under or above Land;”

Section 16.2.5 Section 2.1 is hereby deleted in its entirety and substituted in lieu thereof is the following:

“**Section 2.1 Debt**. This Security Instrument and the grants, assignments and transfers made in Article I are given for the purpose of securing the following:

(a) Payment of the Note and the amount of \$2,193,548.00. , together with interest thereon as provided therein, and all renewals, amendments, extensions and modifications thereof, and all refinancing of any part of said note and any and all other additional indebtedness of either Borrower for the benefit of Lender, now existing or hereafter arising, whether joint or several, due or to become due, absolute or contingent, direct or indirect, liquidated or unliquidated, and any renewals, extensions, modifications and refinancing thereof, and whether incurred or given as maker, endorser, guarantor or otherwise, and whether the same be evidenced by note, open account, assignment, endorsement, guaranty, pledge or otherwise;

(b) Payment of taxes, assessments, insurance premiums, costs or other advances incurred to preserve or protect the Property, together with interest thereon until paid at the Default Rate, all as contemplated by this Security Instrument; and

(c) Payment of any fees and expenses incurred in connection with Borrowers’ obligations hereunder.”

Section 16.2.6 Subparagraphs (a) through (f) of Section 7.1 are hereby deleted and restated in their entirety as follows:

“(a) In addition to the rights and remedies set forth herein, at the option of Lender this Security Instrument may be foreclosed in any manner now or hereafter provided by Alabama law, and Lender, its successors and assigns, agents or attorneys, may sell the Property or any part of the Property at one or more public sales before the door of the courthouse of the county or counties, as may be required, in which the Land or any part of the Land is situated, after having first given notice of the time, place and terms of sale at least once a week for three (3) successive weeks preceding the date of such sale in some newspaper published in said county or counties, as may be otherwise required. At any such sale, Lender or any person conducting the sale for Lender may execute and deliver to the purchaser a conveyance of the Property or any part of the Property. Lender may bid at said sale and purchase the Property, or any part thereof, if the highest bidder therefor. In the event of any sale under this Security Instrument by virtue of the exercise of the powers herein granted, or pursuant to any order in any judicial proceedings or

otherwise, the Property may be sold as an entirety or in separate parcels and in such manner or order as Lender in its sole discretion may elect.

(b) As may be permitted by law, Lender shall apply the proceeds of sale (i) first, to payment of all costs, fees and expenses, including attorneys' fees and expenses incurred by the Lender in exercising the power of sale or judicially foreclosing this Security Instrument, (ii), second, to the payment of the Obligations in such manner and order as Lender may elect, and (iii) third, the remainder, if any, shall be paid to Borrowers, or to Borrowers' heirs, devisees, representatives, successors or assigns, or such other persons as may be entitled thereto.

(c) Lender, or its successors and assigns, agents or attorneys, may in the manner provided by law postpone sale of all or any portion of the Property. Any sale may be adjourned by Lender, its successors and assigns, agents or attorneys, and reset at a later date without additional publication; provided that an announcement to that effect be made at the scheduled place of sale at the time and on the date the sale is originally set.

(d) INTENTIONALLY OMITTED.

(e) INTENTIONALLY OMITTED.

(f) INTENTIONALLY OMITTED.

Section 16.2.7 Section 13.1 is hereby deleted in its entirety and restated in its entirety as follows:

"Section 13.1 Governing Law. TO THE FULLEST EXTENT ALLOWED BY THE LAWS OF THE STATE OF ALABAMA, THIS SECURITY INSTRUMENT SHALL BE DEEMED TO BE A CONTRACT ENTERED INTO PURSUANT TO THE LAWS OF THE STATE OF NEW YORK AND SHALL IN ALL RESPECTS BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, PROVIDED, HOWEVER, THAT WITH RESPECT TO THE CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS OF THIS SECURITY INSTRUMENT, THE DETERMINATION OF DEFICIENCY JUDGMENTS, THE PROVISIONS OF THIS SECURITY INSTRUMENT REGARDING ASSIGNMENTS OF RENTS AND LEASES, AND THE EXERCISE OF REMEDIES PURSUANT TO THIS SECURITY INSTRUMENT, THE LAWS OF THE STATE OF ALABAMA SHALL APPLY.


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