20200511000183370
05/11/2020 10:27:06 AM
ASSIGN 1/10

This instrument is additional security for Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing to be recorded immediately prior hereto.

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**BIRMINGHIAM 4600 APL MP, LLC,**
**a Delaware limited liability company**
**(Assignor)**

**to**

**CAPITAL ONE, NATIONAL ASSOCIATION**
**(Administrative Agent)**

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# ASSIGNMENT OF LEASES AND RENTS

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**Dated as of May 7, 2020**

**Property Location: 4600 U.S. Highway 280, Birmingham, AL**

**DOCUMENT PREPARED BY AND WHEN RECORDED, RETURN TO:**
POLSINELLI
150 N. Riverside Plaza, Suite 3000
Chicago, IL 60606
Attention: Jason Kaplan, Esq.

73241682

# ASSIGNMENT OF LEASES AND RENTS

This Assignment of Leases and Rents (this "**Agreement**") is executed as of May 7, 2020, by **BIRMINGHAM 4600 APL MP, LLC**, a Delaware limited liability company, whose address for notice is 181 W. Madison Street, Suite 4700, Chicago, Illinois 60602 ("**Assignor**"), to **CAPITAL ONE, NATIONAL ASSOCIATION**, a national banking association, as administrative agent for the Lenders (as defined in the Loan Agreement) whose address for notice is 77 W. Wacker Drive, 10th Floor, Chicago, Illinois 60601, Attention: Jeffrey M. Muchmore, Reference: MB Kayne CORE ("**Administrative Agent**").

## RECITALS:

A. This Agreement is given in connection with a loan in the principal sum of up to TWO HUNDRED FIFTY-EIGHT MILLION EIGHT HUNDRED FIFTY-SIX THOUSAND NINE HUNDRED FORTY-SEVEN AND NO/100 DOLLARS ($258,856,947.00) (as the same may be increased from time to time in accordance with the terms of the Loan Agreement) pursuant to the Loan Agreement dated as of December 17, 2019, by and among Administrative Agent, Lenders (as defined in the Loan Agreement), Assignor and the other Borrower parties joined thereto from time to time (the "**Other Borrower Parties**") (as the same may be amended, restated, replaced, supplemented, extended or otherwise modified from time to time, the "**Loan Agreement**") and evidenced by (i) one or more promissory notes, executed by the Other Borrower Parties, bearing interest and being payable to the order of one or more Lenders, and (ii) one or more amended and restated promissory notes, executed by Assignor and certain of the Other Borrower Parties, bearing interest and being payable to the order of one or more Lenders (as the same may be amended, restated, replaced, supplemented, increased, extended or otherwise modified from time to time, collectively, the "**Note**"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

B. The Note is secured by, among other things, that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing of even date herewith executed by Assignor in favor of Administrative Agent for the benefit of Lenders and relating to the Property (defined below) (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Mortgage**").

C. Assignor desires to further secure the payment of the Obligations and the performance of all of its obligations under (i) the Note, (ii) the Mortgage, (iii) the Loan Agreement, and (iv) any guaranty executed by Assignor in favor of Administrative Agent (each of the foregoing, this Agreement, and such other documents and instruments evidencing the Loan to which Assignor, the Other Borrower Parties or Guarantor are parties, and such modifications, amendments, extensions, replacements, and substitutions thereof being herein collectively called the "**Loan Documents**").

D. The assignment pursuant to this Agreement is given pursuant to the Loan Agreement, and payment, fulfillment, and performance by Assignor and the Other Borrower Parties of the Obligations secured hereby, and each and every term and provision of the Loan

Agreement, the Note and the Mortgage, including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Agreement.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Administrative Agent agree as follows:

**AGREEMENT:**

1. **Absolute Assignment**. Assignor unconditionally, irrevocably and absolutely assigns and grants to Administrative Agent, for the benefit of Lenders, all of Assignor's right, title and interest in and to: (a) all existing and future leases, subleases, occupancy agreements, licenses, concessions, rental contracts and other agreements (written or oral) now or hereafter existing relating to the use or occupancy of the project located on the real property described in ***Exhibit A*** attached hereto and made a part hereof (said land and project herein collectively referred to as the "**Property**"), together with all guarantees, letters of credit and other credit support, modifications, extensions and renewals thereof (whether before or after the filing by or against Assignor of any petition of relief under 11 U.S.C. § 101 et seq., as same may be amended from time to time, the "**Bankruptcy Code**"), and all related security and other deposits (collectively, the "**Leases**"); (b) all rents, revenues, liquidated damages following defaults under the Leases, issues, profits, income and proceeds due or to become due from tenants of the Property, including rentals and all other payments of any kind under the Leases for using, leasing, licensing, possessing, operating from, rendering in, selling or otherwise enjoying the Property (collectively, the "**Rents**"); (c) all of Assignor's 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; and (d) any and all other rights of Assignor in and to the items set forth in subsections (a) through (c) above, and all amendments, modifications, replacements, renewals, proceeds and substitutions thereof. This Agreement is an absolute assignment to Administrative Agent for the benefit of Lenders and not an assignment as security for the performance of the obligations under the Loan Documents, or any other indebtedness, and such absolute assignment is presently and immediately effective without further or supplemental assignment. The absolute assignment contained herein shall not itself reduce the obligations owing to Lenders under the Loan Documents unless and until Administrative Agent actually receives the Rents and such Rents are applied by Administrative Agent to such obligations pursuant to Section 4 below.

2. **Rights of Administrative Agent**. Subject to the provisions of Section 6 below and subject to applicable Requirements of Law, Administrative Agent shall have the right, power and authority to: (a) notify any person that the Leases have been assigned to Administrative Agent for the benefit of Lenders and that all Rents are to be paid directly to Administrative Agent, whether or not Administrative Agent on behalf of the Lenders has commenced or completed foreclosure or taken possession of the Property; (b) during the continuance of an Event of Default, settle, compromise, release, extend the time of payment of, and make allowances, adjustments and discounts of any Rents or other obligations under the Leases; (c)

during the continuance of an Event of Default, enforce payment of Rents and other rights under the Leases, prosecute any action or proceeding, and defend against any claim with respect to Rents and Leases; (d) during the continuance of an Event of Default, enter upon, take possession of and operate the Property; (e) during the continuance of an Event of Default, lease all or any part of the Property; and/or (f) during the continuance of an Event of Default, perform any and all obligations of Assignor under the Leases and exercise any and all rights of Assignor therein contained to the full extent of Assignor's rights and obligations thereunder, with or without the bringing of any action or the appointment of a receiver. At Administrative Agent's request, Assignor shall deliver a copy of this Agreement to each tenant under a Lease and to each manager and managing agent or operator of the Property. Assignor irrevocably directs any tenant, manager, managing agent, or operator of the Property, without any requirement for notice to or consent by Assignor, to comply with all demands of Administrative Agent under this Agreement and to turn over to Administrative Agent on demand all Rents which it receives.

3. **No Obligation or Liability**. Notwithstanding Administrative Agent's rights hereunder, Administrative Agent shall not be obligated to perform, and Administrative Agent does not undertake to perform, any obligation, duty or liability with respect to the Leases, Rents or Property on account of this Agreement. Administrative Agent shall have no responsibility on account of this Agreement for the control, care, maintenance or repair of the Property, for any waste committed on the Property, for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property. Administrative Agent shall not be liable for any loss sustained by Assignor resulting from Administrative Agent's failure to let the Property after an Event of Default or from any other act or omission of Administrative Agent or Lenders in managing the Property after an Event of Default. Nothing herein contained shall be construed as constituting Administrative Agent or any Lender a "mortgagee in possession" in the absence of the taking of actual possession of the Property by Administrative Agent or Lenders. In the exercise of the powers herein granted Administrative Agent for the benefit of Lenders, no liability shall be asserted or enforced against Administrative Agent or Lenders, all such liability being expressly waived and released by Assignor.

4. **Right to Apply Rents**. Subject to the provisions of Section 6 below, Administrative Agent shall have the right, but not the obligation, to use and apply any Rents received by Administrative Agent pursuant to the terms hereof, and subject to Section 2.6 of the Loan Agreement, in such order and such manner as Administrative Agent may determine for:

(a) **Enforcement or Defense**. The payment of costs and expenses of enforcing or defending the terms of this Agreement or the rights of Administrative Agent hereunder, and collecting any Rents;

(b) **Loan Payments**. Interest, principal or other amounts payable pursuant to the Loan Documents and any and all modifications, amendments or extensions thereof or replacements or substitutions therefor; and

(c) **Operating Expenses**. Payment of costs and expenses of the operation and maintenance of the Property, including (i) rentals and other charges

payable by Assignor under any ground lease or other agreement affecting the Property; (ii) electricity, telephone, water and other utility costs, taxes, assessments, water charges and sewer rents and other utility and governmental charges levied, assessed or imposed against the Property; (iii) insurance premiums; (iv) costs and expenses with respect to any litigation affecting the Property, the Leases or the Rents; (v) wages and salaries of employees, commissions of agents and attorneys' fees and expenses; and (vi) all other carrying costs, fees, charges, reserves, and expenses whatsoever relating to the Property.

After the payment of all such costs and expenses and after Administrative Agent has established such reserves as it, in its sole and absolute discretion, deems necessary for the proper management of the Property, Administrative Agent shall apply all remaining Rents received by it to the reduction of the Loan.

5. **No Waiver**. The exercise or nonexercise by Administrative Agent of the rights granted in this Agreement or the collection and application of Rents by Administrative Agent shall not be a waiver of any default by Assignor under this Agreement or any other Loan Document. No action or failure to act by Administrative Agent with respect to any obligations of Assignor under the Loan Documents, or any security or guaranty given for the payment or performance thereof, shall in any manner affect, impair or prejudice any of Administrative Agent's rights and privileges under this Agreement, or discharge, release or modify any of Assignor's duties or obligations hereunder.

6. **Collection of Rents**. Until the occurrence and during the continuance of an Event of Default under the Mortgage or until Assignor shall default in the performance of any of its obligations under this Agreement (beyond any applicable notice and cure periods), and subject to the terms of any Cash Management Agreement, Assignor may receive, collect and enjoy the Rents and income from the Property. Upon the occurrence and during the continuance of an Event of Default under the Mortgage or a default by Assignor in the performance of any of its obligations under this Agreement beyond any applicable notice and cure periods, Administrative Agent shall immediately be entitled to receive and apply all Rents, whether or not Administrative Agent or Lenders enter upon and take control of the Property. Other than during the existence of an Event of Default under the Mortgage or a default by Assignor in the performance of any of its obligations under this Agreement (beyond any applicable notice and cure periods), Assignor shall apply any Rents which it receives to the payment of debt service on the Note and other payments due in accordance with and under the Loan Agreement, and any taxes, assessments, water charges, sewer rents and other governmental charges levied, assessed or imposed against the Property, insurance premiums, operation and maintenance charges relating to the Property, and other obligations of lessor under the Leases before using such proceeds for any other purpose. Administrative Agent is hereby granted and assigned by Assignor the right, at its option, upon the occurrence and during the continuance of an Event of Default under the Mortgage or a default by Assignor in the performance of any of its obligations under this Agreement beyond applicable notice and cure periods, to enter upon the Property in person, by agent or by court-appointed receiver to collect the Rents. Any Rents collected during the existence of an Event of Default under the Mortgage or a default by Assignor in the performance

of any of its obligations under this Agreement, after any applicable notice and cure periods, may be applied toward payment of the Indebtedness in such priority and proportion as Administrative Agent, in its discretion, shall deem proper. The foregoing notwithstanding, Assignor irrevocably (i) appoints Administrative Agent as its attorney-in-fact to collect any and all Rents, and (ii) instructs any party obligated to pay Rents to Assignor to pay such Rents to Administrative Agent upon demand by Administrative Agent without regard to whether an Event of Default has taken place, and without regard to any contrary instructions from Assignor at the time of Administrative Agent's demand for remittance of Rents.

7. **Term; Release**. This Agreement shall continue in full force and effect until all amounts due under the Loan Documents are paid in full. No judgment or decree entered as to the indebtedness under the Loan Documents shall operate to abrogate or lessen the effect of this Agreement until such indebtedness has actually been paid. The affidavit, certificate, letter, or statement of any officer of Administrative Agent showing any part of such indebtedness remaining unpaid shall be and constitute conclusive evidence of the validity, effectiveness, and continuing force of this Agreement. Any person, firm, corporation, or other entity may and is hereby authorized to rely on such affidavit, certificate, letter, or statement.

8. **Appointment**. Assignor irrevocably appoints Administrative Agent its true and lawful attorney in fact, which appointment is coupled with an interest, to exercise any or all of the rights or powers described herein with the same force and effect as if exercised by Assignor, and Assignor ratifies and confirms any and all acts done or omitted to be done by Administrative Agent, Lenders, their respective agents, servants, employees or attorneys in, to or about the Property to the extent permitted by this Agreement. Notwithstanding the foregoing, Administrative Agent agrees not to exercise such rights or powers except during the continuance of an Event of Default.

9. **Liability of Administrative Agent**. Administrative Agent shall not in any way be liable to Assignor for any action or inaction of Administrative Agent, Lenders, their respective employees or agents under this Agreement, except to the extent due to the gross negligence or willful misconduct of any of the foregoing.

10. **Indemnification**. Assignor shall indemnify, defend and hold harmless Administrative Agent from and against all liability, actual loss, actual damage, out-of-pocket cost or expense which it may incur under this Agreement or under any of the Leases, including any claim against Administrative Agent by reason of any alleged obligation, undertaking, action, or inaction on its part to perform or discharge any terms, covenants or conditions of the Leases or with respect to Rents, and including reasonable attorneys' fees and expenses, but excluding any claim to the extent caused by Administrative Agent's gross negligence or willful misconduct. Any amount covered by this indemnity shall be payable within three (3) Business Days after Administrative Agent's demand, and shall bear interest from such date until the same is paid by Assignor to Administrative Agent at a rate equal to the Default Rate.

11. **Modification**. This Agreement may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of such change is sought.

12. **Bankruptcy**.

(a) Upon the occurrence of an Event of Default and during the continuance thereof, Administrative Agent shall have the right to proceed in its own name on behalf of Lenders or in the name of Assignor 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 Assignor, 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 Assignor a petition under the Bankruptcy Code, and Assignor, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Assignor shall give Administrative Agent not less than ten (10) days' prior notice of the date on which Assignor shall apply to the bankruptcy court for authority to reject the Lease. Administrative Agent shall have the right, but not the obligation, to serve upon Assignor within such ten-day period a notice stating that (i) Administrative Agent demands that Assignor assume and assign the Lease to Lenders pursuant to Section 365 of the Bankruptcy Code and (ii) Administrative Agent covenants to cure or provide adequate assurance of future performance under the Lease. If Administrative Agent serves upon Assignor the notice described in the preceding sentence, Assignor 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 the notice shall have been given, subject to the performance by Lenders of the covenant provided for in clause (ii) of the preceding sentence.

13. **Authority**. Assignor represents and warrants that it has full power and authority to execute and deliver this Agreement and the execution and delivery of this Agreement has been duly authorized and does not conflict with or constitute a default under any law, judicial order or other agreement affecting Assignor or the Property.

14. **Liability**. If Assignor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several.

15. **Headings, Etc**. The headings and captions of various paragraphs of this Agreement 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.

16. **Notices**. Any notice required or permitted to be given under this Agreement shall be (a) in writing, (b) sent in the manner set forth in the Loan Agreement, and (c) effective in accordance with the terms of the Loan Agreement.

17. **Successors and Assigns**. This Agreement shall inure to the benefit of Administrative Agent, Lenders and their respective successors and assigns and shall be binding on Assignor and its successors and assigns.

18. GOVERNING LAW. **THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF ILLINOIS APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE (WITHOUT REGARD TO THE PRINCIPLE OF CONFLICTS OF LAW APPLICABLE UNDER ILLINOIS LAW) AND APPLICABLE LAWS OF THE UNITED STATES OF AMERICA; PROVIDED THAT (A) WITH RESPECT TO THE PROVISIONS HEREOF WHICH RELATE TO TITLE, OR TO THE CREATION, PERFECTION, PRIORITY, ENFORCEMENT OR FORECLOSURE OF LIENS ON AND SECURITY INTERESTS IN OR ASSIGNMENTS OF REAL PROPERTY, THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE WHERE SUCH REAL PROPERTY IS LOCATED; AND (B) WITH RESPECT TO THE PROVISIONS HEREOF WHICH RELATE TO THE CREATION, PERFECTION, PRIORITY, ENFORCEMENT AND FORECLOSURE OF LIENS ON PROPERTY GOVERNED BY ARTICLE 9 OF THE UCC, THE CONFLICTS OF LAW PROVISIONS OF THE UCC SHALL CONTROL; IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY LAW, THE LAWS OF THE STATE OF ILLINOIS SHALL GOVERN.**

19. **Conflict**. If any conflict or inconsistency exists between the absolute assignment of the Rents and the Leases in this Agreement and the assignment of the Rents and Leases as security in the Mortgage, the terms of this Agreement shall control. In addition, to the extent that the terms and conditions in this Agreement and the terms and conditions of the Loan Agreement conflict, the terms and conditions of the Loan Agreement shall control and supersede the terms of this Agreement with respect to such conflicts.

20. **Limitation on Liability**. Assignor's liability hereunder is subject to the limitation on liability provisions of Article 13 of the Loan Agreement.

21. **Counterparts**. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

[***Remainder of this page intentionally left blank. Signature page follows.***]

EXECUTED as of the date first above written.

**BIRMINGHAM 4600 APL MP, LLC,**
a Delaware limited liability company

By: _____
Name: Gregg Graines
Title: Authorized Signatory

STATE OF ILLINOIS )
) ss.
COUNTY OF COOK )

On this 4 day of May, 2020, before me, a Notary Public in and for the State and County aforesaid, personally appeared Gregg Graines, as Authorized Signatory of Birmingham 4600 APL MP, LLC, a Delaware limited liability company, known to me (or satisfactorily proven) and acknowledged that he or she, as such Authorized Signatory, being authorized to do so on behalf of such company, executed the foregoing instrument as the voluntary act and deed of said company for the purposes therein contained by signing the name of the a limited liability company by himself or herself as such Authorized Signatory.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____
(Signature of Notary)

Katarina Maier
(Legibly Print or Stamp Name of Notary)

My commission expires: 3/27/22

(official seal)

KATARINA MAIER
Official Seal
Notary Public - State of Illinois
My Commission Expires Mar 27, 2022

**EXHIBIT A**

**Legal Description**

PARCEL 1
LOT 1, ACCORDING TO THE SURVEY OF RIVER RIDGE PLAZA, AS RECORDED IN MAP BOOK 26, PAGE 14, IN THE OFFICE OF THE JUDGE OF PROBATE OF SHELBY COUNTY, ALABAMA.

PARCEL 2
BENEFICIAL EASEMENTS GRANTED IN THAT CERTAIN RECIPROCAL EASEMENT AND OPERATING AGREEMENT EXECUTED BY AND BETWEEN ST. VINCENT'S HOSPITAL AND RIVER RIDGE COMPANY, L.L.C., DATED SEPTEMBER 9, 1999 AND RECORDED IN INSTRUMENT NO. 1999-38039 IN THE AFORESAID PROBATE OFFICE.

PARCEL 3
BENEFICIAL EASEMENTS GRANTED IN THAT CERTAIN SIXTH AMENDMENT AND RESTATEMENT OF CERTAIN PROVISIONS OF RESTRICTIVE COVENANTS RECORDED IN INSTRUMENT NO. 1999-10301, AS MODIFIED BY CONSENT AND WAIVER AS TO RESTRICTIVE COVENANTS RECORDED IN INSTRUMENT NO. 1999-38031, IN THE AFORESAID PROBATE OFFICE.

Tax ID No. 02-7-35-0-001-003.002
Property Address: 4600 U.S. Highway 280, Birmingham, AL

**Filed and Recorded**
**Official Public Records**
**Judge of Probate, Shelby County Alabama, County Clerk**
**Shelby County, AL**
**05/11/2020 10:27:06 AM**
**$49.00 CHERRY**
**20200511000183370**