

E 3199524 B 7378 P 1831-1850  
RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
10/29/2019 1:38:00 PM  
FEE \$40.00 Pgs: 20  
DEP eCASH REC'D FOR COTTONWOOD TITLE INS

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

Margot M. Hammond, Esq.  
Holland & Knight LLP  
10 Saint James Avenue, 11th floor  
Boston, MA 02116

Affecting Tax Parcel No. 11-794-0010

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**ASSIGNMENT OF LEASE AND RENTS**

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DBD NOCIGS 2019-40 LLC,  
Assignor

to

WELLS FARGO TRUST COMPANY, NATIONAL ASSOCIATION, as Trustee,  
Assignee

Dated as of October 17, 2019

## ASSIGNMENT OF LEASE AND RENTS

THIS ASSIGNMENT OF LEASE AND RENTS (herein, together with all modifications, supplements and amendments hereto, called this "Assignment"), dated as of the Effective Date set forth on **Schedule A** attached hereto and made a part hereof (the "Effective Date") made by the Borrower set forth on **Schedule A** attached hereto and made a part hereof ("Assignor") to WELLS FARGO TRUST COMPANY, NATIONAL ASSOCIATION, as Trustee, having a principal place of business at 299 S. Main Street, 5<sup>th</sup> Floor, MAC: U1228-051, Salt Lake City, Utah 84111 ("Assignee").

### WITNESSETH:

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

WHEREAS, Assignor has received an absolute and unconditional guaranty of payment and performance of the Lease from CVS Health Corporation ("Lease Guarantor") and dated as of the date of the Lease (herein, as it may from time to time be modified, supplemented, amended, amended and restated or replaced, called the "Lease Guaranty");

WHEREAS, simultaneously with the execution and delivery of this Assignment, Assignee is making a mortgage loan to Assignor (the "Loan") as evidenced by a certain Promissory Note dated as of the Effective Date by Assignor to Assignee (herein, as it may from time to time be modified, supplemented, amended, amended and restated or replaced, called the "Note") and secured by the Security Instrument (as defined in the Note) (the Note, the Security Instrument and any and all other documents evidencing, securing or pertaining to the Loan are collectively referred to as the "Loan Documents"; capitalized terms used herein and not otherwise defined herein will have the meanings given to them in the Security Instrument); and

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

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

1. Assignor, as security for the Obligations, has assigned, transferred, conveyed and set over, and by these presents does hereby presently, unconditionally and irrevocably assign, transfer, convey and set over to Assignee, all of Assignor's estate, right, title and interest in, to and under the Lease and the Lease Guaranty (excluding, however, the Excepted Rights and the Excepted Payments), together with all rights, powers, privileges, options and other benefits of Assignor, as the lessor under the Lease and as beneficiary under the Lease Guaranty (excluding, however, the Excepted Rights and Excepted Payments) and together with any and all other leases, subleases, if and to the extent that Assignor has an interest therein pursuant to the Lease, licenses, rental agreements and occupancy agreements of whatever form now or hereafter affecting all or any part of the Mortgaged Property, including, without limitation, the immediate and continuing right:
  - (a) except with respect to Fixed Rent that is prepaid on the Lease Commencement Date (as defined in the Lease) (to the extent such Fixed Rent is not allocable to interest due on the Note on November 10, 2019), to make claim for, receive and collect (and to apply the same to the payment of the Obligations) all rents (including all Fixed Rent and Additional Rent as such terms are defined in the Lease), income, revenues, issues, profits, insurance proceeds, condemnation proceeds, moneys, security deposits, and damages payable to or receivable by Assignor under the Lease or pursuant to any of the provisions thereof (such rents, income, revenues, issues, profits, proceeds, moneys, security deposits or damages, collectively, the "Rents") (excluding, however, the Excepted Payments);
  - (b) as provided in the Security Instrument, to accept or reject (i) any Rejectable Offer (as defined in the Lease) by Lessee pursuant to the Lease to purchase the Mortgaged Property or any part thereof, or (ii) any condemnation proceeds or insurance proceeds payable in connection with a loss or destruction thereof as provided in and subject to the Lease, excluding, however, the Excepted Rights and Excepted Payments as specifically set forth herein;
  - (c) to make all waivers and agreements of any kind (except as herein provided) pursuant to the Lease and the Lease Guaranty; and
  - (d) to give all notices, consents, approvals, releases and other instruments including notice of acceptance or rejection of any Rejectable Offer to be given under the Lease and the Lease Guaranty, excluding, however, the Excepted Rights and Excepted Payments.
2. (a) Assignor and Assignee agree that, so long as no Event of Default as defined in and under the Security Instrument has occurred and is continuing, Assignor may take any action with respect to the premises demised under the Lease without the prior written consent of Assignee, so long as such action is taken in good faith and as permitted by the Loan Documents or by law (provided, however, that, Assignee shall have the exclusive right to give any notice of default under the Loan Documents to Lessee or Assignor, and provided further that only with the prior written consent of Assignee, and subject to the terms and conditions hereof, Assignor may exercise its remedies under the Lease, subject, however, to

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

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

used herein, “Excepted Payments” means the following described payments or amounts:

- (1) Fixed Rent not exceeding an amount equal to the Fixed Rent under the Lease from the closing date of the Loan through November 10, 2019, that is prepaid on the Lease Commencement Date (to the extent such Fixed Rent is not allocable to interest due on the Note on November 10, 2019), and all payments by Lessee pursuant to any indemnity under the Lease or in payment or reimbursement of costs and expenses which by the terms thereof are payable to Assignor or its owners, successors, permitted assigns, employees, officers, directors, shareholders, members, managers, trustees, beneficial owners, partners, servants, agents and affiliates thereof for their respective accounts; and
- (2) any insurance proceeds to the extent payable under general public liability policies maintained by Lessee pursuant to Section 32 of Part II of the Lease or under self-insurance maintained by Lessee pursuant to Section 32 of Part II of the Lease in lieu of such public liability insurance, which, by the terms of such policies or the self-insurance provisions of the Lease, are payable directly to Assignor or its owners, successors, permitted assigns, employees, officers, directors, shareholders, members, managers, trustees, beneficial owners, partners, servants, agents and affiliates thereof, in each such case for their own respective accounts.

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

- (1) the right of the Assignor, but not to the exclusion of Assignee, (a) to receive from Lessee certificates and other documents and information that Lessee is required to give or furnish to Assignor pursuant to the Lease, (b) to inspect the premises demised under the Lease and all books and records relating thereto, (c) to undertake repairs and maintenance of the premises demised under the Lease, (d) to send Notices of Breach (so long as any such Notice of Breach, by itself or with the passage of time, does not result in an Event of Default under the Lease or the Lease Guaranty or the termination of the Lease or the Lease Guaranty or the acceleration of rent payable under the Lease, and so long as a copy of such Notice of Breach is delivered simultaneously to Assignee) and to sue for damages or to enforce performance or observance by Lessee under the Lease and/or the Lease Guarantor under the Lease Guaranty of the applicable covenants and terms of the Lease and Lease Guaranty as allowed by law, equity, the Lease or the Lease Guaranty (so long as such suit, together with the passage of time, if applicable, in connection therewith is conducted

so as not to result in the existence of an Event of Default under the Lease or the Lease Guaranty, the termination of the Lease or the Lease Guaranty or acceleration of rent under the Lease), (e) to execute and deliver such powers of attorney and other documents granting the Lessee the rights to execute, acknowledge and deliver tax returns, statements and other tax related instruments, and pay any Taxes (as defined in the Security Instrument) with respect to the Mortgaged Property, and (f) to execute applications for liquor licenses and other licenses, permits, authorizations and approvals and take other actions which may be required by the Assignor (in its capacity as landlord under the Lease) to cooperate with the Lessee pursuant to Section 30 of Part II of the Lease; and,

- (2) the right of Assignor, on its behalf only, to consent or approve or refuse to consent or approve of any options or other rights to terminate the Lease and/or to acquire the Mortgaged Property or the net award payable to Assignor in a Major Condemnation (as defined in the Lease) and any cause of action in connection with a Major Condemnation (subject to any conditions thereto as are otherwise specifically contained in the Loan Documents) provided that on any such consent Assignor states conspicuously that Assignor's consent does not signify a necessary consent of Assignee, and (subject to any conditions otherwise contained in the Loan Documents) that no consent or approval of Assignor shall be valid or effective unless and until Assignee's written consent is obtained.
3. The execution and delivery of this Assignment shall not in any way impair or diminish the obligations of Assignor under the Lease, nor shall any of the obligations contained in the Lease be imposed upon Assignee (unless and until Assignor's fee estate in the Mortgaged Property is transferred to Assignee or a receiver or trustee pursuant to a foreclosure of the Security Instrument or other exercise by Assignee of its remedies under the Security Instrument or this Assignment). Upon the payment of the Obligations in full in immediately available funds, this Assignment and all rights herein assigned to Assignee shall automatically cease and terminate and all estate, right, title and interest of Assignor in and to the Lease shall revert to Assignor, and Assignee shall, at the request and at the expense of Assignor, deliver to Assignor an instrument in recordable form canceling this Assignment and reassigning the Lease without recourse, representation or warranty, to Assignor.
4. Assignor hereby presently, unconditionally and irrevocably designates Assignee to receive, and directs Lessee and Lease Guarantor to pay to Assignee or its designated servicer, all payments (except for Excepted Payments) payable or receivable under both the Lease and any new lease permitted under the Lease including, without limitation, all payments of Fixed Rent and Additional Rent (as such terms are defined in the Lease), and other sums payable to the lessor under Lease (excluding, however, the Excepted Rights and Excepted Payments), and no such payment by Lessee under the Lease shall be

effective to discharge the obligation of Lessee under the Lease to make such payment unless made to Assignee in accordance with such designation and direction. Assignor agrees that any Rents (other than Excepted Payments) received by Assignor shall be held in trust by Assignor for the sole and exclusive benefit of Assignee pursuant to the terms of the Loan Documents and shall be delivered by Assignor to Assignee within one (1) business day after receipt of the same. Upon and during the continuance of an Event of Default, and if and to the extent that Assignor has any interest or rights in any subleases(s) of the premises demised under the Lease, Assignor designates Assignee to receive, and directs Lessee to pay to Assignee or its designated servicer, all payments payable or receivable under any such subleases(s). Assignor hereby designates Assignee to receive duplicate original copies of all notices, undertakings, demands, statements, offers, documents and other instruments and communications which Lessee is or may be required or permitted to give, make, deliver to or serve upon Assignor under the Lease. Assignor hereby directs Lessee to deliver to Assignee, at its address set forth below or at such other address as Assignee shall designate to Assignor, duplicate original copies of all such notices, undertakings, demands, statements, documents and other communications. No delivery thereof by Lessee shall be of any force or effect unless made to Assignee and Assignor.

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

Mortgaged Property or of any interest therein so as to effect a merger of the estates and rights of, or termination or diminution of the obligations of Lessee thereunder; (d) shall not alter, modify or change the terms of the Lease Guaranty or cancel or terminate the Lease Guaranty without the prior written consent of Assignee; (e) shall not consent to any assignment of or subletting under the Lease not in accordance with the Lease terms, without the prior consent of Assignee; and (f) except as provided for in paragraph 2 hereof, shall not pursue any remedies under the Lease or the Lease Guaranty or obligations of the Lease Guarantor, without the prior written agreement of Assignee, which will not be unreasonably withheld, conditioned or delayed.

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



occurrence and during the continuation of an Event of Default. The exercise by Assignee of the option granted it in this paragraph and the collection of the Rents and the application thereof as herein provided shall not be considered a waiver of any default by Assignor under the Note, the Security Instrument, the Lease, this Assignment or any of the other Loan Documents.

9. Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Mortgaged Property after an Event of Default or from any other act or omission of Assignee in managing the Mortgaged Property after any Event of Default unless such loss is caused by the willful misconduct, gross negligence, or bad faith of Assignee. Assignee shall not be obligated to perform or discharge any obligation, duty or liability under the Lease or under or by reason of this Assignment (unless and until Assignor's fee estate in the Mortgaged Property is transferred to Assignee or a receiver or trustee pursuant to a foreclosure of the Security Instrument or other exercise by Assignee of its remedies under the Security Instrument or this Assignment) and Assignor shall, and hereby agrees, subject to paragraph 22 hereof, to indemnify Assignee for, and to hold Assignee harmless from and against, any and all liability, loss or damage which is incurred under the Lease or under or by reason of this Assignment and from any and all claims and demands whatsoever, including the defense of any such claims or demands which may be asserted against Assignee by reason of any alleged obligations and undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Lease (except to the extent caused by the gross negligence, willful misconduct, or bad faith of Assignee). Should Assignee incur any such liability, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby and by the Security Instrument and the other Loan Documents and Assignor shall reimburse Assignee therefor within five (5) days following demand and upon the failure of Assignor so to do Assignee may, at its option, declare all sums secured hereby and by the Note, the Security Instrument and the other Loan Documents immediately due and payable. This Assignment shall not operate to place any obligation or liability for the control, care, management or repair of the Mortgaged Property upon Assignee, nor for the carrying out of any of the terms and conditions of the Lease; nor shall it operate to make Assignee responsible or liable for any waste committed on the Mortgaged Property by Lessee or any other parties (except to the extent caused by the gross negligence, willful misconduct, or bad faith of Assignee), or for any dangerous or defective condition of the Mortgaged Property, including without limitation the presence of any Hazardous Substances (as defined in the Security Instrument) (except to the extent caused by the gross negligence, willful misconduct, or bad faith of Assignee), or for any negligence in the management, upkeep, repair or control of the Mortgaged Property resulting in loss or injury or death to any tenant, licensee, employee or stranger (except to the extent caused by the gross negligence, willful misconduct, or bad faith of Assignee).
10. Assignee may, to the extent permitted by applicable law, take or release other security for the payment of the Debt, may release any party primarily or secondarily liable therefor and may apply any other security held by it to the reduction or satisfaction of the Debt without prejudice to any of its rights under this Assignment.

11. Nothing contained in this Assignment and no act done or omitted by Assignee pursuant to the power and rights granted to Assignee hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under the Note, the Security Instrument or the other Loan Documents and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Assignee under the terms thereof. The right of Assignee to collect the Debt and to enforce any other security therefor held by it may, to the extent permitted by applicable law, be exercised by Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder.
12. Nothing herein contained shall be construed as constituting Assignee a “mortgagee in possession” in the absence of the taking of actual possession of the Mortgaged Property by Assignee. In the exercise of the powers herein granted Assignee, no liability shall be asserted or enforced against Assignee, all such liability being expressly waived and released by Assignor.
13. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Assignment may be used interchangeably in singular or plural form and the word “Assignor” shall mean “each Assignor and any subsequent owner or owners of the Mortgaged Property or any part thereof or any interest therein (unless such party has been released by Assignee from its obligations)”, the word “Assignee” shall mean “Assignee and any subsequent holder of the Note,” the word “Note” shall mean “the Note and any other evidence of indebtedness secured by the Security Instrument,” the word “person” shall include an individual, corporation, partnership, limited liability company, trust, unincorporated association, government, governmental authority, and any other entity, the words “Mortgaged Property” shall include any portion of the Mortgaged Property and any interest therein, and the word “Debt” shall mean the principal balance of the Note with interest thereon as provided in the Note and the Security Instrument and all other sums due pursuant to the Note, the Security Instrument, this Assignment and the other Loan Documents; whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.
14. The failure of Assignee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Assignment. Assignor shall not be relieved of Assignor’s obligations hereunder by reason of (i) failure of Assignee to comply with any request of Assignor or any other party to take any action to enforce any of the provisions hereof or of the Security Instrument, the Note or the other Loan Documents, (ii) the release from the Security Instrument, regardless of consideration, of any part of the Mortgaged Property, or (iii) any agreement or stipulation by Assignee extending the time of payment or otherwise modifying or supplementing the terms of this Assignment, the Note, the Security Instrument or the other Loan Documents. Assignee may, to the extent permitted by applicable law, resort for the payment of the Debt to any other security held by Assignee in such order and manner as Assignee, in its discretion, may elect. Assignee may take any action to recover the Debt, or any portion thereof or to enforce any covenant hereof without prejudice to the right of Assignee thereafter to enforce its rights under this Assignment. The rights of Assignee under this Assignment shall be separate,

distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Assignee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

15. Assignor hereby consents to, and hereby agrees to direct Lessee and the Lease Guarantor as follows:

- (a) Lessee and Lease Guarantor shall consent to this Assignment and agree to pay and deliver to Assignee all rentals and other sums assigned to Assignee pursuant to this Assignment in accordance with the terms and provisions of the Lease and/or the Lease Guaranty (as applicable), without offset, deduction, defense, deferment or abatement. Neither Lessee nor Lease Guarantor shall for any reason whatsoever seek to recover from Assignee any moneys paid to Assignee by virtue of this Assignment. All sums payable to Assignee pursuant to this Assignment shall be paid to Assignee in immediately available funds on the due date thereof at such address and/or account as shall be designated by Assignee by written notice to Lessee. No payment made by Lessee and/or Lease Guarantor shall be effective to discharge the obligations of Lessee and/or Lease Guarantor under the Lease or the Lease Guaranty, as applicable, to make such payments or be of any other force or effect unless paid to Assignee. Lessee and Lease Guarantor shall deliver to Assignee duplicate original copies of all notices, undertakings, demands, statements, offers, documents and other instruments or communications which it is or may be required or permitted to give, make, serve or deliver pursuant to the Lease and/or the Lease Guaranty, as applicable.
- (b) Neither Lessee nor Lease Guarantor shall enter into any agreement amending, modifying, waiving any provision of, or terminating the Lease or the Lease Guaranty without the prior consent of Assignee, nor shall Lessee sublease all or any part of the Mortgaged Property except in accordance with the terms of the Lease. Any attempted amendment, modification, waiver, or termination of the Lease or the Lease Guaranty without Assignee's consent shall be void. If the Lease or the Lease Guaranty shall be amended as herein permitted, the Lease or the Lease Guaranty as so amended, as applicable, shall continue to be subject to this Assignment without the necessity of any further act by any of the parties hereto. Lessee shall remain obligated under the Lease, and Lease Guarantor shall remain obligated under the Lease Guaranty, in accordance with its terms, and neither Lessee nor Lease Guarantor shall take any action to terminate (except as expressly permitted by the Lease or the Lease Guaranty, as applicable), rescind or avoid the Lease or the Lease Guaranty, notwithstanding any action with respect to the Lessee or the Lease Guarantor which may be taken by any trustee or receiver of Assignor or of any assignee of Assignor or by any court in any bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution or other proceeding affecting Assignor or any assignee of Assignor. Lessee acknowledges and agrees to be bound by the license and right of access granted to Assignee and its agents, employees, contractors, engineers, architects, nominees, attorneys and other representatives pursuant to paragraph 23(b) of the Security Instrument.

16. If any term or provision of this Assignment or any application hereof shall be invalid or unenforceable, the remainder of this Assignment and any other application of such term or provision shall not be affected thereby.
17. Any notice, demand, statement, request or consent made hereunder shall be effective and valid only if in writing, referring to this Assignment, signed by the party giving such notice, and delivered either personally to such other party, or sent by nationally recognized overnight courier delivery service or by certified mail addressed to the other party at such party's Notice Address as set forth in **Schedule A** attached hereto and made a part hereof (or to such other address or person as either party or person entitled to notice may by notice to the other party specify).

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

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

Paragraph 3 of this Assignment is hereby deleted in its entirety and replaced with the following:

This Assignment is a present and absolute assignment and not merely one for security; provided, however that, the execution and delivery hereof shall not in any way impair or diminish the obligations of Assignor under the Lease, nor shall any of the obligations contained in the Lease be imposed upon Assignee (unless and until Assignor's fee or leasehold estate, as applicable, to the Mortgaged Property is transferred to Assignee pursuant to a foreclosure of the Security Instrument or other exercise by Assignee of its remedies under the Security Instrument). Upon the payment of the Obligations in full in immediately available funds, this Assignment and all rights herein assigned to Assignee shall automatically cease and terminate and all estate, right, title and interest of Assignor in and to the Lease shall revert to Assignor, and Assignee shall, at the request and at the expense of Assignor, deliver to Assignor an instrument in recordable form canceling this Assignment and reassigning the Lease without recourse, representation or warranty, to Assignor.

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

This Assignment is intended to assign rents and leases pursuant to 25 Del. C. 2121.

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

Notwithstanding anything to the contrary, this Assignment is intended to, and does constitute, an assignment of rents as security for the repayment of indebtedness as contemplated in Florida Statutes Section 697.07. Assignee shall be entitled to the remedies provided in said Section 697.07, in addition to all rights and remedies, whether procedural or substantive, in effect at the time of execution or enforcement of this Assignment.

26. If the Mortgaged Property is located in the State of Louisiana, the following provisions (a) and (b) shall apply:

- (a) The Note has a maturity date of November 10, 2041.
- (b) The maximum amount of the Debt that may be outstanding at any time and from time to time that this Assignment secures, including all principal, interest and any expenses incurred by the Lender, and all other amounts included as Debt, is \$[\_\_\_\_\_][400% of the loan amount].

27. If the Mortgaged Property is located in the State of New Jersey, the following provisions shall apply:

- (a) The word "securing" shall be deleted from the fourth "WHEREAS" clause hereof;

- (b) The words “as security for the Obligations” shall be deleted from paragraph 1 hereof; and
  - (c) With respect to the Mortgaged Property covered hereby, this document is deemed an absolute assignment and not as security for any obligation.
28. If the Mortgaged Property is located in the State of New York, the following provision shall apply:
- (a) In addition to and apart from the foregoing Assignor hereby covenants and agrees with the Assignee that it shall comply with the leasing obligations set forth in the Loan Documents. The provisions of the preceding sentence shall be enforceable as provided in Section 291-f of the Real Property Law of the State of New York (the “**Real Property Law**”) with respect to the Lease and any other leases covered by said section; as to leases not covered by said section, the Assignee shall be entitled to enforce the foregoing in any manner permitted by law or equity. The Assignor further agrees that upon demand of the Assignee the Assignor will enter into a similar agreement with the Assignee pursuant to Section 291-f of the Real Property Law providing for the above with the Assignee with respect to any lease hereafter executed by the Assignor relating to space in the Mortgaged Property; notwithstanding the provisions of this sentence, it is understood and agreed that the remaining provisions of this paragraph shall also apply to leases, if any, hereafter executed. The Assignor hereby irrevocably appoints the Assignee the attorney-in-fact of the Assignor to execute any such agreement on behalf of the Assignor and to deliver to the lessee to whose lease such agreement relates the written notice referred to in Section 291-f of the Real Property Law whether or not such lease is one to which such Section 291-f is applicable

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

Notwithstanding anything to the contrary, this Assignment is intended to, and does, constitute an assignment of rents as security for repayment of indebtedness as contemplated in the Texas Assignment of Rents Act (Texas Property Code, Section 64.001, et seq.). Assignee shall be entitled to the remedies provided in said Act, in addition to all rights and remedies, whether procedural or substantive, in effect at the time of execution or enforcement of this Assignment

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

ORAL AGREEMENTS DISCLAIMER: The following notice is given pursuant to RCW 19.36.140:

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

*(BALANCE OF PAGE INTENTIONALLY LEFT BLANK.)*

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

**ASSIGNOR:**

DBD NOCIGS 2019-40 LLC,  
a Delaware limited liability company

By: William Turner  
William Turner, Authorized Signatory

**ACKNOWLEDGMENT**

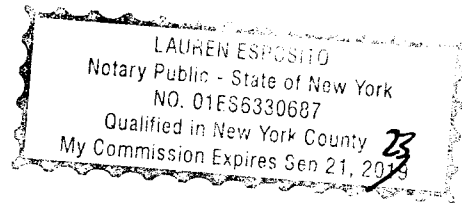
STATE OF NEW YORK            )  
  ):SS  
COUNTY OF NEW YORK        )

Lauren Esposito  
Lauren Esposito

On this 2 day of October, in the year 2019, before me Lauren Esposito a notary public, personally appeared William Turner, the Authorized Signatory of DBD NOCIGS 2019-40 LLC, a Delaware limited liability company, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged he executed the same on behalf of the limited liability company.

Witness my hand and official seal

Lauren Esposito  
(notary signature)



Prepared by and after Recording Mail to:

Margot M. Hammond, Esq.  
Holland & Knight LLP  
10 Saint James Avenue, 11th floor  
Boston, MA 02116



**SCHEDULE A  
MASTER SCHEDULE**

<b>Effective Date:</b>	October 17, 2019
<b>Borrower:</b>	DBD NOCIGS 2019-40 LLC, a Delaware limited liability company
<b>Address of (1) Borrower's principal place of business; (2) Guarantor's principal place of business; and (3) Borrower Notice Address</b>	<p>c/o Fortress Investment Group 1345 Avenue of the Americas, 46th Floor New York, New York 10105 Attn: Constantine Dakolias</p> <p><b>With a copy to:</b></p> <p>Dain, Torpy, Le Ray, Wiest &amp; Garner, P.C. 745 Atlantic Avenue, 5th Floor Boston, MA 02111 Attn: Tim Pecci, Esq. Telephone: (617) 542-4800</p>
<b>Loan Amount:</b>	\$4,952,119.63
<b>Security Instrument:</b>	Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing
<b>Guarantor:</b>	DBD NOCIGS 2019 LLC, a Delaware limited liability company
<b>Lease:</b>	Lease, dated as of October 17, 2019, between Borrower, as landlord, and Lessee, as tenant
<b>Lessee:</b>	Utah CVS Pharmacy, L.L.C., a Utah limited liability company
<b>Maturity Date:</b>	November 10, 2041

<b>Lender Notice Address:</b>	<p>Wells Fargo Trust Company, National Association, as Trustee 299 S. Main Street, 5<sup>th</sup> Floor MAC: U1228-051 Salt Lake City, Utah 84111 Attn.: Corporate Trust Lease Group Fax: (801) 246-7142</p> <p><b>With a copy to:</b> Holland &amp; Knight LLP 10 Saint James Avenue, 11<sup>th</sup> Floor Boston, Massachusetts 02116 Attn: Margot M. Hammond, Esq. Telephone: (617) 573-5856</p>
<b>Lessee Notice Address:</b>	<p>Utah CVS Pharmacy, L.L.C. c/o CVS Corporation One CVS Drive Woonsocket, Rhode Island 02895 Attn: Property Administration Dept./Store #10662 Telephone: (401) 770-8962</p> <p><b>With a copy to:</b> Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. 666 Third Avenue New York, NY 10017 Attn.: Stephen Friedberg, Esq. Telephone: (212) 692-6875</p>

*[End of Schedule A Master Schedule]*

EXHIBIT "A"  
LEGAL DESCRIPTION

PARCEL 1:

All that certain parcel of land being a portion of parcel 4, Fort Lane Village Amended Subdivision, also being located in the northeast quarter of Section 28, Township 4, North, Range 1 West, Salt Lake Base and meridian, City of Layton, State of Utah, more particularly described as follows:

Beginning at the Northwest corner of parcel 4 of the Fort Lane Village Amended Subdivision Plat, said point being South 00°32'40" West 73.00 feet to the South right of way line of Gentile Street as shown on the Fort Lane Village Amended Plat recorded in Book 6568 at page 338 in the Davis County Recorder's office; South 89°27'20" East 76.45 feet from the North quarter of said section 28 and running thence South 00°32'40" West 214.78 feet; thence South 89°27'20" East 323.68 feet to the West right of way line of Fort Lane; thence along said right of way North 00°47'13" East 214.78 feet to the South right of way line of Gentile Street; thence along said right of way North 89°27'20" West 324.59 feet to the point of beginning.

PARCEL 2:

The nonexclusive easement for vehicular and pedestrian traffic access, ingress and egress, appurtenant to Parcel 1 described herein, contained in Cross Access Easement Agreement dated February 4, 2010 and recorded February 12, 2010 as Entry No. 2511470 in Book 4961 at Page 1054, official records, as amended by First Amendment to Cross Access Easement Agreement dated July 27, 2016 and recorded August 30, 2016 as Entry No. 2962370 in Book 6590 at Page 222, official records.

PARCEL 3:

The nonexclusive easement, appurtenant to Parcel 1 described herein, contained in Storm Drain and Sanitary Sewer Easement Agreement dated December 15, 2009 and recorded February 12, 2010 as Entry No. 2511471 in Book 4961 at Page 1066, official records.

PARCEL 4:

The non-exclusive easement for pedestrian and vehicular ingress and egress, appurtenant to Parcel 1 described herein, contained in Easement Agreement dated November, 2010 and recorded November 19, 2010 as Entry No.

2568127 in Book 5155 at Page 956, official records.

PARCEL 5:

The non-exclusive easements, appurtenant to Parcel 1 described herein, contained in Amended and Restated Declaration of Easements and Conditions dated August 30, 2016 and recorded August 30, 2016 as Entry No. 2962369 in Book 6590 at Page 166, official records, as amended by First Amendment to Amended and Restated Declaration of Easements and Conditions dated April 13, 2017 and recorded July 12, 2017 as Entry No. 3032092 in Book 6805 at Page 384, official records.

PARCEL 6:

The non-exclusive easement for the passage of vehicles and pedestrians, appurtenant to Parcel 1 described herein, contained in Cross-Access Easement, Temporary Construction Easement and Restriction Agreement dated August 30, 2016 and recorded August 30, 2016 as Entry No. 2962367 in Book 6590 at Page 146, official records.

PARCEL 7:

The non-exclusive easement for pedestrian and vehicular ingress and egress, appurtenant to Parcel 1 described herein, contained in Access Easement and Maintenance Agreement dated February 7, 2017 and recorded February 8, 2017 as Entry No. 3001147 in Book 6699 at Page 86, official records.