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RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
FIRST AMERICAN NCS  
BY: eCASH, DEPUTY - EF 14 P.

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

BLAND, NAVARRO & WEBER LLP  
444 South Flower Street, Suite 2160  
Los Angeles, CA 90071

Attention: Ralph C. Navarro, Esq.

(Space Above This Line For Recorder's Use)

**ASSIGNMENT AND ASSUMPTION AGREEMENT  
AND AMENDMENT OF DEED OF TRUST**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT AND AMENDMENT OF DEED OF TRUST ("Agreement"), dated as of August 17, 2020, is entered into by and between 2741 MIDDLEFIELD PARTNERS, LLC, a California limited liability company, and KJ-CAMDEN, LLC, a California limited liability company (collectively, the "Assignors"); RIVERPARK SUGARHOUSE, LLC, a Utah limited liability company ("Assignee"); and SUN LIFE ASSURANCE COMPANY OF CANADA, a Canadian corporation ("Lender").

RECITALS

A. Lender made a loan to Assignors evidenced by that certain Promissory Note ("Note") dated August 5, 2016, payable to Lender in the original principal sum of Twenty-One Million and No/100 Dollars (\$21,000,000.00) with interest and principal payable as therein provided.

B. The Note is secured by that certain Deed of Trust and Security Agreement ("Deed of Trust") dated August 5, 2016, recorded August 10, 2016, as Entry No. 12339589 of Official Records of Salt Lake County, Utah ("Official Records"); that certain Assignment of Leases and Rents ("Assignment") dated August 5, 2016, recorded August 10, 2016, as Entry No. 12339590 of Official Records; and certain other documents executed by the Assignors or other parties in connection with or securing or evidencing the loan evidenced by the Note (all such documents shall be collectively known as "Loan Documents").

C. The Deed of Trust encumbers that certain real property (the "Property") more particularly described in Exhibit A thereto.

D. Assignors have or will convey their interests in the Property to Assignee, and for valuable consideration, Assignee desires to assume all of the obligations of Assignor under the Loan Documents.

E. Lender has been requested to consent to the conveyance of Assignors' interest in the Property from Assignors to Assignee.

F. Lender is willing to so consent upon the assumption by Assignee of all obligations of Assignors under the Loan Documents, and the compliance by Assignee of the terms and conditions of this Agreement.

Sun Life 276 Middlefield-Camden Assignment Assignment final

SL#717100

FIRST AMERICAN TITLE  
# NCS-1010865

NOW THEREFORE, for and in consideration of the mutual covenants contained herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The principal balance of the Note as of August 1, 2020, was \$18,051,307.83 after the payment of the monthly installment due August 1, 2020.

2. The next to last unnumbered paragraph in Section 4.4 of the Deed of Trust is deleted in its entirety and amended and replaced with the following, and all references to the Deed of Trust in this Agreement shall be deemed to be to the Deed of Trust, as so amended:

"Notwithstanding the foregoing, so long as an Event of Default does not exist, no transfer or other fee shall be payable, and consent from Lender shall not be required, for any transfer of direct or indirect interests in Borrower so long as after giving effect to such transfer, Borrower continues to be controlled by one or more of the following: David S. Layton; Jeffrey C. Flamm; or William H. Child. As used herein, "control" shall mean direct or indirect voting control (but not necessarily the legal or beneficial ownership interests in Borrower) over the management of Borrower equal to or greater than fifty percent (50%).

However, Lender's prior written consent shall be required for any transfer of direct or indirect interests in the Borrower that results in any person not currently a holder of a direct or indirect interest in Borrower holding a 25% or greater legal or beneficial ownership interest in Borrower. Borrower will provide Lender with a prior written request indicating a planned transfer of ownership, together with supporting identity and other documentation satisfactory to Lender showing that such transfer is permitted by this section, prior to any transfer of legal or beneficial ownership interests of 25% or more of the direct or indirect interests in Borrower."

3. Assignors hereby assign, sell, transfer, set over and deliver unto Assignee, without warranty or recourse, all of Assignors' right, title and interest in and to the Loan Documents. Assignors shall indemnify, defend and hold harmless Assignee from and against all claims, liabilities, losses, damages, costs and expenses (including, without limitation, attorneys' fees) caused by the failure of Assignors to pay or perform in a timely manner any obligation required to be paid or performed by Assignors under the Loan Documents prior to the date of this Agreement.

4. Assignee hereby assumes and agrees to keep and perform all of the promises, covenants and obligations of Assignors under the Note, Deed of Trust, Assignment and any of the other Loan Documents, and specifically assumes and promises to pay according to the terms of the Note all principal and interest now remaining unpaid thereon. Assignee shall indemnify, defend and hold harmless Assignors from and against all claims, liabilities, losses, damages, costs and expenses (including, without limitation, attorneys' fees) caused by the failure of Assignee to pay or perform in a timely manner any obligation required to be paid or performed by Assignee under the Loan Documents on and after the date of this Agreement.

5. Assignee acknowledges that:

(a) Assignee has read and understands all of the terms of the Loan Documents;

(b) The Loan Documents were duly and validly executed by Assignors and are in full force and effect as of the date hereof;

(c) The Property shall remain subject to the Deed of Trust; and

(d) Nothing in this Agreement shall affect the priority of the lien of the Deed of Trust over other liens and encumbrances against the Property.

6. Assignors hereby covenant that Assignors will at any time and from time to time, upon written request therefor, execute and deliver to Lender any new or confirmatory instruments which Lender or Assignee may reasonably request in order to fully assign and transfer to and vest in Assignee all of Assignors' right, title and interest in and to the Loan Documents and to evidence Assignee's full assumption thereof. Assignee hereby covenants that Assignee will at any time and from time to time, upon written request therefor, execute and deliver to Lender any new or confirmatory instruments which Lender or Assignors may reasonably request in order to fully assign and transfer to and vest in Assignee all of Assignors' right, title and interest in and to the Loan Documents and to evidence Assignee's full assumption thereof.

7. Lender hereby consents to (i) the transfer of Assignors' interest in the Property to Assignee, (ii) the assignment of the Loan by Assignors, and (iii) the assumption of the Loan by Assignee. Lender hereby releases Assignors and Kenneth S. Fong on a limited basis from obligations and/or liabilities under the Loan Documents to the extent that such obligations and/or liabilities first arise on or after the transfer of legal title to the Property to the Assignee. Notwithstanding the foregoing, Assignors and Kenneth Fong shall not be released from any obligations and/or liabilities that first occurred prior to the transfer of legal title to the Property to the Assignee, regardless of when such obligations and/or liabilities shall be discovered and whether known or unknown as of the date that legal title to the Property is transferred to the Assignee

8. The consent provided for herein shall not be deemed a consent or an agreement by the Lender to any future sale, transfer, conveyance, encumbrance or mortgage, or a waiver of any of the rights of the Lender under the Note and Loan Documents, including, but not limited to, those rights to declare any future sale, transfer, conveyance, encumbrance or mortgage an event of default under the Loan Documents and to enforce the remedies provided by the Deed of Trust.

9. This Agreement will become effective only upon satisfaction of each and all of the following:

(a) Issuance to Lender of date down and CLTA 111.4 endorsements to its ALTA Lenders' Policy, each in form satisfactory to Lender, insuring the transfer of Assignors' interest in the subject property to Assignee, and showing no new exceptions to title from those shown in Lender's existing title policy, except as specifically approved by Lender;

(b) Execution and delivery by Assignee and David S. Layton, Jeffrey C. Flamm and William H. Child (the "Guarantors") to Lender of a Environmental Indemnity Agreement (the "New Indemnity") in form and substance acceptable to Lender;

(c) Execution and delivery by Guarantors to Lender of a Guaranty of Non-Recourse Carve-outs (the "New Guaranty") in form and substance acceptable to Lender;

(d) Issuance to Lender of a legal opinion, in form and substance acceptable to Lender, regarding Assignee's execution and delivery of this Agreement and New Indemnity, Guarantors' execution and delivery of the New Indemnity and New Guaranty, and the enforceability of this Agreement and the Loan Documents against Assignee and Guarantors, as applicable;

(e) Payment by Assignors and Assignee (one-half by Assignors and one-half by Assignee) to Lender of an assumption fee in the amount of \$180,513.08 (1% of the outstanding principal balance of the Note);

(f) A UCC-1 Financing Statement reflecting the Assignee as debtor; and

(g) Payment by Assignee of all title company charges in connection with the issuance of the aforesaid endorsements, including recording charges, plus fees and expenses of Lender's attorneys.

10. Nothing in this Agreement shall affect or be construed to affect in any way the validity or priority of the lien or charge of the Deed of Trust or affect or be construed to affect the validity or priority of any other security held by Lender for the Loan.

11. (a) Assignors hereby represent and warrant that this Agreement has been duly authorized and executed by Assignors and that it is valid and enforceable against Assignors in accordance with its terms. Assignee represents and warrants to, and agrees with the Lender, that this Agreement has been duly authorized by all necessary action on the part of Assignee, has been duly executed by Assignee and constitutes the valid and binding obligation of Assignee, enforceable against Assignee in accordance with the terms hereof. Lender represents and warrants to, and agrees with Assignors and Assignee, that this Agreement has been duly authorized by all necessary action on the part of Lender, has been duly executed by Lender and constitutes the valid and binding obligation of Lender, enforceable against Lender in accordance with the terms hereof.

(b) Assignee hereby certifies that (i) to Assignee's current, actual knowledge, the representations and warranties contained in the Loan Documents continue to be true and correct in all material respects, and, to Assignee's current, actual knowledge, no default thereunder has occurred, nor, to Assignee's current, actual knowledge, has any event occurred that with notice, lapse of time, or both would become such a default; and (ii) the financial statements supplied to Lender truly and completely disclose Assignee's financial condition in all material respects as of the date of the statement, and there has been no material adverse change in Assignee's financial condition since the date of the statements.

(c) Assignors hereby certify that to Assignors' current, actual knowledge, (i) the representations and warranties contained in the Loan Documents continue to be true and correct in all material respects, and (ii) no default thereunder has occurred, nor has any event occurred that with notice, lapse of time, or both would become such a default.

(d) Lender hereby certifies that, without inquiry, the representations and warranties contained in the Loan Documents continue to be true and correct in all material respects. Lender hereby certifies to Lender's current, actual knowledge, no default in the payment of the Loan, payment of real property taxes, or payment of insurance premiums thereunder has occurred nor has any event occurred that with notice, lapse of time, or both would become such a default.

12. Assignee ratifies, reaffirms and confirms that all of the terms and provisions of the Loan Documents are and shall continue to be in full force and effect and valid and enforceable in accordance with their terms, including without limitation all personal obligations under non-recourse carve-outs and environmental indemnifications contained in the Loan Documents.

13. ASSIGNORS AND ASSIGNEE ACKNOWLEDGE THAT, AS OF THE DATE HEREOF, THEY DO NOT HAVE ANY DEFENSES, CLAIMS, COUNTERCLAIMS OR RIGHTS OF SET-OFF, LEGAL OR EQUITABLE, ARISING OUT OF OR IN CONNECTION WITH THE LOAN, THE LOAN DOCUMENTS OR THIS AGREEMENT. ASSIGNORS AND ASSIGNEE WAIVE AND RELEASE, ACQUIT, SATISFY AND FOREVER DISCHARGE LENDER AND ITS AFFILIATES, AGENTS AND ASSIGNS FROM ANY AND ALL CLAIMS, COUNTERCLAIMS, DEFENSES, ACTIONS, CAUSES (LEGAL OR EQUITABLE), PROMISES AND DEMANDS WHATSOEVER IN LAW OR IN EQUITY WHICH ASSIGNORS OR ASSIGNEE EVER HAD, NOW HAS OR WHICH ANY SUCCESSOR OR ASSIGN THEREOF HEREAFTER CAN, SHALL OR MAY HAVE AGAINST LENDER OR ITS AFFILIATES OR AGENTS, FOR, UPON OR BY REASON OF ANY MANNER, OR CAUSE OR THING WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH THE LOAN, THE LOAN DOCUMENTS OR THIS AGREEMENT THROUGH THE DATE HEREOF.

14. In any action between the parties hereto seeking the enforcement of any of the terms and provisions of this Agreement, the prevailing party in such action shall be awarded, in addition to damages, injunctive or other relief, its reasonable costs and expenses, and reasonable attorneys fees.

15. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective assigns, heirs, successors and personal representatives.

16. This Agreement shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of Utah.

17. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one counterpart.

18. The execution and delivery of this Agreement shall not constitute a novation or modification of the lien, encumbrance or security of the Deed of Trust, which Deed of Trust shall retain its priority as originally filed for record. The execution and delivery hereof shall not constitute a novation of the Note or any other Loan Documents in any way.

19. The execution of this Agreement by Lender does not constitute a waiver of any rights or remedies available to Lender pursuant to the terms, covenants and conditions of any of the Loan Documents.

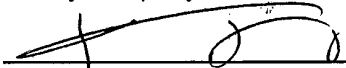
20. This Agreement shall be effective as of the date of recordation in the Official Records.

[Signatures on next page]


IN WITNESS WHEREOF, this Agreement is executed effective as of the date set forth above.

ASSIGNORS:

2741 MIDDLEFIELD PARTNERS, LLC, a California limited liability company

By:   
Kenneth S. Fong, Manager

KJ-CAMDEN, LLC, a California limited liability company

By:   
Kenneth S. Fong, Manager

By: \_\_\_\_\_  
John C. Fong, Manager

IN WITNESS WHEREOF, this Agreement is executed effective as of the date set forth above.

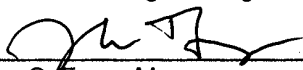
ASSIGNORS:

2741 MIDDLEFIELD PARTNERS, LLC, a California limited liability company

By: \_\_\_\_\_  
Kenneth S. Fong, Manager

KJ-CAMDEN, LLC, a California limited liability company

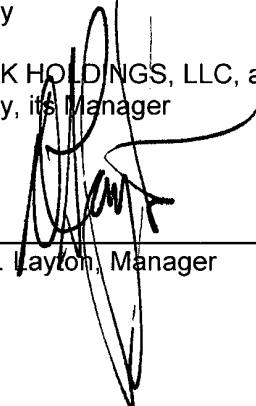
By: \_\_\_\_\_  
Kenneth S. Fong, Manager

By:  \_\_\_\_\_  
John C. Fong, Manager

ASSIGNEE:

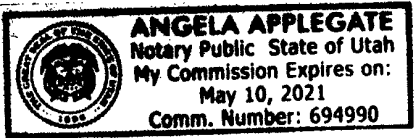
RIVERPARK SUGARHOUSE LLC, a Utah limited liability company

By: RIVERPARK HOLDINGS, LLC, a Utah limited liability company, its Manager

By:   
\_\_\_\_\_  
David S. Layton, Manager

State of Utah                    )  
  ) ss.  
County of Salt Lake            )

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of August, 2020, by David S. Layton, the Manager of RiverPark Holdings, LLC, the Manager of RiverPark Sugarhouse, LLC.



  
\_\_\_\_\_  
Notary Public


My Commission Expires: May 10, 2021

Residing at: Salt Lake County



LENDER:

SUN LIFE ASSURANCE COMPANY OF CANADA,  
a Canadian corporation

By: 

Name: SHANNON PRICE

Title: Senior Director  
Canadian Asset Management

By: 

Name: KARIN BENEDETTI

Title: Associate Director  
Canadian Asset Management

I/We have the authority to bind the Corporation.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF California )  
COUNTY OF Santa Clara )

On 8-18-2020, before me, HSIAOTIEN CHU, a Notary Public, personally appeared Kenneth S. Fong, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Handwritten Signature]



\_\_\_\_\_  
Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF California  
COUNTY OF Nevada

On August 19th 2020, before me, Esteban Salcido, a Notary Public, personally appeared John Calvin Fang, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument, and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

  
\_\_\_\_\_  
Notary Public

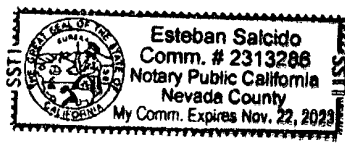




EXHIBIT A

Property Description

Parcel 1:

Lot 6, HOMESTEAD VILLAGE LOT 3 AMENDED and also amending Lots 1 through 4 Blk. 1 View City Subdivision, Recorded April 7, 2011, as Entry No. 11163174, in Book 2011P, of Plats at Page 40.

Parcel 1A:

Rights of Access to the Parking Parcel as defined and described in said Reciprocal Easement and Operating Agreement as set forth in that certain Amended and Restated Reciprocal Easement and Operation Agreement between Woodmen Properties, L.L.C., ESA P. Portfolio, LLC d/b/a Homestead Studio Suites and Chick-fil-A, Inc., Recorded April 11, 2011, as Entry No. 11164534, in Book 9917, at Page 3525 of the Official Records.

Parcel 1B:

Easements for Air Rights; Building Footing Encroachment; Storm Water Drainage; Maintenance; Permanent Improvement Encroachment; and Access which benefits the subject property as reserved in that certain Special Warranty Deed with Reservation and Grant of Easements dated April 11, 2011 as Entry No. 11164672 in Book 9917 at Page 4011.

Parcel 2:

Amended Lot 3, HOMESTEAD VILLAGE LOT 3 AMENDED and also amending Lots 1 through 4 Blk. 1 View City Subdivision, according to the official plat thereof, filed in Book 2011P of Plats, at Page 40 of the official records of Salt Lake County Recorder.

Parcel 2A:

The Non-Exclusive Easement, appurtenant to Parcel 2 described herein, for ingress and egress by vehicular and pedestrian traffic as created by and provided for in that certain Amended and Restated Reciprocal Easement and Operating Agreement recorded April 11, 2011 as Entry No. 11164534, in Book 9917, at Page 3525.

Parcel 3:

Lots 5, 6, 7 and 8, and the East 20 feet of Lot 9, Block 1, View City, a subdivision of part of Lot 10, Block 46, Ten Acre Plat "A", Big Field Survey, excepting the North 12 feet thereof conveyed to the State Road Commission of Utah.

ALSO, commencing at the Southeast corner of Lot 5, Block 1, View City, and running thence West 120 feet; thence South 20 feet; thence East 120 feet; thence North 20 feet to the point of beginning, also known as the East 120 feet of a vacated alley to the South.

THE FOREGOING TWO PARCELS are more particularly described as follows:

Beginning at a point that is 39.12 feet North 89°58'50" West and 46.36 feet South 00°13'15" West from the City Monument at 1240 East (Douglas Street) and 2100 South Street, and running thence South 00°01'00" East 153.00 feet; thence North 89°50'52" East 120.12 feet (record 120.00 feet); thence North 00°01'00" West 153.00 feet; thence South 89°50'52" West 120.12 feet (record 120.00 feet) to the point of beginning.

*Tax Parcels*

*16-20-229-074-0000*  
*16-20-229-070-0000*  
*16-20-229-071-0000*