

20211123000563310
11/23/2021 12:27:22 PM
MORT 1/19

435

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

**PIN: 25 6 13 0 000 001.000
MORTGAGE AMOUNT OF \$363,755.00.**

STATE OF: ALABAMA

COUNTY OF: SHELBY

Document Date: November 22, 2021

GRANTOR: Diamond Towers IV LLC
Address: c/o Diamond Communications LLC
120 Mountain Avenue
Springfield, New Jersey 07081

GRANTEE: Wilmington Trust, National Association, as Indenture Trustee
Address: 1100 North Market Street, Rodney Square North
Wilmington, Delaware 19890-1605
Attention: Workflow Management - Diamond Issuer LLC

Legal Description: Attached as Exhibit A.

Return after recording to:

Old Republic Title Insurance Company
530 South Main Street, Suite 1061
Akron, Ohio 44311

Prepared by:

King & Spalding LLP
300 S. Tryon Street, Suite 1700
Charlotte, North Carolina 28202

THIS MORTGAGE, FIXTURE FILING, SECURITY AGREEMENT,
ASSIGNMENT OF RENTS AND LEASES, SERVES AS A
FINANCING STATEMENT FILED AS A FIXTURE FILING PURSUANT TO
SECTION 7-9A-502, CODE OF ALABAMA, 1975, AS AMENDED.
THIS MORTGAGE SECURES A PORTION OF THE INDEBTEDNESS
IN THE AMOUNT OF \$363,755.00.

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

This Mortgage, Fixture Filing, Security Agreement and Assignment of Leases and Rents (this “Security Instrument”) is executed effective as of November 22, 2021 (the “Effective Date”), by **DIAMOND TOWERS IV LLC**, a Delaware limited liability company (“Grantor”), whose mailing address is c/o Diamond Communications LLC, 120 Mountain Avenue, Springfield, New Jersey 07081, and whose organizational number is 36-4751274, in favor of **WILMINGTON TRUST, NATIONAL ASSOCIATION**, as Indenture Trustee (the “Indenture Trustee”) on behalf of and for the benefit of the Noteholders and any other secured party specified in the Indenture (as defined below) (each, a “Secured Party” and, collectively, the “Secured Parties”), whose address is 1100 North Market Street, Rodney Square North, Wilmington, Delaware 19890-1605, Attention: Workflow Management - Diamond Issuer LLC. References to this “Security Instrument” shall mean this instrument and any and all renewals, modifications, amendments, supplements, restatements, extensions, consolidations, substitutions, spreaders and replacements of this instrument.

FOR GOOD AND VALUABLE CONSIDERATION, including the Indebtedness and the trust herein created, the receipt of which is hereby acknowledged, and in order to secure the payment of the Indebtedness and the performance of the obligations, covenants, agreements and undertakings hereinafter described, Grantor does hereby GRANT, BARGAIN, SELL, WARRANT, CONVEY, TRANSFER, ASSIGN and SET OVER to Indenture Trustee, on behalf of and for the benefit of the Secured Parties, (i) all of its right, title and interest in and to the real property described on **Exhibit A** attached hereto (the “Land”), as such rights, title and interests are set forth in the document(s) listed on **Exhibit B** attached hereto (the “Contract”), and as such document(s) may be amended, amended and restated, supplemented or otherwise modified from time to time; (ii) all of its right, title and interest to all buildings, structures and

other improvements of every kind and description now or at any time situated, placed or constructed upon the Land; (iii) all interests of Grantor in and to any streets, ways, alleys and/or strips of land adjoining said land or any part thereof; and (iv) all of Grantor's rights, estates, powers and privileges appurtenant or incident to the foregoing (the foregoing are collectively referred to herein as the "Collateral").

TO HAVE AND TO HOLD the Collateral unto Indenture Trustee, on behalf of and for the benefit of the Secured Parties, and its and their successors and assigns, upon the terms, provisions and conditions herein set forth.

In order to secure the payment of the Indebtedness and the performance of the obligations, covenants, agreements and undertakings hereinafter described, Grantor hereby grants to Indenture Trustee, on behalf of and for the benefit of the Secured Parties, a security interest in all of Grantor's right, title and interest, now held or hereafter obtained, in goods, equipment, furnishings, fixtures, furniture, chattels and personal property of whatever nature located on or used in connection with the Collateral, and all fixtures, accessions and appurtenances thereto, and all renewals or replacements of or substitutions for any of the foregoing, all building materials and equipment now or hereafter delivered to said premises and intended to be installed therein, profits and proceeds from all or any part of the Collateral, all proceeds (including premium refunds) of each policy of insurance relating to the Collateral, all proceeds from the taking of the Collateral or any part thereof or any interest therein or right or estate appurtenant thereto by eminent domain or by purchase in lieu thereof, all amounts deposited in Grantor's operating accounts, all contracts related to the Collateral (including leases and license agreements), all money, rents, revenues, income, proceeds, profits, security and other types of deposits, funds, accounts, instruments, documents, general intangibles (including trademarks, trade names and symbols owned by Grantor and used in connection therewith), all notes or chattel paper arising from or related to the Collateral, all permits, licenses, franchises, certificates, entitlements and all other rights and privileges obtained by Grantor in connection with the Collateral, all plans, specifications, maps, surveys, reports, architectural, engineering and construction contracts, books of account, insurance policies, guaranties, warranties and other documents, of whatever kind or character, relating to the use, construction upon, occupancy, leasing, sale or operation of the Collateral, all proceeds and other amounts paid or owing to Grantor under or pursuant to any and all contracts and bonds relating to the construction, erection or renovation of the Collateral (collectively, the "Additional Collateral") and all proceeds (both cash and noncash) of the Collateral and Additional Collateral. The Collateral, Additional Collateral and such proceeds are collectively called the "Property".

Grantor will warrant and forever defend the title to the Property against the claims of all persons whomsoever lawfully claiming or to claim the same or any part thereof, subject to Permitted Encumbrances.

Article I Indebtedness

1.1 Indebtedness. This Security Instrument is made to secure and enforce the payment and performance of the following notes, obligations, indebtedness and liabilities: (a) the Notes issued under the Indenture from time to time, the aggregate principal amount of which on the date hereof is Four Hundred Thirty-Five Million Dollars (\$435,000,000.00), both principal and interest being payable as therein provided, together with all amendments, modifications and extensions of the Notes and all other notes given in substitution of the Notes or in modification, increase renewal, extension or consolidation of the

Notes, in whole or in part; (b) all loans and future advances made by any Secured Party under the Indenture and all other debts, obligations and liabilities of every kind and character of Obligors (as defined in the Indenture) now or hereafter existing in favor of any Secured Party under the Indenture (including all indebtedness incurred or arising pursuant to the provisions of this Security Instrument or any agreement entered into by an Obligor relating to the above described indebtedness or any other instrument now or hereafter evidencing, governing or securing the above described indebtedness or any part thereof) whether such debts, obligations or liabilities be direct or indirect, primary or secondary, joint or several, fixed or contingent and (c) all other Obligations (as defined in the Indenture). The indebtedness referred to in this Section is herein called the “Indebtedness”.

The Indebtedness is due and payable on or before (i) November 20, 2051, or (ii) such earlier date as the Notes become due and payable pursuant to the Indenture (whether by acceleration, prepayment in full, scheduled reduction or otherwise).

1.2 Indenture. The Notes, this Security Instrument and certain other documents were executed and delivered pursuant to that certain Amended and Restated Base Indenture, dated as of November 22, 2021, (as amended, restated, amended and restated, supplemented or otherwise modified, the “Indenture”) among Diamond Issuer LLC, as Issuer (the “Issuer”), each direct and indirect subsidiary of the Issuer party thereto and listed therein, and Wilmington Trust, National Association, a national banking association, as Indenture Trustee. Terms used, but not defined, herein are defined in the Indenture and shall have the meaning given such terms in the Indenture. The representations, covenants, indemnities and terms and provisions of the Indenture are incorporated herein by reference as though fully set forth herein. All of the covenants in the Indenture, together with any covenants set forth in this Security Instrument, shall constitute covenants running with Grantor’s interest in the Property.

Article II Assignment of Leases and Rents

2.1 Assignment. In order to secure payment of the Indebtedness, Grantor does hereby grant a security interest in and absolutely and unconditionally assign, transfer and set over to Indenture Trustee as collateral, on behalf of and for the benefit of the Secured Parties, the following:

- (a) all rights, title, interests, estates, powers, privileges, options and other benefits of Grantor in or to any lease agreement which now or hereafter covers or affects all or any portion of the Property, together with all renewals, extensions, modifications, amendments, subleases and assignments of such lease agreements (the “Lease” or “Leases”);
- (b) all of the rents, income, receipts, revenues, issues, profits and other sums of money that are now and/or at any time hereafter become due and payable to Grantor under the terms of the Leases or arising or issuing from or out of the Leases or from or out of the Property or any part thereof, including but not limited to minimum rents, additional rents, percentage rents, deficiency rents and liquidated damages following default, payments in consideration for cancellation of a Lease, security deposits (whether cash, one or more letters of credit, bonds or other form of security), advance rents, all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Property and all of Grantor’s

rights to recover monetary amounts from any lessee in bankruptcy including, without limitation, rights of recovery for use and occupancy and damage claims arising out of lease defaults, including rejections, disaffirmances, repudiations, and similar actions, under the Federal Bankruptcy Code and other statutes governing the rights of creditors, including specifically the immediate and continuing right to collect and receive each and all of the foregoing excluding Shared Rent (as defined in the Indenture) (the “Rent” or “Rents”); and

(c) any and all guaranties of payment of the Rent.

2.2 No Merger of Estates. Notwithstanding (a) the fact that any Lease or the leasehold estate created thereby may be held, directly or indirectly, by or for the account of any person or entity which shall have an interest in the fee estate of the Property, (b) the operation of law or (c) any other event, lessee’s leasehold estate under such Lease shall not merge into the fee estate and the lessee shall remain obligated under such lease as assigned by this Security Instrument.

2.3 No Third Party Beneficiary. It is expressly agreed by the parties hereto that the assignment under this Article II shall not be construed or deemed made for the benefit of any third party or parties.

2.4 Release and Termination. The assignment contained in this Article II shall terminate upon the release of this Security Instrument but no lessee under the Leases shall be required to take notice of such termination until a copy of a release of this Security Instrument shall have been delivered to such lessee.

2.5 Perfection Upon Recordation. Grantor acknowledges and agrees that, to the extent permitted under applicable law, upon recordation of this Security Instrument, Indenture Trustee’s interest in the Rents shall be deemed to be fully perfected, “choate” and enforceable as to Grantor and to the extent permitted under applicable law, all third parties, including, without limitation, any subsequently appointed trustee in any case under Title 11 of the United States Code (the “Bankruptcy Code”), without the necessity of commencing a foreclosure action with respect to this Security Instrument, making formal demand for the Rents, obtaining the appointment of a receiver or taking any other affirmative action.

2.6 Bankruptcy Provisions. Grantor and Indenture Trustee agree that (a) this Security Instrument shall constitute a “security agreement” for purposes of Section 552(b) of the Bankruptcy Code, (b) the security interest created by this Security Instrument extends to property of Grantor acquired before the commencement of a case in bankruptcy and to all amounts paid as Rents and (c) such security interest shall extend to all Rents acquired by the estate after the commencement of any case in bankruptcy.

Article III Event of Default

3.1 Defaults. The term “Event of Default” as used in this Security Instrument shall have the meaning assigned to such term in the Indenture.

Article IV
Remedies Upon Event of Default

4.1 Acceleration. During the continuance of an Event of Default, the Indenture Trustee shall have the option, without obligation, of declaring all Indebtedness in its entirety to be immediately due and payable as provided for in the Indenture by written notice to the Issuer, and the Indenture Trustee may foreclose on the liens and security interests evidenced hereby in any manner provided for herein; provided that such acceleration may be rescinded and annulled pursuant to the terms set forth in the Indenture.

4.2 Possession. During the continuance of an Event of Default, Indenture Trustee is authorized prior or subsequent to the institution of any foreclosure proceedings, but subject to the rights of all other Persons with interests in the Land, to enter upon the Property, or any part thereof, and to take possession of the Property and of all books, records and accounts relating thereto and to exercise without interference from Grantor any and all rights which Grantor has with respect to the management, possession, operation, protection or preservation of the Property, including the right to rent the same for the account of Grantor and to deduct from such Rents all reasonable costs, expenses and liabilities of every character incurred by Indenture Trustee in collecting such Rents and in managing, operating, maintaining, protecting or preserving the Property and to apply the remainder of such Rents on the Indebtedness, in each case, in accordance with Section 5.01 of the Indenture. If necessary to obtain the possession provided for above, Indenture Trustee may invoke any and all legal remedies to dispossess Grantor, including specifically one or more actions for forcible entry and detainer, trespass to try title and restitution.

4.3 Intentionally Omitted.

4.4 Foreclosure. Indenture Trustee may institute any one or more actions of mortgage foreclosure against all or any part of the Property, or take such other action at law, equity or by contract for the enforcement of this Security Instrument and realization on the security herein or elsewhere provided for, as the law may allow, and may proceed therein to final judgment and execution for the entire unpaid balance of the Indebtedness. The unpaid balance of any judgment shall bear interest at the greater of (a) the statutory rate provided for judgments, or (b) the interest rate payable upon overdue principal as set forth in the relevant Notes. Without limiting the foregoing, Indenture Trustee may foreclose this Security Instrument and exercise its rights as a secured party for all or any portion of the Indebtedness which are then due and payable, subject to the continuing lien of this Security Instrument for the balance not then due and payable. In case of any sale of the Property by judicial proceedings, the Property may be sold in one parcel or in such parcels, manner or order as Indenture Trustee in its sole discretion may elect. Grantor, for itself and anyone claiming by, through or under it, hereby agrees that Indenture Trustee shall in no manner, in law or in equity, be limited, except as herein provided, in the exercise of its rights in the Property or in any other security hereunder or otherwise appertaining to the Indebtedness or any other obligation secured by this Security Instrument, whether by any statute, rule or precedent which may otherwise require said security to be marshalled in any manner and Grantor, for itself and others as aforesaid, hereby expressly waives and releases any right to or benefit thereof. The failure to make any tenant a defendant to a foreclosure proceeding shall not be asserted by Grantor as a defense in any proceeding instituted by Indenture Trustee to collect the Indebtedness or any deficiency remaining unpaid after the foreclosure sale of the Property. Upon any foreclosure sale, whether by virtue of judicial proceeding or otherwise, Indenture Trustee may bid upon and purchase the Property or any part thereof or interest therein, and upon compliance

with the terms of the sale, may hold, retain, possess and dispose of the same in its own absolute right, without further accountability.

4.5 Receiver. In addition to all other remedies herein provided for, Grantor agrees that during the continuance of an Event of Default, Indenture Trustee as a matter of right and without (a) notice to Grantor or any other party, (b) a showing of insolvency of Grantor, (c) a showing of fraud or mismanagement with respect to the Property, (d) regard to the sufficiency of the security for the repayment of the Indebtedness, or (e) the necessity of filing any proceeding other than a proceeding for appointment of a receiver, shall be entitled to the appointment of a receiver or receivers for the Property or any part thereof (including without limitation the Rents of the Property). Grantor irrevocably consents to such appointment and waives any and all defenses to such application for a receiver. This Section will not deprive Indenture Trustee of any other right, remedy or privilege it may have under applicable law to have a receiver appointed for the Property. Additionally, during the pendency of a receivership for all or a portion of the Property, Grantor consents to any proceeding commenced by Indenture Trustee which seeks to enforce another right or remedy of Indenture Trustee under the Transaction Documents or applicable law, including without limitation, the commencement of a foreclosure of the Property. This Section is made an express condition upon which the Notes are being issued and the proceeds thereof are being advanced.

4.6 Proceeds of Sale. The proceeds of any sale held by Indenture Trustee or any receiver or public officer in foreclosure of the liens evidenced hereby shall be applied in accordance with Section 5.01 of the Indenture.

4.7 Indenture Trustee as Purchaser. Indenture Trustee, on behalf of the Secured Parties, shall have the right to become the purchaser at any foreclosure sale, and to credit upon the amount of the bid made therefor, to the extent necessary to satisfy such bid, the pro rata part of the Indebtedness, accounting to any Secured Parties not joining in such bid in cash for the portion of such bid or bids apportionable to such nonbidding Secured Parties.

4.8 Uniform Commercial Code. It is the intention of the parties hereto that this Security Instrument shall constitute a "security agreement" within the meaning of the Uniform Commercial Code of the State in which the Land is located, as the same may be amended from time to time (the "Code"). During the continuance of an Event of Default, Indenture Trustee may exercise its rights of enforcement with respect to the Additional Collateral under the Code, and in conjunction with, in addition to or in substitution for those rights and remedies:

(a) Subject to the rights of all other Persons with interests in the Land, Indenture Trustee may enter upon the Property to take possession of, assemble and collect the Additional Collateral or to render it unusable;

(b) Indenture Trustee may require Grantor to assemble the Additional Collateral and make it available at a place Indenture Trustee designates which is mutually convenient to allow Indenture Trustee to take possession or dispose of the Additional Collateral;

(c) written notice mailed to the Issuer as provided herein ten (10) days prior to the date of public sale of the Additional Collateral or prior to the date after which private sale of the Additional Collateral will be made shall constitute reasonable notice;

(d) any sale of any Additional Collateral made pursuant to the provisions of this Section shall be deemed to have been conducted in a commercially reasonable manner, whether private or public, if held contemporaneously with the sale of all or any portion of the Collateral under power of sale as provided herein and in accordance with applicable law upon giving the same notice and under the same procedures as otherwise specified herein or otherwise required under applicable law for such sale of all or any portion of the Collateral under power of sale hereunder or under applicable law;

(e) in the event of a foreclosure sale, the Additional Collateral and the other Collateral may, at the option of Indenture Trustee, be sold as a whole;

(f) it shall not be necessary for Indenture Trustee to take possession of the Additional Collateral or any part thereof prior to the time that any sale pursuant to the provisions of this Section is conducted and it shall not be necessary that the Additional Collateral or any part thereof be present at the location of such sale;

(g) prior to application of proceeds of disposition of the Additional Collateral to the Indebtedness, such proceeds shall be applied to the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and the reasonable attorneys' fees and legal expenses incurred by Indenture Trustee;

(h) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the Obligations or as to the occurrence of any default, or as to Indenture Trustee having declared all of the Indebtedness to be due and payable, or as to notice of time, place and terms of sale and of the properties to be sold having been duly given, or as to any other act or thing having been duly done by Indenture Trustee, shall be taken as prima facie evidence of the truth of the facts so stated and recited; and

(i) Indenture Trustee may appoint or delegate any one or more Persons as agent to perform any act or acts necessary or incident to any sale held by Indenture Trustee, including the sending of notices and the conduct of the sale, but in the name and on behalf of Indenture Trustee.

4.9 Partial Foreclosure. Following and during the continuance of an Event of Default, Indenture Trustee shall have the right to proceed with foreclosure of the liens and security interests evidenced hereby without declaring the entire Indebtedness due, and in such event any such foreclosure sale may be made subject to the unmatured part of the Indebtedness; and any such sale shall not in any manner affect the unmatured part of the Indebtedness, but as to such unmatured part this Security Instrument shall remain in full force and effect just as though no sale had been made. The proceeds of any such sale shall be applied as provided in Section 4.6 hereof. Several sales may be made hereunder without exhausting the right of sale for any unmatured part of the Indebtedness.

4.10 Remedies Cumulative. All remedies herein expressly provided for are cumulative of any and all other remedies existing at law or in equity and are cumulative of any and all other remedies provided for in any other instrument securing the payment of the Indebtedness, or any part thereof, or otherwise benefiting Indenture Trustee, and Indenture Trustee shall, in addition to the remedies herein provided, be entitled to avail itself of all such other remedies as may now or hereafter exist at law or in equity for the collection of the Indebtedness and the enforcement of the covenants herein and the foreclosure of the liens and security interests evidenced hereby, and the resort to any remedy provided for hereunder or under any such other instrument or provided for by law shall not prevent the concurrent or subsequent employment of any other appropriate remedy or remedies.

4.11 Resort to Any Security. Indenture Trustee may resort to any security given by this Security Instrument or to any other security now existing or hereafter given to secure the payment of the Indebtedness, in whole or in part, and in such portions and in such order as may seem best to Indenture Trustee in its sole and uncontrolled discretion, and any such action shall not in any way be considered as a waiver of any of the rights, benefits, liens or security interests evidenced by this Security Instrument.

4.12 Waiver. In addition to those waivers set forth in Section 10.19 of the Indenture, to the full extent Grantor may do so, Grantor agrees that Grantor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force pertaining to the rights and remedies of sureties or redemption, and Grantor, for Grantor and Grantor's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Property, to the extent permitted by law, hereby waives and releases all rights of valuation, appraisement, stay of execution and all rights to a marshaling of the assets of Grantor, including the Property, or to a sale in inverse order of alienation in the event of foreclosure of the liens and security interests hereby created. Grantor shall not have or assert any right under any statute or rule of law pertaining to the marshaling of assets, sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents or other matters whatever to defeat, reduce or affect the right of Indenture Trustee under the terms of this Security Instrument to a sale of the Property for the collection of the Indebtedness without any prior or different resort for collection, or the right of Indenture Trustee under the terms of this Security Instrument to the payment of the Indebtedness out of the proceeds of sale of the Property in preference to every other claimant whatever. If any law referred to in this Section and now in force, of which Grantor or Grantor's heirs, devisees, representatives, successors and assigns and such other persons claiming any interest in the Property might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section.

4.13 No Mortgagee in Possession. Neither the enforcement of any of the remedies under this Article IV, the assignment of the Rents and Leases under Article II nor any other remedies afforded to Indenture Trustee under the Transaction Documents, at law or in equity shall cause Indenture Trustee or any other Secured Party to be deemed or construed to be a mortgagee in possession of the Property, to obligate Indenture Trustee or any other Secured Party to lease the Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise, except that from and after the date that title to the Property is transferred to Indenture Trustee or any Secured Party (or foreclosure purchaser therefrom), such party shall be liable for the performance of all Leases to the extent required by applicable law.

Article V
Covenants

5.1 Right of Indenture Trustee to Perform. Grantor agrees that, if Grantor fails to perform any act or to take any action which Grantor is required to perform or take, or to pay any money which hereunder Grantor is required to pay, or takes any action prohibited under, in each case, this Security Instrument and/or the Indenture, Indenture Trustee may, but shall not be obligated to, perform or cause to be performed such act or take such action or pay such money or remedy any action so taken, pursuant to Section 10.3 of the Indenture and any amounts advanced or expended by Indenture Trustee under Section 10.3 of the Indenture, together with interest thereon at the interest rate payable upon overdue principal as set forth in relevant Notes, shall be payable pursuant to Section 5.01 of the Indenture and be secured by this Security Instrument.

Article VI
Miscellaneous

6.1 Defeasance. If all of the Indebtedness is paid in full and if all of the covenants, warranties, undertakings and agreements made in this Security Instrument are kept and performed, then all rights under this Security Instrument shall terminate and the Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, which shall be released by Indenture Trustee as the Grantor reasonably requests at Grantor's cost. Notwithstanding the foregoing, Indenture Trustee shall release this Security Instrument in the event (i) the Issuer exercises its rights under Section 2.11 of the Indenture, (ii) Grantor no longer owns any interest in the Property as a result of sales of such interests permitted under the Indenture, or (iii) Grantor is released from its obligations under the Indenture pursuant to Section 16.06 of the Indenture.

6.2 No Lien on Fee Estate. Subject to Section 6.3 and unless Grantor holds an interest in the fee estate pursuant to the Contract, this Security Instrument does not create a lien on the fee estate described in **Exhibit A** hereto.

6.3 Acquisition of Fee Estate. If Grantor, so long as any portion of the Notes or any other Obligation remains unpaid, shall become the owner and holder of the fee title to the property covered hereunder, the lien of this Security Instrument shall be spread to cover Grantor's fee title, and the fee title shall be deemed to be included in the Property effective as of the date of such acquisition. Grantor agrees, at its sole cost and expense (in accordance with the terms of the Indenture), including without limitation Indenture Trustee's reasonable attorneys' fees and expenses, to (i) execute any and all documents or instruments necessary to subject its fee title to the lien of this Security Instrument; and (ii) provide a title insurance policy which shall insure that the lien of this Security Instrument is a first lien on Grantor's fee title.

6.4 Protection and Defense of Lien. Indenture Trustee (whether or not named as a party to legal proceedings with respect thereto) is hereby authorized and empowered, without obligation to the extent provided in Section 10.03 of the Indenture to take such additional steps as in its judgment and discretion may be necessary or proper for the defense of any such legal proceedings or the protection of the validity or priority of this Security Instrument and the rights, titles, liens and security interests created or evidenced hereby, including but not limited to the employment of counsel, the prosecution or defense of

litigation, the compromise or discharge of any adverse claims made with respect to the Property, the purchase of any tax title and the removal of prior liens or security interests (including but not limited to the payment of debts as they mature or the payment in full of matured or nonmatured debts, which are secured by these prior liens or security interests), and all expenses so incurred of every kind and character shall be an obligation owing by Grantor payable in accordance with the terms of the Indenture.

6.5 Authorization to File Financing Statement. Grantor shall and hereby authorizes Indenture Trustee, and Indenture Trustee shall have the right, but not the obligation, to file such financing statements as are necessary or as Indenture Trustee may deem reasonably necessary to perfect Indenture Trustee's interest in the Additional Collateral and to file continuation statements to match such perfection. Grantor authorizes, without obligation, Indenture Trustee to include in any such financing statements (a) the collateral description "all personal property" or similar variation; (b) any other information required by Subchapter E of Article/Chapter 9 of the Uniform Commercial Code for the sufficiency or filing office acceptance of any financing statement or amendment, including whether Grantor is an organization, the type of organization and any organization identification number issued to Grantor; and (c) any other information necessary to properly effectuate the transactions described in the Transaction Documents, as determined by Indenture Trustee in its discretion and in accordance with the terms of the Indenture. Grantor further agrees that a carbon, photographic or other reproduction of this Security Instrument or any financing statement describing any Property is sufficient as a financing statement and may be filed in any jurisdiction by Indenture Trustee.

6.6 Fixture Filing. This Security Instrument shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Property and is to be filed for record in the real estate records in the Office of the County Recorder where the Property (including said fixtures) is situated. This Security Instrument shall also be effective as a financing statement covering as-extracted collateral and is to be filed for record in the real estate records of the county where the Property is situated. The mailing address of Grantor and the address of Indenture Trustee from which information concerning the security interest may be obtained are the addresses of Grantor and Indenture Trustee set forth on the first page of this Security Instrument.

6.7 Filing and Recordation. Grantor will or will cause this Security Instrument and all amendments and supplements hereto and substitutions for this Security Instrument and all financing statements and continuation statements relating hereto to be recorded, filed, re-recorded and refiled in such manner and in such places as are necessary or as Indenture Trustee may request to perfect Indenture Trustee's interest in the Additional Collateral, and will pay all such recording, filing, re-recording and refiling taxes, fees and other charges.

6.8 Dealing with Successor. In the event the ownership of the Property or any part thereof becomes vested in a person other than Grantor, Indenture Trustee may, without notice to Grantor, deal with such successor or successors in interest with reference to this Security Instrument and to the Indebtedness in the same manner as with Grantor, without in any way vitiating or discharging Grantor's liability hereunder or for the payment of the Indebtedness. No sale of the Property (except as permitted under the Indenture), no forbearance on the part of Indenture Trustee and no extension of the time for the payment of the Indebtedness given by any Indenture Trustee shall operate to release, discharge, modify, change or affect, in whole or in part, the liability of Grantor hereunder or for the payment of the Indebtedness or the

liability of any other person hereunder or for the payment of the Indebtedness, except as agreed to in writing by Indenture Trustee.

6.9 Subrogation. To the extent that proceeds of the Notes are used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Property, such proceeds have been advanced by Secured Parties at Grantor's request and Secured Parties shall be subrogated to any and all security interests and liens owned or held by any owner or holder of such outstanding liens, security interests, charges or encumbrances, irrespective of whether said liens, security interests, charges or encumbrances are released; provided, however that the terms and provisions of this Security Instrument shall govern the rights and remedies of Indenture Trustee, acting on its own behalf and on behalf of Secured Parties and shall supersede the terms, provisions, rights and remedies under and pursuant to the instruments creating the lien or liens to which Secured Parties are subrogated hereunder.

6.10 Application of Indebtedness. If any part of the Indebtedness cannot be lawfully secured, or is not fully secured, by this Security Instrument or if any part of the Property cannot be lawfully subject to the lien and security interest hereof to the full extent of such Indebtedness or if the lien and security interest of the Indebtedness of this Security Instrument are invalid or unenforceable as to any part of the Indebtedness or as to any part of the Property, then all payments or repayments made on the Indebtedness, whether voluntary or under foreclosure or other enforcement action or procedure, shall be applied first to the portion of the Indebtedness which is not secured by this Security Instrument, it being the parties' intent that the portion of the Indebtedness last remaining unpaid shall be secured by this Security Instrument.

6.11 Notice. Any notice or communication required or permitted hereunder shall be given in accordance with the provisions of the Indenture.

6.12 Successors, Substitutes and Assigns. The terms, provisions, covenants and conditions hereof shall be binding upon Grantor, and the successors and assigns of Grantor including all successors in interest of Grantor in and to all or any part of the Property, and shall inure to the benefit of Indenture Trustee and its successors, substitutes and assigns (for the benefit of the Secured Parties to whom any portion of the Indebtedness is outstanding from time to time) and shall constitute covenants running with the land. All references in this Security Instrument to Obligors, Grantor, Indenture Trustee or a Secured Party shall be deemed to include all of such party's permitted successors, substitutes and assigns.

6.13 Severability. A determination that any provision of this Security Instrument is unenforceable or invalid shall not affect the enforceability or validity of any other provision and any determination that the application of any provision of this Security Instrument to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

6.14 Gender and Number. Within this Security Instrument, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, and words in the plural number shall be held and construed to include the singular, unless in each instance the context otherwise requires.

6.15 Counterparts. This Security Instrument 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 such counterpart.

6.16 Joint and Several. The term “Obligors” as used in this Security Instrument means all of the Obligor entities identified in the Indenture. The obligations of Obligors hereunder shall be joint and several.

6.17 Headings. The Section headings contained in this Security Instrument are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several Sections hereof.

6.18 Entire Agreement. This Security Instrument and the other Transaction Documents constitute the entire understanding and agreement between Grantor, Indenture Trustee, and Secured Parties with respect to the transactions arising in connection with the Indebtedness and supersede all prior written or oral understandings and agreements between Grantor, Indenture Trustee and Secured Parties (or any of them) with respect thereto.

6.19 Waiver of Marshaling and Certain Rights. To the extent that Grantor may lawfully do so, Grantor hereby expressly waives any right pertaining to the marshaling of assets, the administration of estates of decedents, or other matters to defeat, reduce or affect (a) the right of Indenture Trustee to sell all or any part of the Property for the collection of the Indebtedness (without any prior or different resort for collection), or (b) the right of Indenture Trustee to the payment of the Indebtedness out of the proceeds of the sale of all or any part of the Property in preference to every other person and claimant.

6.20 Attorney-in-Fact. Effective upon the occurrence and during the continuance of an Event of Default, Grantor hereby irrevocably appoints Indenture Trustee as its attorney-in-fact, which agency is coupled with an interest and with full power of substitution, with full authority in the place and stead of Grantor and in the name of Grantor or otherwise (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Indenture Trustee deems appropriate to protect Indenture Trustee’s interest, (b) upon the issuance of a deed pursuant to the foreclosure of this Security Instrument or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents and Additional Collateral in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, (c) to prepare and file or record financing statements and UCC continuation statements, and to prepare, execute and file or record applications for registration and like papers necessary to create, perfect or preserve Indenture Trustee’s security interests and rights in or to any of the Property, and (d) to perform any obligation of Grantor hereunder; provided, however, that (1) Indenture Trustee shall not under any circumstances be obligated to perform any obligation of Grantor; (2) any reasonable sums advanced by Indenture Trustee in such performance shall be added to and included in the Indebtedness; provided, however, that the foregoing reimbursement obligation shall not extend to any action by Indenture Trustee or any Secured Party which constitutes gross negligence or willful misconduct by Indenture Trustee or any Secured Party, respectively; (3) Indenture Trustee as such attorney-in-fact shall only be accountable for such funds as are actually received by Indenture Trustee; and (4) Indenture Trustee shall not be liable to Grantor or any other person or entity for any failure to take any action which it is empowered to take under this Section.

6.21 Inconsistencies with Transaction Documents. In the event of any inconsistency between this Security Instrument and any other Transaction Documents, the terms hereof shall control only as necessary to create, preserve and/or maintain a valid lien and security interest upon the Property, otherwise the provisions of such Transaction Document shall control.

6.22 Contract Provisions. To the extent Grantor holds any leasehold interest as a tenant or lessee, or any easement or other possessory interest other than a fee simple interest, under the Contract:

(a) Grantor covenants and agrees that the fee title to the Land and the leasehold estate created under any Contract shall not merge but shall always remain separate and distinct, notwithstanding the union of said estates either in Grantor or a third party by purchase or otherwise; and in case Grantor acquires the fee title, an easement interest, or any other estate, title or interest in and to the Land, the lien of this Security Instrument shall, without further conveyance, simultaneously with such acquisition, be spread to cover and attach to such acquired estate and as so spread and attached shall be prior to the lien of any mortgage placed on the acquired estate after the date of this Security Instrument.

(b) The lien of this Security Instrument shall attach to all of Grantor's rights and remedies at any time arising under or pursuant to Subsection 365(h) of Title 11 of the Code, including, without limitation, all of Grantor's rights to remain in possession of the Land. If an Event of Default shall have occurred and be continuing, Grantor shall not, without Indenture Trustee's prior written consent, elect to treat any Contract, if applicable, as terminated under Subsection 365(h)(1)(A)(i) of the Bankruptcy Code. Any such election made without Grantor's consent shall be void.

(c) If an Event of Default shall have occurred and be continuing, Indenture Trustee shall have the right to proceed in its own name or in the name of Grantor in respect of any claim, suit, action or proceeding relating to the rejection of any Contract by the lessor or any other party, including, without limitation, the right to file and prosecute under the Bankruptcy Code, without joining or the joinder of Grantor, any proofs of claim, complaints, motions, applications, notices and other documents. Any amounts received by Indenture Trustee as damages arising out of the rejection of any Contract as aforesaid shall be applied first to all costs and expenses of Indenture Trustee (including, without limitation, reasonable attorneys' fees) incurred in connection with the exercise of any of its rights or remedies under this paragraph and thereafter in accordance with the Indenture. Grantor acknowledges that the assignment of all claims and rights to the payment of damages from the rejection of any Contract made under the granting clauses of this Security Instrument constitutes a present irreversible and unconditional assignment and Grantor shall, and shall at the request of Indenture Trustee, promptly make, execute, acknowledge, deliver and file, in form and substance as required under the terms of the Indenture, a UCC Financing Statement (Form UCC-1) and all such additional instruments, agreements and other documents, as may at any time hereafter be necessary or as may be required by Indenture Trustee to carry out such assignment.

(d) If pursuant to Subsection 365(h)(1)(B) of the Bankruptcy Code, Grantor shall seek to offset against the rent reserved in any Contract the amount of any damages caused by the nonperformance by the lessor or any other party of any of their respective obligations under such

Contract after the rejection by the lessor or such other party of such Contract under the Bankruptcy Code, then Grantor shall, if an Event of Default shall have occurred and be continuing, prior to effecting such offset, notify in writing Indenture Trustee of its intent to do so, setting forth the amount proposed to be so offset and the basis therefor. In such event, Indenture Trustee shall have the right to object to all or any part of such offset that, in the reasonable judgment of Indenture Trustee, would constitute a breach of such Contract, and in the event of such objection, Grantor shall not effect any offset of the amounts found objectionable by Indenture Trustee. Neither Indenture Trustee's failure to object as aforesaid nor any objection relating to such offset shall constitute an approval of any such offset by Indenture Trustee.

(e) Grantor shall, after obtaining knowledge thereof, promptly notify Indenture Trustee of any filing by or against the lessor or other party with an interest in the portion of the Property that constitutes real property of a petition under the Bankruptcy Code. Grantor shall promptly deliver to Indenture Trustee, following receipt, copies of any and all notices, summonses, pleadings, applications and other documents received by Grantor in connection with any such petition and any proceedings relating thereto.

(f) If there shall be filed by or against Grantor a petition under the Bankruptcy Code and Grantor, as lessee under any Contract, shall determine to reject such Contract pursuant to Section 365(a) of the Bankruptcy Code, then Grantor shall give Indenture Trustee not less than five (5) days' prior written notice of the date on which Grantor shall apply to the court for authority to reject such Contract.

6.23 APPLICABLE LAW. THIS SECURITY INSTRUMENT SHALL BE GOVERNED BY THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK, EXCEPT FOR THOSE PROVISIONS IN THIS SECURITY INSTRUMENT PERTAINING TO THE CREATION, PERFECTION OR VALIDITY OF OR EXECUTION OF LIENS OR SECURITY INTERESTS ON PROPERTY LOCATED IN THE STATE WHERE THE PROPERTY IS LOCATED, WHICH PROVISIONS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE WHERE THE PROPERTY IS LOCATED AND APPLICABLE UNITED STATES FEDERAL LAW.

6.24 CONSENT TO FORUM. THE PROVISIONS OF THE INDENTURE RELATING TO THE CHOICE OF FORUM FOR ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY OF THE TRANSACTION DOCUMENTS ARE INCORPORATED HEREIN BY REFERENCE AS THOUGH SET FORTH HEREIN IN ITS ENTIRETY.

6.25 Indenture Trustee. The Indenture Trustee shall be afforded all of the rights, protections, immunities and indemnities set forth in the Indenture as if such rights, protections, immunities and indemnities were specifically set forth herein. It is expressly understood and agreed by the parties hereto that (i) this Security Instrument is executed and delivered by Wilmington Trust, National Association ("Wilmington"), not individually or personally, but solely as Indenture Trustee in the exercise of the powers and authority conferred upon and vested in it, and pursuant to instructions set forth therein, (ii) each of the

representations, undertakings and agreements herein made on the part of Indenture Trustee is made and intended not as personal representations, undertakings or agreements of Wilmington, (iii) nothing herein contained shall be construed as imposing any liability upon Wilmington, individually or personally, to perform any covenant, either express or implied, contained herein, all such liability, if any, is hereby expressly waived by the parties hereto and by any Person claiming by, through or under the parties hereto and such waiver shall bind any third party making a claim by or through one of the parties hereof, and (iv) under no circumstances shall Wilmington be personally liable for the payment of any indebtedness or expenses hereunder, or be personally liable for the breach or failure of any obligations, representation, warranty or covenant made or undertaken by the Grantor under this Security Instrument.

Article VII

State Law Provisions

7.1 Conflicts. To the extent of any conflict between the provisions of this Article VII and the other provisions of this Security Instrument, the provisions of this Article VII shall control.

7.2 No Homestead or Agricultural Use. No portion of the Property is being used as Grantor's business or residential homestead. No portion of the Property is being used for agricultural purposes.

7.3 No Buildings or Manufactured (Mobile) Homes. Notwithstanding any provision in this Security Instrument to the contrary, in no event is any Building or Manufactured (Mobile) Home (as such terms are defined in applicable Flood Insurance Regulations) included in the definition of "Property," or "Collateral" or "Additional Collateral" and no Building or Manufactured (Mobile) Home is hereby encumbered by this Security Instrument. As used herein, "Flood Insurance Regulations" shall mean (a) the National Flood Insurance Act of 1968, (b) the Flood Disaster Protection Act of 1973, (c) the National Flood Insurance Reform Act of 1994 (amending 42 USC 4001 *et seq.*), and (d) the Flood Insurance Reform Act of 2004, in each case as now or hereafter in effect and including any regulations promulgated thereunder.


REMAINDER OF PAGE INTENTIONALLY BLANK
SIGNATURE PAGE FOLLOWS

20211123000563310 11/23/2021 12:27:22 PM MORT 17/19

IN WITNESS WHEREOF, Grantor has executed this Mortgage, Fixture Filing, Security Agreement and Assignment of Leases and Rents as of the date of the acknowledgment below, but to be effective as of the Effective Date.

GRANTOR:

DIAMOND TOWERS IV LLC, a Delaware limited liability company

By: 
Name: Gene Grieco
Title: Secretary

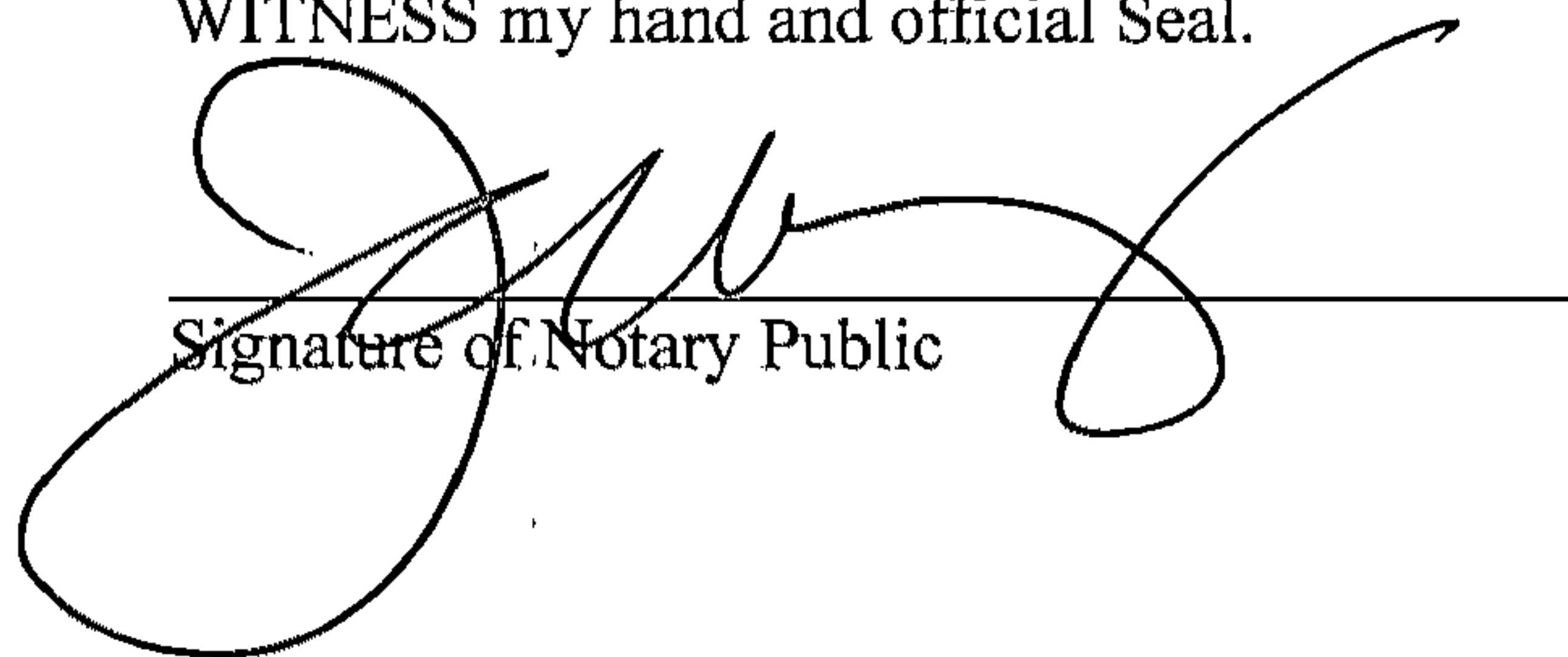
ACKNOWLEDGMENT

STATE OF NEW JERSEY)
) ss.
COUNTY OF UNION)

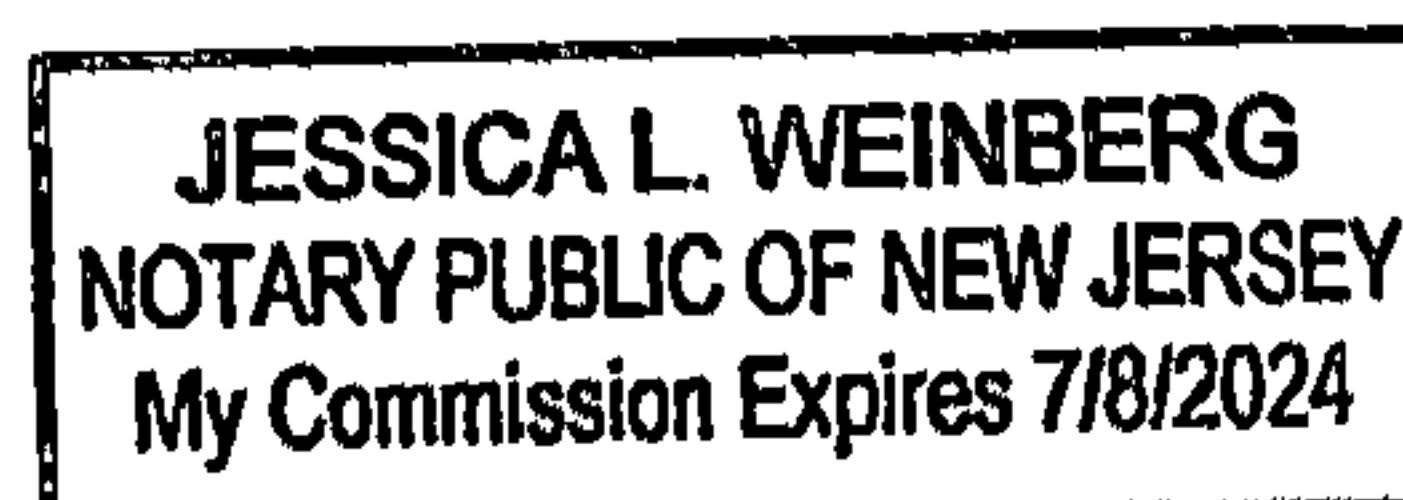
On 11/22, 2021, before me Jessica Weinberg, a Notary Public, personally appeared Gene Grieco, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official Seal.


Signature of Notary Public

[SEAL]



Legal Description

The Property is legally described as follows:

PARENT TRACT

The NE 1/4 of Section 13, Township 21 South, Range 5 West, Shelby County, Alabama.

The Premises are described and/or depicted as follows:

100' x 100' LEASE AREA

A portion of the Shelby Investments, LLC, a Georgia limited liability company tract described in Instrument number 20140723000225620 as recorded in the Probate Judge Office for Shelby County, Alabama, situated in the Northeast 1/4 of Section 13, Township 21 South, Range 5 West in said County and being more particularly described as follows;

COMMENCING at a 3" capped pipe found marking the Northeast corner of said Section 13, Thence along the Northerly line of said Section 13, N 89°43'18" W a distance of 96.02 feet to a point; Thence leaving said Northerly line, S 00°16'42" W a distance of 215.41 feet to an set 5/8" rebar and the POINT OF BEGINNING; Thence S 15°17'00" E a distance of 100.00 feet to a set 5/8" rebar; Thence S 74°42'58" W a distance of 100.00 feet to a set 5/8" rebar; Thence N 15°17'00" W a distance of 100.00 feet to a set 5/8" rebar; Thence N 74°42'58" E a distance of 100.00 feet to a set 5/8" rebar and the POINT OF BEGINNING. Containing 10,000 square feet (0.23 acres) of land more or less.

30' INGRESS/EGRESS & UTILITY EASEMENT

A portion of the Shelby Investments, LLC, a Georgia limited liability company tract described in Instrument number 20140723000225620 and Instrument number 20161101000399750 as recorded in the Judge of Probate Office for Shelby County, Alabama, situated in the Northeast 1/4 of Section 13, the Southeast 1/2 of Section 12 and the Southwest 1/4 of Section 7, Township 21 South, Range 5 West in said County and being more particularly described as follows;

COMMENCING at a 3" capped pipe found marking the Northeast corner of said Section 13, Thence along the Northerly line of said Section 13, N 89°43'18" W a distance of 96.02 feet to a point; Thence leaving said Northerly line, S 00°16'42" W a distance of 215.41 feet to an set 5/8" rebar; Thence S 15°17'00" E a distance of 100.00 feet to a set 5/8" rebar; Thence S 74°42'58" W a distance of 100.00 feet to a set 5/8" rebar; Thence N 15°17'00" W a distance of 50.00 feet to the POINT OF BEGINNING of an ingress/egress and utility easement being 30 feet wide and lying 15 feet on each side of the following described centerline; Thence S 75°19'22" W a distance of 112.70 feet to a point; Thence N 62°04'00" W a distance of 74.48 feet to a point; Thence N

Grey Hill AL045 Option & GL MOL EXE

20211123000563310 11/23/2021 12:27:22 PM MORT 19/19

EXHIBIT B

Document(s) Creating Rights

That certain Memorandum of Land Lease Agreement between Shelby Investments LLC and Diamond Towers IV LLC dated as of 06/18/2019 , recorded on 03/19/2021 as 2021031900140060 in Shelby County, AL, as assigned by that certain Assignment of Agreement to Diamond Towers IV LLC dated as of 01/20/2021, recorded on 02/04/2021 as 20210204000059320 in Shelby County, AL, as may have been previously amended from time to time.



**Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
11/23/2021 12:27:22 PM
\$621.70 JOANN
20211123000563310**

Allen S. Bayl