

WHEN RECORDED PLEASE RETURN TO:

Brownstein Hyatt Farber Schreck, LLP
410 Seventeenth Street, Suite 2200
Denver, Colorado 80202
Attention: Ana Tenzer, Esq.



20151209000421690 1/8 \$35.00
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MONARCH AT LEE BRANCH, LLC,
(Borrower)

to

FORTRESS CREDIT CO LLC,
(Lender)

ASSIGNMENT OF LEASES AND RENTS

Dated: December 2, 2015

PROPERTY LOCATION:

The Village at Lee Branch
600-1401 Doug Baker Blvd.
Birmingham, Alabama

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (this "*Assignment*") made as of December 2, 2015, by **MONARCH AT LEE BRANCH, LLC**, a Delaware limited liability company, having its principal place of business at 4828 Ashford Dunwoody Rd., Atlanta, GA 30338 ("*Borrower*"), to **FORTRESS CREDIT CO LLC**, a Delaware limited liability company, having an address at 1345 Avenue of the Americas, 46th Floor, New York, New York 10105 (together with its successors and assigns, "*Lender*").

RECITALS

Borrower has executed a certain Promissory Note (the "*Note*") of even date herewith, evidencing a loan in the original principal amount of up to Twenty-One Million Five Hundred Seventy Thousand and No/100 Dollars (\$21,570,000.00) (such loan, or so much thereof as shall have been advanced, and the obligation of Borrower to repay the same may be referred to herein as the "*Loan*"), and in connection therewith Borrower and Lender have executed a certain Loan Agreement (the "*Loan Agreement*") also of even date herewith. Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Loan Agreement.

The obligations of Borrower under the Note and the Loan Agreement are secured by, among other things, the Security Instrument, executed by Borrower in favor of the Lender. The real property and improvements encumbered by the Security Instrument may be referred to as the "*Property*." The Property includes the land more particularly described in **Exhibit A** attached hereto.

NOW THEREFORE, as a material inducement to Lender to execute and deliver the Loan Agreement, Borrower covenants and agrees with and warrants to Lender that:

Section 1. Assignment of Leases, Rents and Receipts. Borrower hereby irrevocably grants and assigns to Lender all of Borrower's right, title and interest in, to and under (i) all present and future Leases and all modifications, amendments and renewals of the same, and (ii) all Rents and all Receipts, whether now due or hereafter accruing. This is a present and absolute assignment, not an assignment for security purposes only. Borrower hereby grants to Lender the sole, exclusive and immediate right, with or without taking possession of the Property, to demand, collect (by suit or otherwise), receive and give valid and sufficient receipts for any and all of said Rents and Receipts, for which purpose Borrower does hereby irrevocably make, constitute and appoint Lender its attorney-in-fact with full power to appoint one or more substitutes or trustees to accomplish such purpose (which power of attorney shall be irrevocable so long as any obligations remain outstanding under the Loan Documents, shall be deemed to be coupled with an interest, shall survive the voluntary or involuntary dissolution of Borrower and shall not be affected by any disability or incapacity suffered by Borrower subsequent to the date hereof). Nonetheless, Lender's right to the Leases, Rents and Receipts is not contingent upon, and may be exercised without possession of, the Property.

Section 2. License to Collect and Receive Rents Prior to Event of Default.

(A) **Grant of License.** Lender hereby confers upon Borrower a revocable license to manage the Property and to collect and receive the Rents and Receipts when due and

prepayments thereof for not more than one month prior to due date thereof, in each case prior to an Event of Default. Such license and Borrower's rights to collect and receive the Rents and Receipts shall terminate automatically and immediately upon the occurrence of an Event of Default, without the necessity of any notice or other action. Further, such license and Borrower's rights to collect and receive the Rents and Receipts shall not excuse any other obligation of Borrower under the Loan Documents, including the obligations to timely pay principal and interest under the Loan.

(B) License is Subject to Other Provisions of Loan Documents. Anything to the contrary herein or elsewhere notwithstanding, such license and Borrower's rights to collect and receive the Rents and Receipts shall be subject to (and controlled by, in the case of any conflict or inconsistency) any provisions of the Loan Documents (a) that require (or allow Lender to require) that any Rents or Receipts be delivered to Lender or be delivered to any lockbox account or other specified account, or (ii) that grant to Lender any right to receive, hold, disburse, apply or otherwise control any Rents or Receipts or the proceeds thereof, or (c) that otherwise subject any Rents or Receipts to any cash control mechanism. Without limitation, Borrower's license granted herein, and Borrower's rights to collect and receive the Rents and Receipts shall be subject to (and controlled by, in the case of any conflict or inconsistency) (a) the Cash Management Agreement of even date herewith, (b) any provisions of any Loan Documents that require (or allow Lender to require) that Insurance Proceeds or Condemnation Proceeds be delivered, held, or applied in any manner, and (c) any provisions of any Loan Documents that require that Lease termination payments be delivered to Lender for deposit into a Reserve.

Section 3. Right to Appointment of Receiver. At any time after an Event of Default, Lender shall have the right to apply to a court of competent jurisdiction for and to obtain appointment of a receiver for all or any part of the Property. Borrower hereby consents to such appointment, and agrees that Lender shall be entitled to appointment of a receiver as a matter of strict right, irrespective of the solvency or financial condition of Borrower or any other Person liable for the Obligations, and irrespective of whether or not the security is adequate for the repayment of the Obligations, the Loan has been accelerated, a notice of default has been recorded, or the application for appointment of a receiver is on notice or ex parte. Nothing herein shall deprive Lender of any other right, remedy or privilege Lender may now have under the law or in equity to have a receiver appointed. Such receivership shall, at the option of Lender, continue until full payment of all of the Obligations or until title to the Property shall have passed by foreclosure sale the Loan Documents or by deed in lieu of such foreclosure. Any such receiver shall have all of the usual powers and duties of receivers in similar cases, including, without limitation, the full power to hold, develop, rent, lease, manage, maintain, operate and otherwise use or permit the use of the Property upon such terms and conditions as said receiver may determine. Without limitation of any rights that may be conferred upon any such receiver by the order of the court, by applicable law, or pursuant to the Loan Documents, any such receiver shall have all rights of Lender under **Section 4** of this Assignment.

Section 4. General Remedies. At any time after an Event of Default, Lender shall have all rights and remedies available under the Loan Documents and under applicable law. Without limitation of the foregoing, without notice and without regard to the adequacy of the security for the Obligations, and with or without bringing any action or proceeding, Lender may either in person or by agent (i) take possession of the Property and have, hold, manage, lease and operate

the Property on such terms and for such period of time as Lender may determine, with full power to make all alterations, renovations, repairs or replacements thereto or thereof as Lender may determine, and (ii) either with or without taking possession of the Property, demand, sue for or otherwise collect and receive all Rents and Receipts, including those past due and unpaid, and (iii) hold any portion of the Rents and Receipts as security for the Obligations, and/or apply any portion of the Rents and Receipts to the payment, in such order and proportion as Lender in its sole discretion may determine, of any of the costs and expenses of managing, operating and securing the Property (including, without limitation, the salaries, fees and wages of a managing agent and such other employees or agents as Lender may designate, taxes, charges, claims, assessments, water charges, sewer rents, liens, premiums for insurance, alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Property) and any of the other Obligations. In addition, upon the occurrence of an Event of Default, Lender, at its option, may either require Borrower to pay monthly in advance to Lender, or any agent appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be in possession of Borrower or require Borrower to vacate and surrender possession of the Property to Lender or to such agent and, in default thereof, Borrower may be evicted by summary proceedings or otherwise.

Section 5. No Liability of Lender. Lender's receipt and acceptance of this Assignment and the rights granted hereunder shall not create or give rise to any obligation owing from Lender to Borrower, nor constitute or give rise to an assumption by Lender of any obligation under any Lease. Lender shall not be responsible or liable for the control, care, management or repair of the Property or for performing any obligation under any of the Leases. Without limitation, no performance by Lender of any obligation of the landlord under any Lease shall create or give rise to any obligation to continue such performance or to perform any other obligation. Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to let the Property or failure to collect any Rents or Receipts, or from any other act or omission of Lender in managing the Property after an Event of Default. Borrower shall indemnify Lender for, and hold Lender harmless from and against, any and all claims, liabilities, losses and damages which may be asserted or incurred under any Lease or under or by reason of this Assignment, including any such claims that may be asserted against Lender by reason of any alleged obligations and undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any Lease. Should Lender incur any such liability, the amount thereof, including costs, expenses and attorneys' fees, shall be secured hereby and by the Security Instrument and the other Loan Documents, and Borrower shall promptly pay the same upon demand. This Assignment shall not operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor for the carrying out of any of the terms and conditions of the Leases; nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the lessees or any other parties, or for any dangerous or defective condition of the Property, including, without limitation, the presence of any Hazardous Materials, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any lessee, licensee, employee or stranger. Lender shall not be liable to Borrower or any other person as a consequence of the exercise or failure to exercise any of the rights, remedies or powers granted to Lender hereunder. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession" in the absence of the taking of actual possession of the Property by Lender. Borrower waives all rights arising from any determination that Lender may be a mortgagee in possession.

Section 6. Tenants Authorized to Rely on Notices From Lender. Borrower hereby irrevocably authorizes and directs all tenants (including any successors, assigns, and subtenants) under all present and future Leases to rely upon and comply with any notice or demand by Lender for the payment of any Rent which may at any time become due under the Leases, or for the performance of any of the tenants' undertakings under the Leases. Without limitation, the tenants receiving any such notice or demand from Lender shall have no responsibility to inquire as to whether any Event of Default has actually occurred or is then existing hereunder. Borrower hereby relieves the tenants from any liability to Borrower by reason of relying upon and complying with any such notice or demand by Lender. Without limitation, any payment of Rent to Lender (or to any agent appointed by Lender to receive Rent, or to any receiver appointed by a court with authority to receive Rent) pursuant to any such demand shall reduce, dollar for dollar, any obligation that the tenant may have to pay Rent to Borrower. Borrower hereby waives any right or claim that Borrower may now or hereafter have against any such tenant by reason of any payment of Rent to Lender or at the direction of Lender.

Section 7. Termination of Assignment. Upon payment in full of the Obligations and the delivery and recording of a satisfaction, release, reconveyance or discharge of the Security Instrument duly executed by Lender, this Assignment shall become and be void and of no effect.

Section 8. Loan Agreement Provisions. The Loan Agreement contains provisions that are applicable to this Assignment and to the Loan Documents generally, including without limitation provisions regarding notices, remedies, amendments and waivers, applicable law, venue, waiver of jury trial, rules of construction, limitations on recourse and reimbursement for Lender's costs, including attorneys' fees and expenses.

Section 9. Successors and Assigns. THIS ASSIGNMENT shall inure to the benefit of Lender and any subsequent holder of the Note and shall be binding upon Borrower, and Borrower's heirs, executors, administrators, successors and assigns and any subsequent owner of the Property.

[SIGNATURES FOLLOW ON NEXT PAGE]



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IN WITNESS WHEREOF, Borrower has executed this Assignment the day and year first above written.

BORROWER:

MONARCH AT LEE BRANCH, LLC,
a Delaware limited liability company

By: Monarch Lee Branch Holdings, LLC,
a Georgia limited liability company,
its Managing Member

By: [Signature]
Name: Stephen M. McMaster
Its: Manager

STATE OF Georgia }
COUNTY OF Dekalb } ss.

On November 02, 2015, before me, CINDY BAETZEL, personally appeared Stephen M. McMaster, 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(s), or the entity(ies) upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.

[SEAL]

Cindy Baetzel
Notary

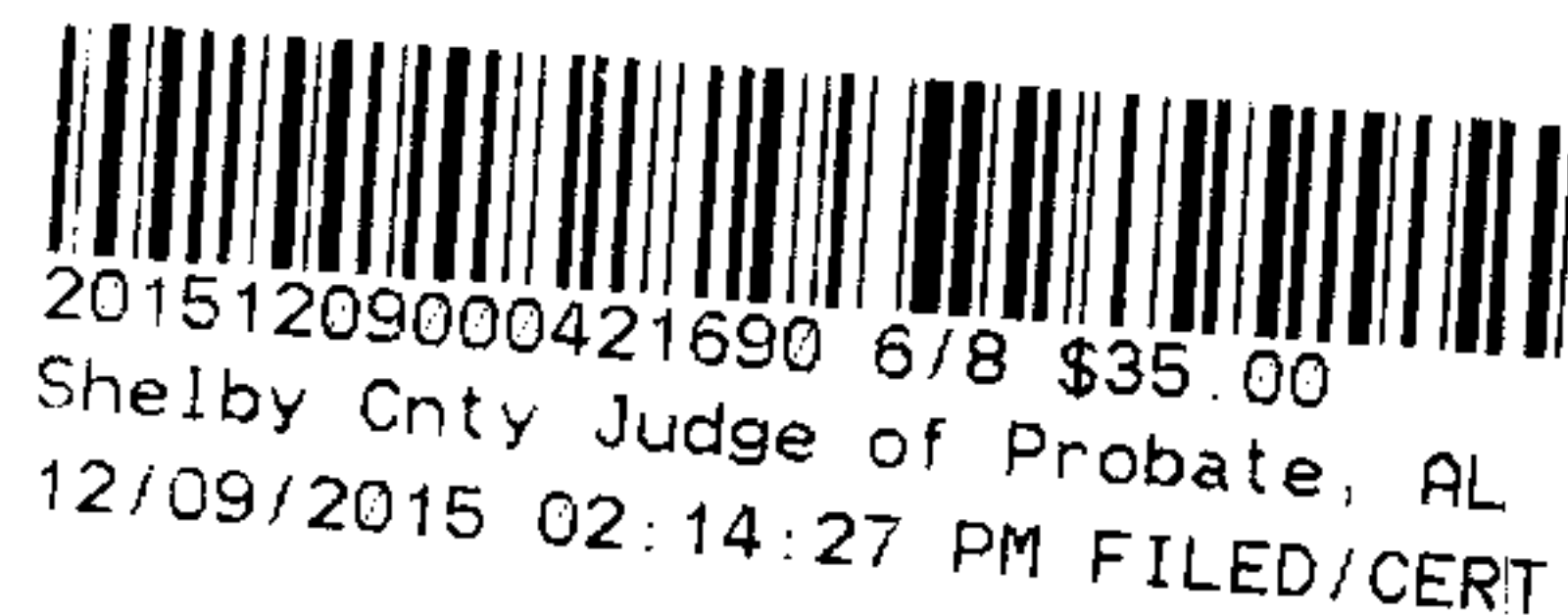
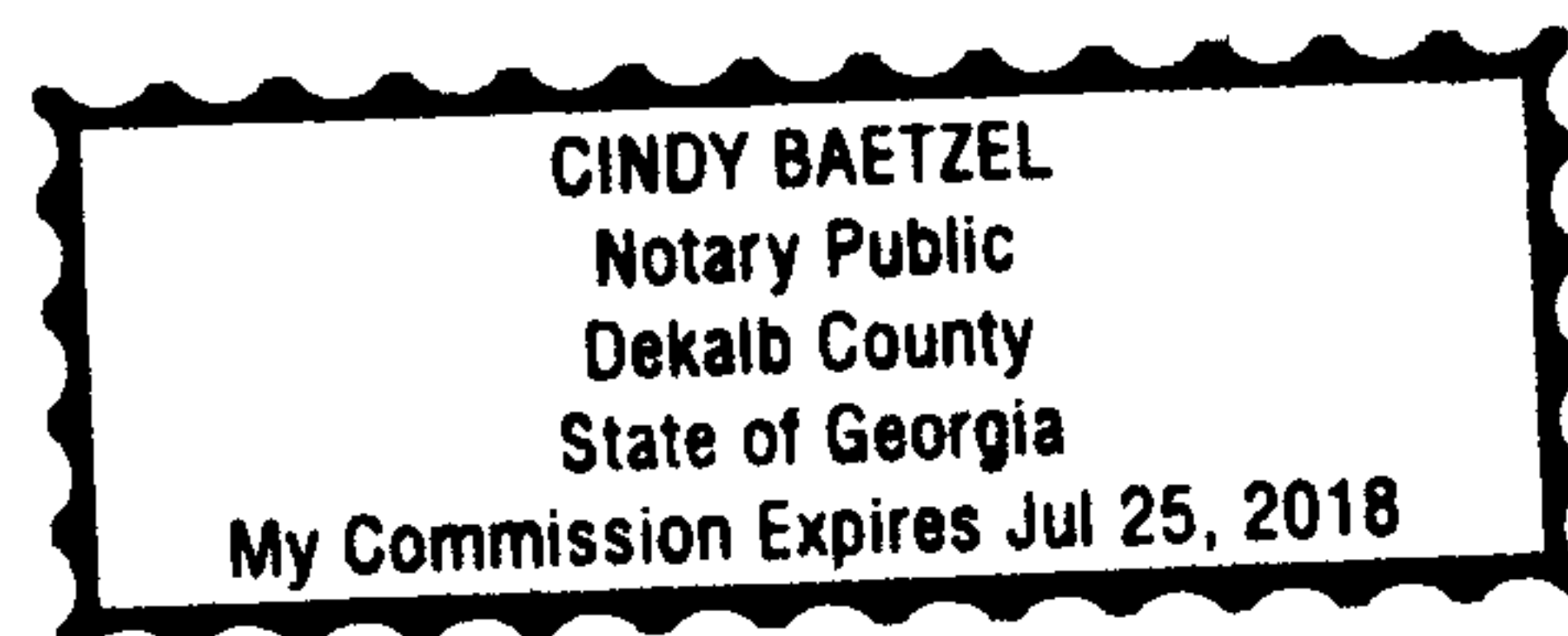


EXHIBIT A

Legal Description

PARCEL 1:

LOT 1B, ACCORDING TO THE SURVEY OF A RESUBDIVISION OF THE VILLAGE AT LEE BRANCH AS RECORDED IN MAP BOOK 31, PAGE 130A AND 130B, IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA, BEING A RESUBDIVISION OF THE VILLAGE AT LEE BRANCH SECTOR 1-REVISION 1.

PARCEL 2:

LOTS 1A, 1B, 1C AND 1D ACCORDING TO THE RESURVEY OF LOT 1 OF THE VILLAGE AT LEE BRANCH, SECTOR 1, PHASE 2, AS RECORDED IN THE OFFICE OF THE JUDGE OF PROBATE OF SHELBY COUNTY, ALABAMA IN MAP BOOK 43, PAGE 66.

LOTS 7 AND 8, ACCORDING TO THE SURVEY OF THE VILLAGE AT LEE BRANCH SECTOR 1 - PHASE 2, AS RECORDED IN MAP BOOK 33, PAGE 58, IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA, BEING A RESUBDIVISION OF LOT 5A OF THE VILLAGE AT LEE BRANCH SECTOR 1-REVISION 1.

PARCEL 3:

TOGETHER WITH SUCH APPURTENANT ACCESS, EASEMENT AND OTHER RIGHTS WHICH ARISE OR ARE RESERVED UNDER AND PURSUANT TO THE FOLLOWING INSTRUMENT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A. RECIPROCAL EASEMENT AGREEMENT BY AND BETWEEN AIG BAKER BROOKSTONE, L.L.C., AND COMPASS BANK, DATED AUGUST 26, 2003, FILED FOR RECORD AUGUST 27, 2003 AT 10:47 A.M., RECORDED AS INSTRUMENT NUMBER: 20030827000569990 IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA.

B. RECIPROCAL EASEMENT AGREEMENT WITH COVENANTS, CONDITIONS AND RESTRICTIONS DATED JUNE 30, 2003 AND RECORDED JULY 1, 2003 AS DOCUMENT NUMBER 20030701000412990 MADE BY AND BETWEEN AIG BAKER BROOKSTONE, LLC AND LEE BRANCH, LLC.

C. COST-SHARING AGREEMENT DATED AS OF JANUARY 1, 2014 AND RECORDED SEPTEMBER 17, 2014 AS DOCUMENT NUMBER 20140917000291230 MADE BY AND BETWEEN PERA LEE BRANCH, INC. AND RUSHMORE LEE BRANCH, LLC.

D. DECLARATION OF EASEMENT AND RESTRICTIONS DATED AS OF MAY 26, 2004 AND RECORDED JUNE 1, 2004 AS DOCUMENT NUMBER 20040601000288850 MADE BY AIG BAKER EAST VILLAGE, LLC, AS AMENDED BY AMENDMENT NO. 1 TO DECLARATION OF EASEMENT AND RESTRICTIONS WAS RECORDED JUNE 24, 2004 AS DOCUMENT NUMBER 20040524000345520; AMENDMENT TO DECLARATION OF EASEMENT AND RESTRICTIONS WAS RECORDED MAY 11, 2012 AS DOCUMENT NUMBER 20120511000165500, AS AMENDED BY AMENDMENT NO. 3 TO DECLARATION OF EASEMENT AND RESTRICTIONS WAS RECORDED JANUARY 27, 2014 AS DOCUMENT NUMBER 20140127000026530; AS AMENDED BY AMENDMENT NO. 4 TO DECLARATION OF EASEMENT AND RESTRICTIONS WAS RECORDED OCTOBER 14, 2014 AS DOCUMENT NUMBER 2014014000323410.

EXHIBIT A

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E. AGREEMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS DATED JUNE 21, 2004 AND RECORDED JUNE 24, 2004 AS DOCUMENT NUMBER 20040624000345530 MADE BY AIG BAKER EAST VILLAGE, LLC, AS AMENDED BY FIRST AMENDMENT TO AGREEMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS DATED SEPTEMBER 3, 2013 AND RECORDED SEPTEMBER 13, 2013 AS DOCUMENT NUMBER 20130913000372210.

F. TO THE EXTENT THAT AN INTEREST IN REAL PROPERTY IS CREATED, DECLARATION OF LIMITED USE RESTRICTIONS DATED JUNE 29, 2007 AND RECORDED JULY 2, 2007 AS DOCUMENT NUMBER 20070702000309430 MADE BY AND BETWEEN AIG BROOKSTONE, LLC AND AIG BAKER EAST VILLAGE, LLC.

G. TO THE EXTENT AN INTEREST IN REAL PROPERTY IS CREATED, AGREEMENT REGARDING MAINTENANCE OBLIGATIONS FOR PAD C – THE VILLAGE AT LEE BRANCH – PHASE II DATED AS OF JUNE 21, 2004 AND RECORDED JUNE 24, 2004 AS DOCUMENT NUMBER 20040624000345540.



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