

This instrument was prepared by  
and should be returned to:  
Tyler Hill, Attorney  
Hill Ward Henderson  
Post Office Box 2231  
Tampa, Florida 33601

20181102000390410  
11/02/2018 03:50:55 PM  
ASSIGN 1/8

### **ASSIGNMENT OF RENTS AND LEASES**

THIS ASSIGNMENT OF RENTS AND LEASES (the “**Assignment**”) is made on November 1, 2018, by GREYSTONE WAY LLC, a Florida limited liability company (“**Assignor**”), whose address is 1801 S. Keene Road, Clearwater, Florida 33756, to and in favor of BRANCH BANKING AND TRUST COMPANY, a North Carolina banking corporation (“**Assignee**”), whose address is 400 N. Tampa Street, Suite 2500, Tampa, Florida 33602.

### **W I T N E S S E T H:**

WHEREAS, Assignor is indebted to Assignee for money borrowed in the aggregate sum of Twelve Million Nine Hundred Sixty Thousand Dollars (\$12,960,000.00) (the “**Loan**”), pursuant to the terms of that certain Construction Loan Agreement dated this date, made between Assignor and Assignee (the “**Loan Agreement**”), and evidenced by that certain Promissory Note dated this date, in the original principal amount of Twelve Million Nine Hundred Sixty Thousand Dollars (\$12,960,000.00), made by Assignor to the order of Assignee (the “**Note**”) and secured by that certain the Mortgage and Security Agreement dated this date from Assignor to Assignee (the “**Mortgage**”) creating a lien on those certain Premises more particularly described on **Exhibit A** attached hereto and made a part hereof (the “**Property**”); and

WHEREAS, Assignee is willing to make said Loan, provided, among other things, that Assignor assign to Assignee its right, title and interest in and to the rents, issues, profits, revenues, royalties, rights and benefits from the Property; and

WHEREAS, Assignor is willing to make such assignment on the terms and conditions hereof as an inducement to Assignee to make such Loan.

NOW, THEREFORE, in consideration of the Loan, the sum of Ten Dollars (\$10.00), and for other good and valuable considerations, the receipt whereof are hereby acknowledged, Assignor hereby agrees as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference.

2. Assignment. Assignor hereby grants, conveys, transfers and assigns to Assignee all of its right, title and interest in and to (i) the rents, reimbursements, income, issues, profits, revenues, royalties, rights and benefits arising now and hereafter from the Property (collectively the “**Rents and Profits**”), together with any and all existing and future leases upon all or any part of the Property and together with any and all amendments, extensions, guarantees of the tenants’ obligations thereunder, and all renewals, modifications and replacements thereof (collectively, the “**Leases**”), and (ii) any and all monies, awards or other payments made or payable by any and all tenants under the leases either in lieu of rent or on account of or arising from any default by any tenant under any lease, including, but not limited to, any damages (all such monies, award or payments, including but not limited to, damages, are collectively referred to herein as the “**Damages**”).

3. Purpose of Assignment. This Assignment is made for the purpose of securing payment of the indebtedness evidenced by the Note, together with all other sums with interest becoming due and payable to Assignee under the provisions hereof or of the Note and Mortgage (including, but not limited to, any future advance under the Mortgage) and the performance and discharge of the obligations, covenants and agreements of Assignor contained herein or in the Loan Agreement, Note, Mortgage or any other instrument or agreement now or hereafter executed by Assignor as security for the repayment of the above described indebtedness (collectively, the “**Loan Documents**”).

4. Representations and Warranties. Assignor hereby represents and warrants that:

(a) Assignor has the right, power and capacity to make this Assignment and that no person, firm or corporation or other entity other than Assignor has or will have any right, title or interest in or to the Leases or the Rents and Profits.

(b) With respect to each Lease in effect at the date hereof: (i) the Lease is in full force and effect and is valid, binding and enforceable in accordance with its terms; (ii) the Lease has not been modified or amended in any respect, nor has any provision thereof been waived; (iii) neither the tenant nor lessor thereunder is in default under the terms of the Lease; (iv) no rent has been prepaid under the Lease for more than one month in advance; (v) the tenant thereunder has no deduction, claim, counterclaim, set-off, or defense against the lessor thereunder or against the rents or other sums payable or to be payable thereunder.

5. Covenants.

(a) Assignor shall not, without the prior written consent of Assignee, which consent shall not be unreasonably withheld or delayed, (i) enter into, or consent to or permit the assignment or subletting of, any Leases; (ii) modify, extend, cancel, consent to any surrender, or in any way alter the terms of the Leases; (iii) alter, modify, change or terminate the terms of any guaranties of the Leases; (iv) create or permit any lien or encumbrance which, upon foreclosure, would be superior to any such Leases or in any other manner impair Assignee’s rights and interest with respect to the Rents and Profits; (v) pledge, transfer, mortgage or otherwise encumber or assign the Leases or the Rents and Profits; or (vi) collect rents more than thirty (30) days prior to their due date.

(b) Assignor shall, at its sole cost and expense, perform and discharge all of the obligations and undertakings of the landlord under the Leases. Assignor shall enforce or secure the performance of each and every obligation and undertaking of the tenants under the Leases. Assignor shall give prompt written notice to Assignee of any and all material defaults of any of the tenants under any and all of the Leases, together with a complete copy of any and all notices delivered as a result of such default.

(c) Assignor agrees, from time to time, to execute and deliver, upon demand, all assignments and any and all other writings as Assignee may reasonably deem necessary or desirable to carry out the purpose and intent hereof, or to enable Assignee to enforce any right or rights hereunder.

6. Events of Default. The term “**Event of Default**” as used herein shall mean the occurrence of any one of the following:

(a) If Assignor shall fail to comply with any of the covenants, duties or obligations of Assignor herein and such default shall continue for thirty (30) days or more after written notice to Assignor from Assignee specifying the nature of such default;

(b) If a default shall occur under the Note, the Mortgage or any Loan Document and shall not be cured within any applicable curative period as stated therein; or

(c) If any representation or warranty made by Assignor herein was false or misleading in any material respect when made.

7. Revocable License to Collect Rents.

(a) Notwithstanding any provision to the contrary contained elsewhere herein, so long as no Event of Default has occurred and subject to paragraph 6 hereof, Assignor shall have a license to manage the Property; to collect, receive and use all Rents and Profits in accordance with the terms of the Leases; to let the Property and to take all actions which a reasonable and prudent landlord would take in enforcing the provisions of the Leases. From and after the occurrence of an Event of Default (whether or not Assignee shall have exercised Assignee’s option to declare the Note immediately due and payable), such license shall be automatically revoked without any action required by Assignee.

(b) Any amounts received by Assignor or its agents in the performance of any acts prohibited by the terms of this Assignment, including but not limited to any amounts received by Assignor as rents, income, issues or profits from the Property from and after the later of the occurrence of an Event of Default under this Assignment, the Note, the Mortgage or any of the other Loan Documents, shall be held by Assignor as trustee for Assignee and all such amounts shall be accounted for to Assignee and shall not be commingled with other funds of Assignor. Any person acquiring or receiving all or any portion of such trust funds shall acquire or receive the same in trust for Assignee as if such person had actual or constructive notice that such funds were impressed with a trust in accordance herewith.

8. Remedies of Assignee. Upon the occurrence of any Event of Default, Assignee in person or by agent or by court-appointed receiver may, at its option, without any action on its part being required, without in any way waiving such default, with or without the appointment of a receiver, or an application therefor:

(a) take possession of the Property and have, hold, conduct tests of, manage or hire a manager to manage, lease and operate the Property, on such terms and for such period of time as Assignee may deem proper, with full power to make, from time to time, all alterations, renovations, repairs or replacements thereto as may seem proper to Assignee;

(b) immediately and without notice to Assignor, with or without taking possession of the Property, notify tenants under the Leases or any other parties in possession of the Property to pay Rents and Profits directly to Assignee, its agent or a court-appointed receiver, and collect and receive all such Rents and Profits and apply them to the payment of:

(i) all costs and expenses incident to: taking and retaining possession of the Property, management and operation of the Property, keeping the Property properly insured and all alterations, renovations, repairs and replacements to the Property;

(ii) the indebtedness secured hereby; together with all costs and attorney's fees, in such order or priority as to any of such items as Assignee in its sole discretion may determine, any statute, law, custom or use to the contrary notwithstanding.

(c) commence, appear in and/or defend any action or proceedings purporting to affect the interests, rights, powers and/or duties of Assignee hereunder, whether brought by or against Assignor or Assignee;

(d) pay, purchase, contest or compromise any claim, debt, lien, charge or encumbrance which in the judgment of Assignee may affect or appear to affect the interest of Assignee or the rights, powers and/or duties of Assignee hereunder; and

(e) take any additional actions or exercise any additional powers granted to Assignor by any law.

The receipt by Assignee of any Rents and Profits pursuant to this Assignment after the institution of foreclosure proceedings under the Mortgage shall not cure any such Event of Default or affect such proceedings or any sale pursuant thereto.

9. Indemnity and Assignee's Disclaimer. Assignor shall and does hereby agree to indemnify Assignee for and to defend and hold Assignee harmless from any and all liability, loss or damage which Assignee may or might incur under the Leases or under or by reason of this Assignment, and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligations or undertakings on Assignee's part to perform or discharge any of the terms, covenants or agreements contained in the Leases. Should Assignee incur any liability, loss or damage under the Leases or under or by reason of this Assignment, or

in the defense of any of such claims or demands, the amount thereof, including costs, expenses and attorney's fees, shall be secured hereby; and Assignor shall reimburse Assignee therefor immediately upon demand, and upon failure of Assignor to do so, Assignee may declare all sums so secured to be immediately due and payable.

This Assignment shall not be deemed or construed to constitute Assignee as mortgagee-in-possession of the Property or to obligate Assignee to take any action hereunder, to incur expenses or to perform or discharge any obligation, duty or liability hereunder or under the Leases and Assignee is not required to take possession of the Property as a condition to the assignment contained herein.

10. Waiver and Discretion. The failure of Assignee to enforce any of the terms, covenants or conditions hereof shall not be construed or deemed to be a waiver of any rights or remedies hereunder. Assignee shall have the full right, power and authority to enforce this Assignment, or any of the terms, covenants or conditions hereof, at any time or times that Assignee shall deem fit.

11. Notices. Any notice required or permitted to be given under this Agreement shall be in writing and shall be sent in accordance with the terms of the Mortgage.

12. Performance and Release. The full repayment of the indebtedness evidenced by the Note and the performance of all of the obligations set forth in the Mortgage and the duly recorded release thereof or reconveyance of the Property described therein shall constitute a reassignment of the Leases hereby assigned to Assignee.

13. Binding Effect. This Assignment applies to and binds the parties hereto and their respective heirs, administrators, executors, successors and assigns, as well as any subsequent owner of the Property (or any portion thereof) and any agreement creating rights in Assignee other than those created herein shall be deemed incorporated herein by reference and made a part hereof for all purposes.

14. Actions by Assignee. Assignee may take or release other security, may release any party primarily or secondarily liable for any indebtedness secured hereby, may grant extensions, renewals or indulgences with respect to such indebtedness, and may apply any other security therefor held by it to the satisfaction of such indebtedness, without prejudice to any of its rights hereunder.

15. No Election of Remedies. Nothing herein contained and no act done or omitted by Assignee pursuant to the powers and rights granted it herein shall be deemed to be a waiver by Assignee of its rights and remedies under the Note and Mortgage, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Assignee under the terms thereof.

16. Miscellaneous. In this Assignment, whenever the context so requires, the masculine gender includes the feminine or neuter, and the singular number includes the plural. Neither this Assignment nor pursuit of any remedy hereunder by Assignee shall cause or constitute a merger of the interests of the tenant and the lessor under any of the Leases such that any of the Leases hereby assigned are no longer valid and binding legal obligations of the parties executing

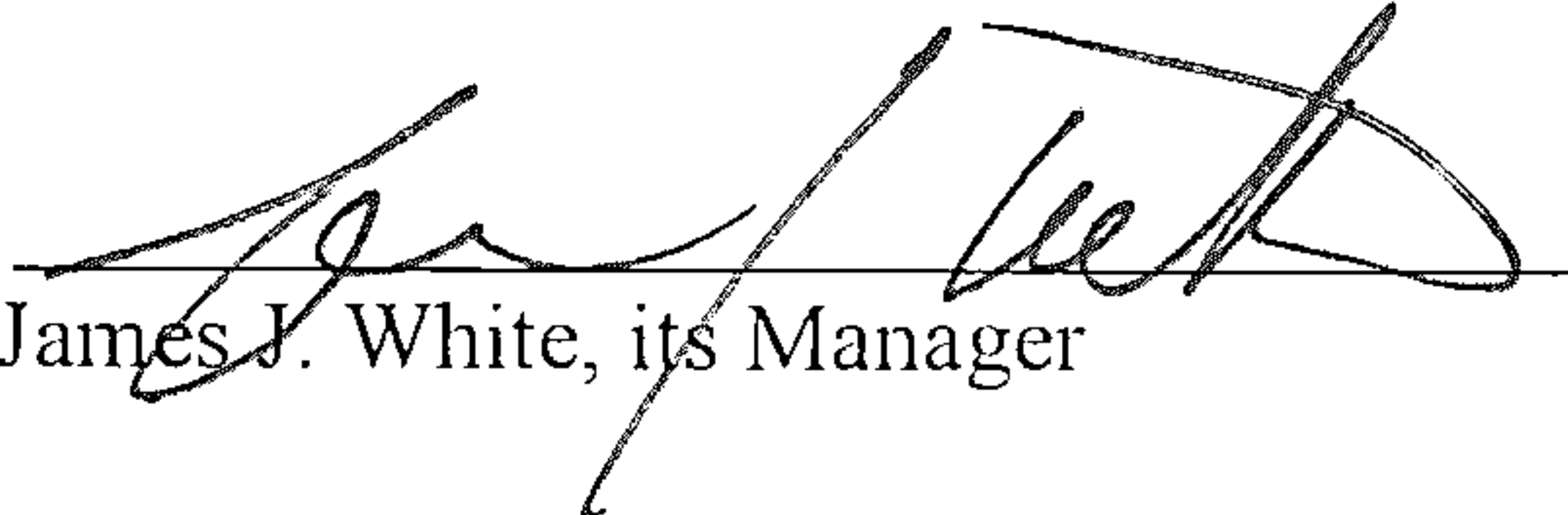
the same. This Assignment shall be governed by and construed under the laws of the state in which the Property is located. The United States District Court for the District in which the Property is located and any court of competent jurisdiction of the State in which the Property is located shall have jurisdiction in any action, suit or other proceeding instituted to enforce the Note, the Mortgage, and this Assignment. Assignor hereby waives (a) any objections to the jurisdiction of such courts, (b) any objections to venue and (c) its right to a trial by jury in any action, proceeding or counterclaim brought by Assignee. In the event any one or more of the provisions contained in this Assignment shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Assignment shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein, but only to the extent that it is invalid, illegal or unenforceable. This Assignment may not be amended or modified orally, but only by an agreement in writing signed by the party against whom enforcement of any amendment or modification is sought.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Assignor has caused this instrument to be executed as of the date first above written.

ASSIGNOR:

GREYSTONE WAY LLC, a Florida limited liability company

By:   
James J. White, its Manager

STATE OF FLORIDA                     )  
  )  
COUNTY OF HILLSBOROUGH        )

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that **James J. White**, whose name as Manager of GREYSTONE WAY LLC, a Florida limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing instrument, he, as such Manager and with full authority, executed the same voluntarily and as the act of said limited liability company.

Witness my hand and official seal, this the 30<sup>th</sup> day of October, 2018.

[NOTARIAL SEAL]

Notary Public 

My Commission Expires: \_\_\_\_\_

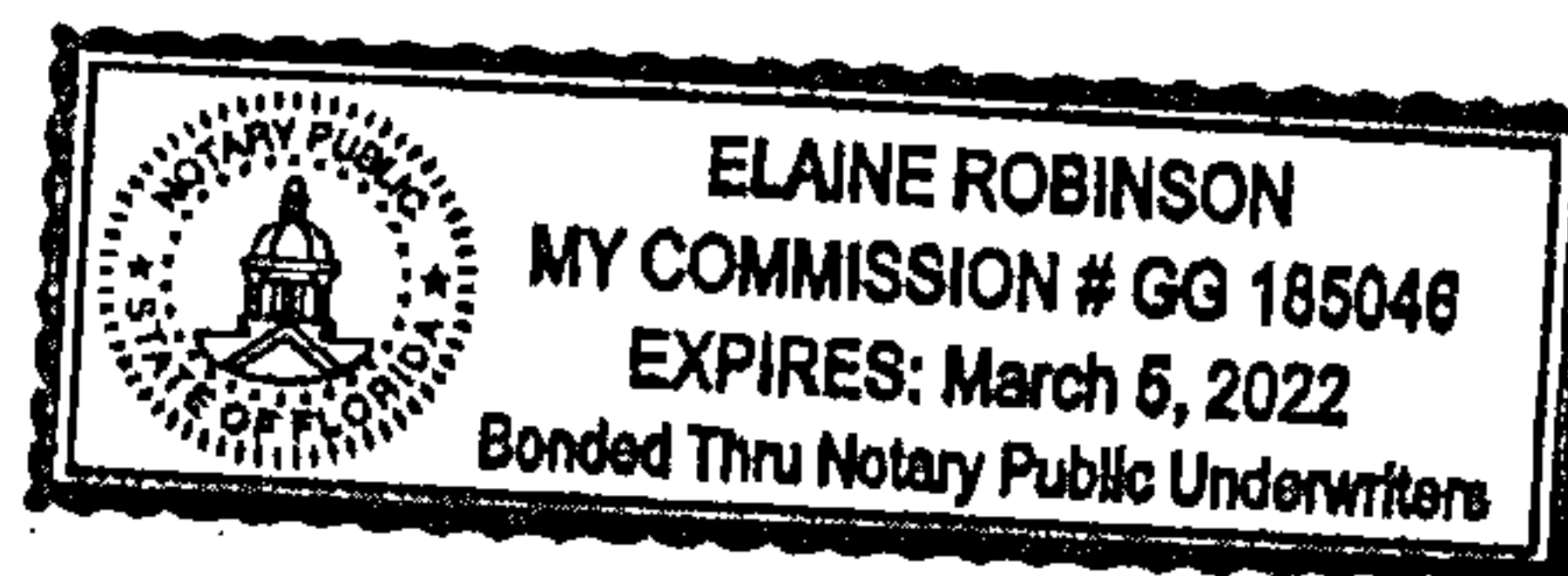


EXHIBIT A

**FEE SIMPLE PARCEL:**

Lot 8, according to the Survey of Tattersall Park Resurvey No. 3, as recorded in Map Book 49, pages 81A and 81B, in the Probate Office of Shelby County, Alabama.

**EASEMENT PARCEL #1:**

TOGETHER WITH Easement for access, drainage and utilities under that certain Restrictive Use and Reciprocal Easement Agreement between EBSCO Industries, Inc., and Greystone Way, LLC, recorded in Instrument 20181102000389880 in the Probate Office of Shelby County, Alabama.

**EASEMENT PARCEL #2:**

TOGETHER WITH drive easement as set out in Access Agreement by and between EBSCO Industries, Inc. and Greystone Way, LLC recorded in Instrument 20181102000899890, in the Probate Office of Shelby County, Alabama.



Filed and Recorded  
Official Public Records  
Judge of Probate, Shelby County Alabama, County  
Clerk  
Shelby County, AL  
11/02/2018 03:50:55 PM  
\$36.00 CHERRY  
20181102000390410

*Allen S. Bayl*