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**05/13/2021 02:37:52 PM**  
**SUBAGREM 1/12**

Drafted, drawn & prepared for or by,

Recording requested by, and

When recorded return to:

WELLS FARGO BANK,  
NATIONAL ASSOCIATION  
Wells Fargo Commercial Mortgage Servicing  
401 S. Tryon Street, 8th Floor  
Charlotte, North Carolina 28202  
Facsimile No.: 704-715-0034

ATTN: CMO Loan Admin.  
Loan No.: 33-0934773

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**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT  
AGREEMENT**

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Parties to the Document:

TENANT:	BURLINGTON COAT FACTORY WAREHOUSE CORPORATION
OWNER:	G&I IX BROOK HIGHLAND LLC
GUARANTOR:	NONE
LENDER:	WELLS FARGO BANK, NATIONAL ASSOCIATION

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Property: 5201-5291 US 280, Birmingham, Alabama, 35242

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**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

Tenant's Trade Name: Burlington Stores

**NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR LEASEHOLD ESTATE IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF THE MORTGAGE (DEFINED BELOW).**

This SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement") is made as of April 21, 2021, by and between **BURLINGTON COAT FACTORY WAREHOUSE CORPORATION**, a Florida corporation ("Tenant"), and **WELLS FARGO BANK, NATIONAL ASSOCIATION** (together with its successors and assigns, "Lender"), with reference to the following facts and intentions of the parties:

**RECITALS**

- A. G&I IX BROOK HIGHLAND LLC, a Delaware limited liability company ("Owner") is the owner of the land and improvements commonly known as 5201-5291 US 280, Birmingham, Alabama 35242 and more specifically described in Exhibit A attached hereto ("Property") and the owner of the landlord's interest in the Lease identified in Recital B below.
- B. Tenant is the owner of the tenant's interest in that lease dated March 31, 2021, (referred to herein as the "Lease").
- C. Lender has made a loan to Owner ("Loan"), which is secured by, among other things, a mortgage, deed of trust, trust indenture, or deed to secure debt encumbering the Property ("Mortgage") and an assignment of leases and rents ("Assignment of Leases") covering the Property.
- D. Tenant has agreed that the Lease shall be subject and subordinate to the lien of the Mortgage held by Lender, provided Tenant is assured of continued occupancy of the Property under the terms of the Lease as hereinafter provided.
- E. Tenant and Lender desire to confirm their understanding with respect to the Lease and the Security Instrument, and to have Landlord confirm its agreement therewith.
- F. THEREFORE, the parties agree as follows:

1. **SUBORDINATION.**

- 1.1 **Subordination.** The lien of the Lease and all of the terms, covenants, and provisions thereof, and all rights, remedies and options of Tenant thereunder (including, without limitation, any preferential rights contained in the Lease, or otherwise existing, to acquire any or all of the Property, or any superior leasehold interest therein) are and shall at all times continue to be subject and subordinate in all respects to the terms, covenants, and provisions of the Mortgage as of the date hereof, including without limitation, all renewals, increases, modifications, spreaders, consolidations, replacements, and extensions thereof and to all sums secured thereby and advances made thereunder with the same force and effect as if the Mortgage had been executed, delivered, and recorded prior to the execution and delivery of the Lease. Tenant acknowledges that Owner delivered to Lender an Assignment of Leases as security for the Loan, and Tenant hereby expressly consents to such assignment. Tenant agrees that if there is a default by Owner in the performance and observance of any of the terms of the Loan, Lender may, at its option, demand in writing that all rents due under the Lease be paid by Tenant directly to Lender at the address specified by Lender. Tenant agrees that upon Lender's written request for payment of rent directly to Lender, Tenant will timely remit any and all payments due under the Lease directly to, and payable to the order of, Lender. Such payments to Lender will

constitute performance of Tenant's payment obligations under the Lease. Tenant acknowledges and agrees that it has no right or option of any nature whatsoever, whether pursuant to the Lease or otherwise, to purchase the leased premises or the Property, or any portion thereof or any interest therein, and to the extent that Tenant has had, or hereafter acquires, any such right or option, the same is hereby acknowledged to be and is hereby waived and released as against Lender.

1.2 **Intentionally omitted.**

1.3 **Entire Agreement.** This Agreement shall be the whole agreement and only agreement with regard to the subordination of the Lease to the Mortgage, and shall supersede and cancel, but only insofar as would affect the priority between the Mortgage and the Lease, any prior agreements as to such subordination, including, without limitation, those provisions, if any, contained in the Lease which provide for the subordination of the Lease to a deed or deeds of trust, a mortgage or mortgages, a deed or deeds to secure debt or a trust indenture or trust indentures.

1.4 **Intentionally omitted.**

1.5 **Intentionally omitted.**

2. **NON-DISTURBANCE AND ATTORNMENT.**

2.1 **Non-Disturbance.** Notwithstanding anything to the contrary contained in the Lease, so long as there shall exist no breach, default or event of default (beyond any period given to Tenant in the Lease to cure such default) on the part of Tenant under the Lease at the time of any foreclosure of the Mortgage, Lender agrees that the leasehold interest of Tenant under the Lease shall not be terminated by reason of such foreclosure, but rather the Lease shall continue in full force and effect and Lender shall recognize and accept Tenant as tenant under the Lease subject to the provisions of the Lease. Nothing contained herein shall prevent Lender from naming Tenant in any foreclosure or other action or proceeding initiated by Lender pursuant to the Mortgage solely to the extent necessary under applicable law in order for Lender to avail itself of and complete the foreclosure or other remedy.

2.2 **Attornment.** Notwithstanding anything to the contrary contained in the Lease, should title to the leased premises and the landlord's interest in the Lease be transferred to Lender or any other person or entity ("**New Owner**") by foreclosure of the Mortgage, by conveyance instrument in-lieu of foreclosure of the Mortgage, or otherwise, Tenant agrees, for the benefit of New Owner and effective immediately and automatically upon the occurrence of any such transfer, that:

(a) Tenant shall pay to New Owner all rental payments required to be made by Tenant pursuant to the terms of the Lease for the remainder of the term of the Lease;

(b) Tenant shall be bound to New Owner in accordance with all of the provisions of the Lease for the remainder of the term of the Lease;

(c) Tenant shall attorn to New Owner as its landlord, such attornment to be effective and self-operative without the execution of any further instruments;

(d) **Intentionally omitted;**

(e) excluding any offsets relating to Tenant exercising self-help in an emergency, New Owner shall not be subject to any claims, offsets or defenses which Tenant might have against any prior landlord (including Owner), unless Lender was given notice and opportunity to cure as set forth herein;

(f) New Owner shall not be obligated to complete any construction work required to be done by any prior landlord (including Owner) pursuant to the provisions of the Lease or to reimburse Tenant for any construction work done by Tenant but the foregoing in no way waives any of the delivery requirements set forth in the Lease and Tenant will not be obligated to accept delivery if all delivery conditions have not been satisfied;

(g) New Owner shall not be required to make any repairs to the Property or the leased premises required as a result of fire or other casualty or by reason of condemnation unless New Owner shall be obligated under the Lease to make such;

(h) Intentionally omitted;

(i) New Owner shall not be liable for any act, omission or default of any prior landlord (including Owner) unless such act or omission is of a continuing nature and Lender was given notice and an opportunity to cure such act or omission in accordance with the terms of this Agreement;

(j) New Owner shall not be bound by any rent or additional rent which Tenant might have paid for more than the current month or any security deposit or other prepaid charge paid to any prior landlord (including Owner);

(k) New Owner shall not be bound by any amendment or modification of the Lease made without its written consent (which consent shall not be unreasonably withheld, conditioned or delayed) which (i) reduces the amount of rent payable under the Lease; (ii) changes the date upon which the then current term of the Lease would expire; or (iii) increases Landlord's repair and maintenance obligations under the Lease; and

(l) New Owner shall not be liable for any obligations of landlord (including Owner) arising under the Lease following any subsequent transfer of the title to the leased premises by New Owner.

3. **LEASE DEFAULTS.** In the event Owner shall fail to perform or observe any of the terms, conditions or agreements in the Lease, Tenant shall give written notice thereof to Lender, however, failure to give such notice shall not be a default under this Agreement or the Lease but shall only be ineffective as to Lender until given. Tenant agrees that Lender has the right (but not the obligation) to cure any breach or material default specified in such notice within fifteen (15) business days from and after the expiration date of the time period provided in the Lease for the cure thereof by Landlord; provided, however, that if such default cannot with diligence be cured by Lender within such fifteen (15) business day period, the commencement of the cure by Lender within such fifteen (15) business day period to remedy the same shall be deemed sufficient so long as Lender pursues such cure with diligence. Tenant will accept performance by Lender of any term of the Lease required to be performed by Owner with the same force and effect as though performed by Owner, although Lender shall in no event be required to do so. Lender's cure rights are subject to Tenant's right to immediately exercise any emergency self-help rights provided under the Lease

4. **OBLIGATIONS AND LIABILITY OF LENDER.** In the event that Lender shall acquire Owner's interest in the Property, Lender shall have no obligation, nor incur any liability, beyond Lender's interest in the Property, and Tenant shall look exclusively to such interest of Lender in the Property for the payment and discharge of any obligations or liability imposed upon Lender hereunder, under the Lease (or under any new lease with Tenant), and Lender is hereby released and relieved of any other obligations or liability hereunder, under the Lease or under any such new lease. In no event shall Lender or any of its affiliates, officers, directors, shareholders, or employees ever be personally be liable for any such obligation, liability or judgment. Lender shall not, either by virtue of the Mortgage, the Assignment of Leases or this Agreement, be or become a mortgagee in possession or be or become subject to any liability or obligation under the Lease or otherwise until Lender shall have acquired the Owner's interest in the Property, by foreclosure or otherwise, and then such liability or obligation of Lender under the Lease (as modified by the terms of this Agreement) shall extend only to those liabilities or obligations accruing subsequent to the date that Lender has acquired Owner's interest in the Property. Without limiting the generality of the foregoing, neither the



Mortgage, the Assignment of Leases nor this Agreement shall, prior to Lender's acquisition of Owner's interest in the Property, by foreclosure or otherwise, operate to place responsibility for the control, care, management or repair of the Property upon Lender or impose upon Lender responsibility for the carrying out of any of the terms or conditions of the Lease, and Lender shall not be responsible or liable for any waste committed on either the leased premises or the Property by any party whatsoever, for any dangerous or defective condition of the Property or for any negligence in the management, upkeep, repair or control of either the leased premises or the Property. Notwithstanding anything contained in this Agreement or the Lease to the contrary, upon Lender's transfer or assignment of Lender's interests in the Loan, the Lease (or any new lease executed pursuant to this Agreement), or the Property, Lender shall be deemed released and relieved of any obligations under this Agreement, the Lease (or any new lease executed pursuant to this Agreement), and with respect to the Property.

5. **MISCELLANEOUS.**

5.1 **Reliance by Lender.** Intentionally omitted.

5.2 **Heirs, Successors and Assigns.** The covenants herein shall be binding upon, and inure to the benefit of, the heirs, successors and assigns of the parties hereto. Whenever necessary or appropriate to give logical meaning to a provision of this Agreement, the term "Owner" shall be deemed to mean the then current owner of the Property and the landlord's interest in the Lease.

5.3 **Addresses; Request for Notice.** So long as the Mortgage remains outstanding and unsatisfied, Tenant will mail or deliver to Lender, at the address and in the manner herein below provided, a copy of all notices given to the Owner by Tenant under and pursuant to the terms and provisions of the Lease. All notices and other communications that are required or permitted to be given to a party under this Agreement shall be in writing and shall be sent to such party, either by personal delivery, by overnight delivery service, by certified first class mail, return receipt requested, or by facsimile transmission, to the address or facsimile number below. All such notices and communications shall be effective upon receipt of such delivery or facsimile transmission. The addresses and facsimile numbers of the parties shall be:

**Owner:**

G & I IX BROOK  
HIGHLAND LLC c/o DLC  
Management Corporation  
565 Taxter Road, 4<sup>th</sup> Floor  
Elmsford, New York 10523  
Attn: General Counsel  
Tel. No.: 914-631-3131  
Fax No.: 914-560-2298

**Tenant:**

Burlington Coat Factory  
Warehouse Corporation  
1830 Route 130 North  
Burlington, New Jersey  
08016  
Attn: Legal Department

**With a copy to:**

Attn: Lease Administration  
Tel. No.: 609-387-7800

**Lender:**

Wells Fargo Bank, National  
Association  
Wells Fargo Commercial  
Mortgage Servicing  
Charlotte, North Carolina  
Facsimile No.: 1-704-715-0034  
Loan No.: 33-0934773

provided, however, any party shall have the right to change its address for notice hereunder by the giving of written notice thereof to the other party in the manner set forth in this Agreement.

5.4 **Invalid or Inoperative Provisions.** If any portion or portions of this Agreement shall be held invalid or inoperative, then all of the remaining portions shall remain in full force and effect, and, so far as is reasonable and possible, effect shall be given to the intent manifested by the portion or portions held to be invalid or inoperative.

5.5 **GOVERNING LAW; JURISDICTION.**

- a. THE PARTIES AGREE THAT THIS AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE WHERE THE PROPERTY IS LOCATED WITHOUT REFERENCE TO THE CHOICE OF LAW PRINCIPLES THEREOF, AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, OWNER AND TENANT HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVE ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT.
  - b. ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER, OWNER OR TENANT ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE COUNTY WHERE THE PROPERTY IS LOCATED, AND EACH PARTY HERETO WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND EACH PARTY HERETO HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING.
- 5.6 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute and be construed as one and the same instrument.
- 5.7 **Section Headings.** Section headings in this Agreement are for convenience only and are not to be construed as part of this Agreement or in any way limiting or applying the provisions hereof.
- 5.8 **Attorneys' Fees.** If any legal action, suit or proceeding is commenced between Tenant and Lender regarding their respective rights and obligations under this Agreement, the prevailing party shall be entitled to recover, in addition to damages or other relief, costs and expenses, reasonable attorneys' fees and court costs (including, without limitation, expert witness fees). As used herein, the term "prevailing party" shall mean the party which obtains the principal relief it has sought, whether by compromise settlement or judgment. If the party which commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.
- 5.9 **Binding Nature.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors, successors-in-title and assigns. When used herein, the term "Owner" refers to the landlord under the Lease and owner of the Property and to any successor to the interest of landlord or owner of the Property and "Lender" refers to Lender and to any assignee or subsequent holder of the note secured by the Mortgage (whether by assignment, secondary market transaction, or otherwise) and Lender's servicer of the Loan, if any.
6. **INCORPORATION.** Exhibit A and the Owner's Consent are attached hereto and incorporated herein by this reference.

[Signature Pages to Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**NOTICE: THIS AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE OWNER TO OBTAIN A LOAN, THE PROCEEDS OF WHICH MAY BE EXPENDED FOR PURPOSES OTHER THAN THE IMPROVEMENT OF THE PROPERTY.**

**LENDER:**

**WELLS FARGO BANK, NATIONAL ASSOCIATION**

By: 

Name: \_\_\_\_\_

Wayne Cole

[Authorized Signor]

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

)  
) ss.:  
)

*see attached*

On the \_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and he acknowledged to me that he executed the same his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

Clear/Reset

WELLS  
FARGO

## All-purpose Acknowledgment California

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

State of California

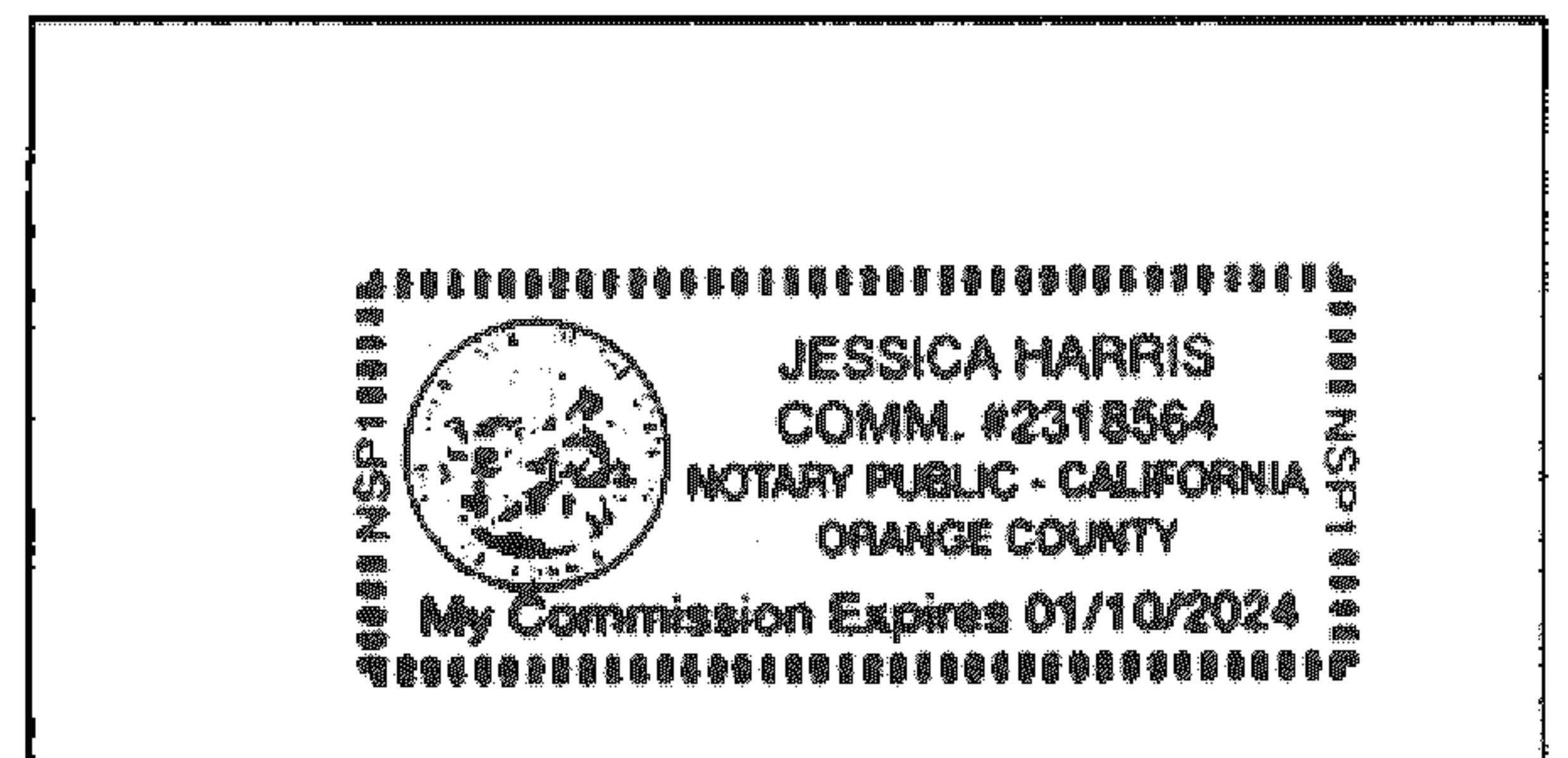
County of Orange

On 4/19/21 before me, Jessica Harris, notary public (here insert name and title of the officer),

personally appeared Wayne Cable

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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



Notary Seal

WITNESS my hand  
and official seal.

Signature [Handwritten Signature]

### For Bank Purposes Only

Description of Attached Document

Type or Title of Document Subordination, Non-Disturbance and Attornment Agreement

Document Date N/A Number of Pages 11

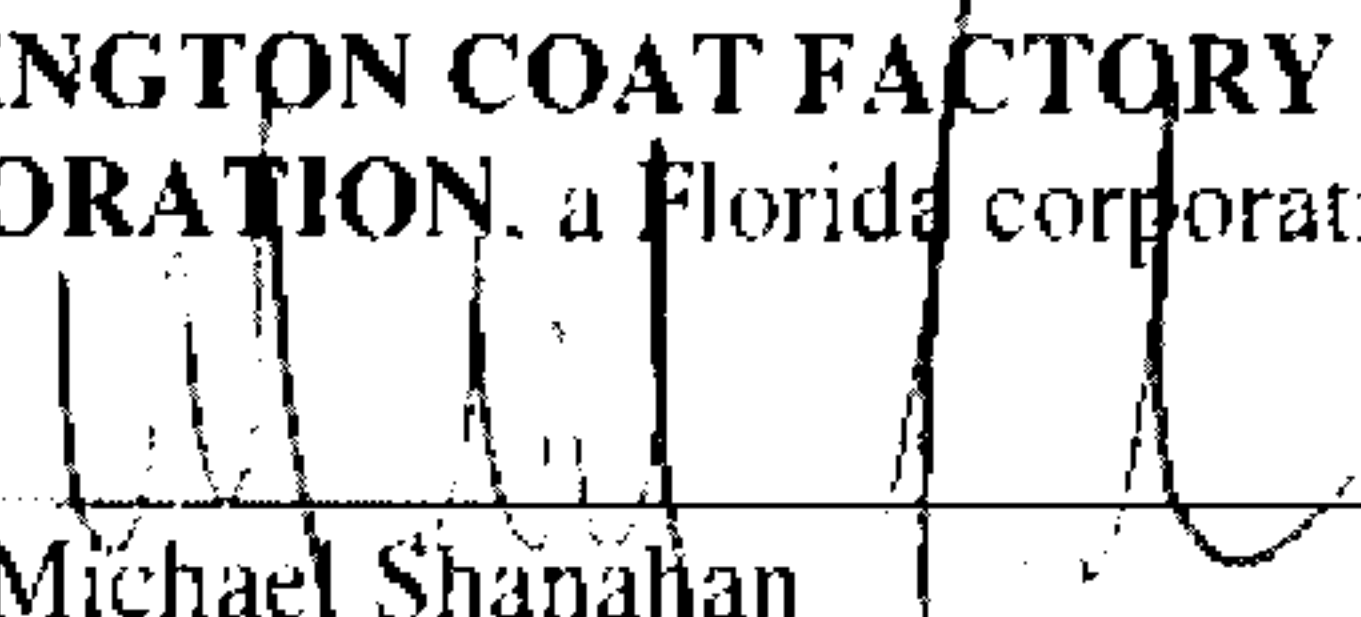
Signer(s) Other Than Named Above N/A

Account Number (if applicable) N/A



**TENANT:**

**BURLINGTON COAT FACTORY WAREHOUSE  
CORPORATION**, a Florida corporation

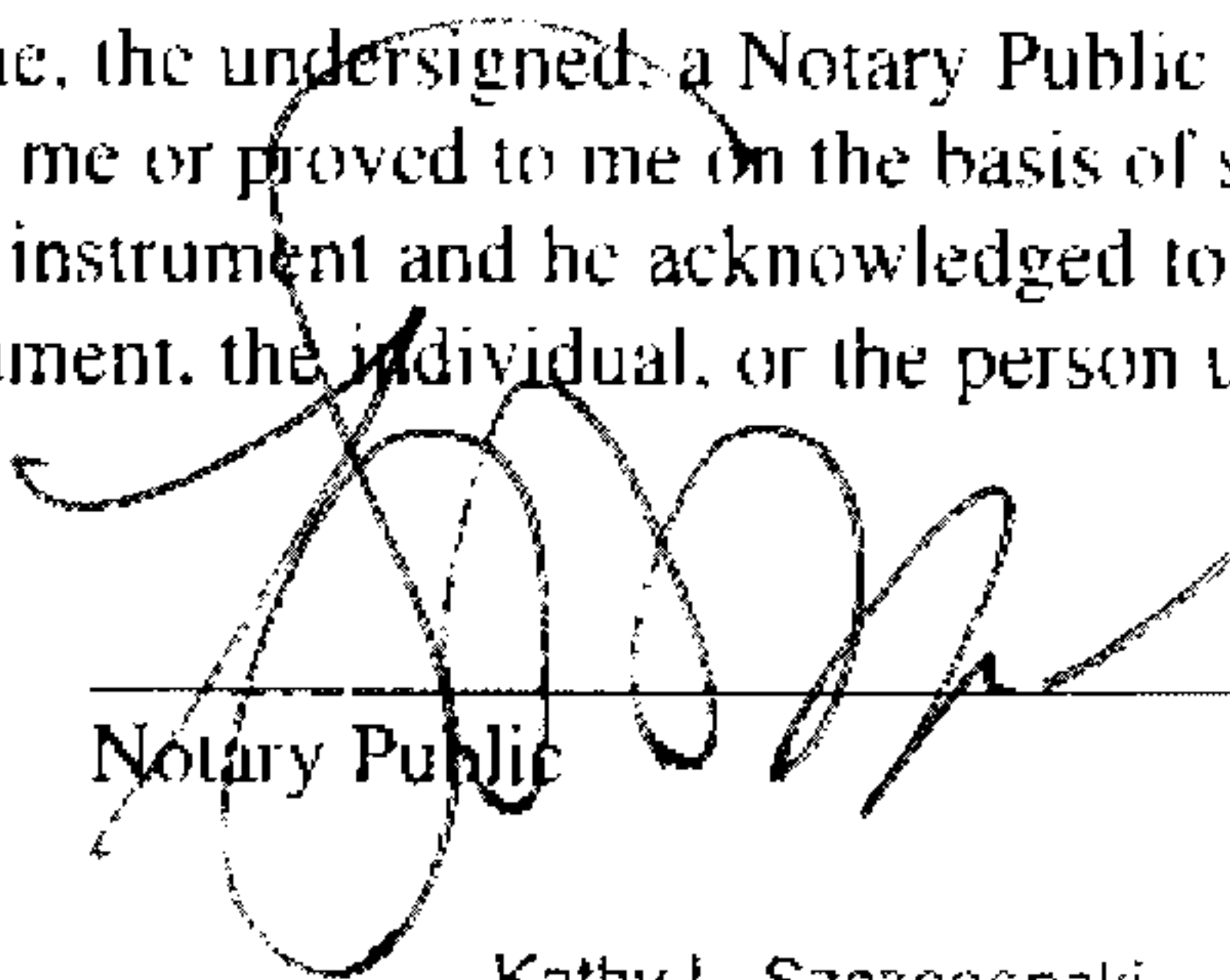
By:   
Name: Michael Shanahan  
Title: Senior Vice President, Real Estate

STATE OF NEW JERSEY )

) ss.:

COUNTY OF BURLINGTON )

On the 21 day of April, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared Michael Shanahan personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and he acknowledged to me that he executed the same his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

Kathy L. Szczepanski  
Notary Public, State of New Jersey  
My Commission Expires May 19, 2024

**IT IS RECOMMENDED THAT, PRIOR TO THE EXECUTION OF THIS AGREEMENT, THE PARTIES  
CONSULT WITH THEIR ATTORNEYS WITH RESPECT HERETO.**

**OWNER'S CONSENT**

The undersigned, which owns the Property and the landlord's interest in the Lease, hereby consents to the execution of the foregoing SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT, and to implementation of the agreements and transactions provided for there-in.

**OWNER:**

**G&I IX BROOK HIGHLAND LLC**, a Delaware  
limited liability company

By: G&I IX Empire JV DLC LLC, a Delaware  
limited liability company, its sole member

By: G&I IX Investment Empire LLC, a  
Delaware limited liability  
company, its manager

By: Vella Brown  
Name: Vella Brown  
Title: Vice President

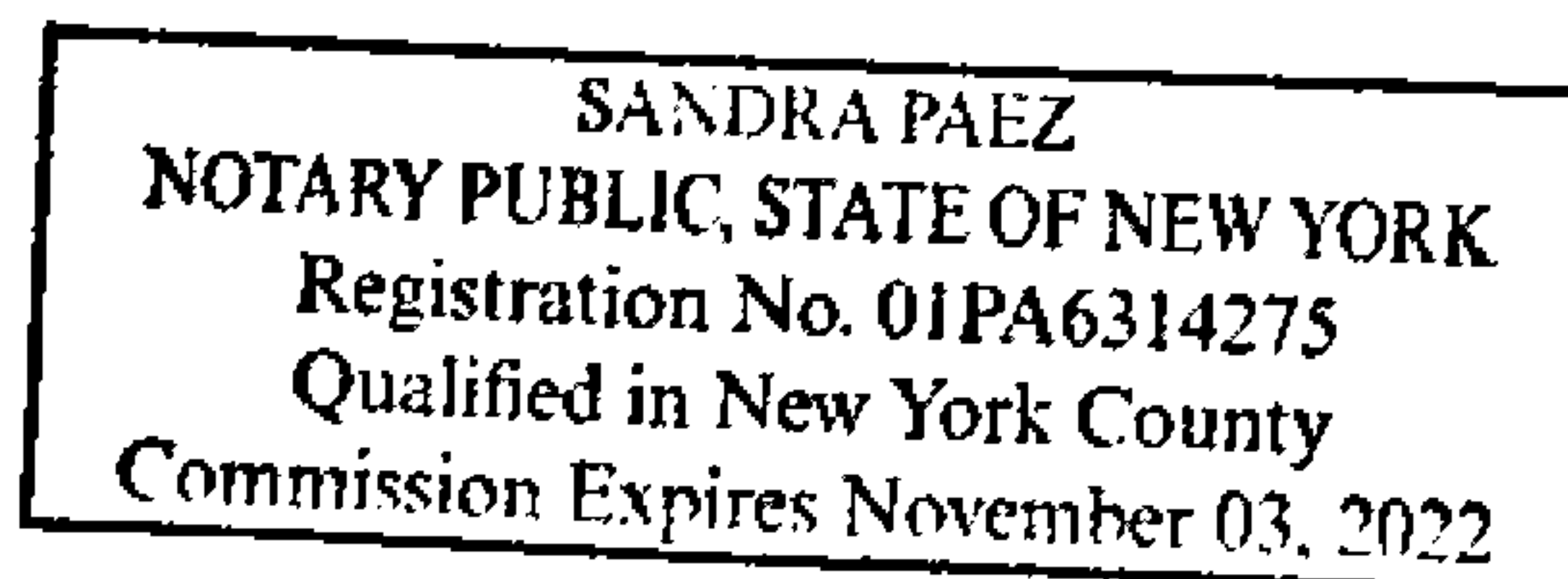
STATE OF New York )

) ss.:

COUNTY OF New York )

On the 6<sup>th</sup> day of April, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared Vella Brown personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and he acknowledged to me that he executed the same his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Sandra Paez  
Notary Public



**EXHIBIT A**

**PROPERTY/ADDRESS INFORMATION**

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Property: 5201-5291 US 280, Birmingham, Alabama, 35242

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**PARCEL I:**

Lot 1, according to the Survey of Brook Highland Plaza Resurvey, as recorded in Map Book 18, page 99, in the Probate Office of Shelby County, Alabama.

LESS AND EXCEPZTZ that part of Lot 1 which is now part of Lot 2A, according to the Lowe's Addition of Brook Highland Plaza, as recorded in Map Book 31, pages 96, in the Probate Office of Shelby County, Alabama.

**PARCEL II:**

Lot 1A, according to the Brook Highland Plaza Resurvey, as recorded in Map Book 18, page 99, in the Probate Office of Shelby County, Alabama.

**PARCEL III:**

Lot 2A, according to the Brook Highland Plaza Resurvey, as recorded in Map Book 18, page 99, in the Probate Office of Shelby County, Alabama.

**PARCEL IV:**

Lot 2B, according to the Amended Map of Lowe's Addition to Brook Highland Plaza, as recorded in Map Book 31, page 96, in the Probate Office of Shelby County, Alabama.

TOGETHER WITH all of the beneficial rights and interest in the easements under the following instruments:

(i) Declaration of Easements and Restrictive Covenants (Brook Highland Development -1.35 acre Out Parcel) by AmSouth bank, N.A., as Ancillary Trustee for NBNC National Bank of North Carolina, as trustee for the Public Employees Retirement System of Ohio, dated 8/2/1990, and recorded in Real 307, Page 985, in the Probate Office of Shelby County, Alabama.

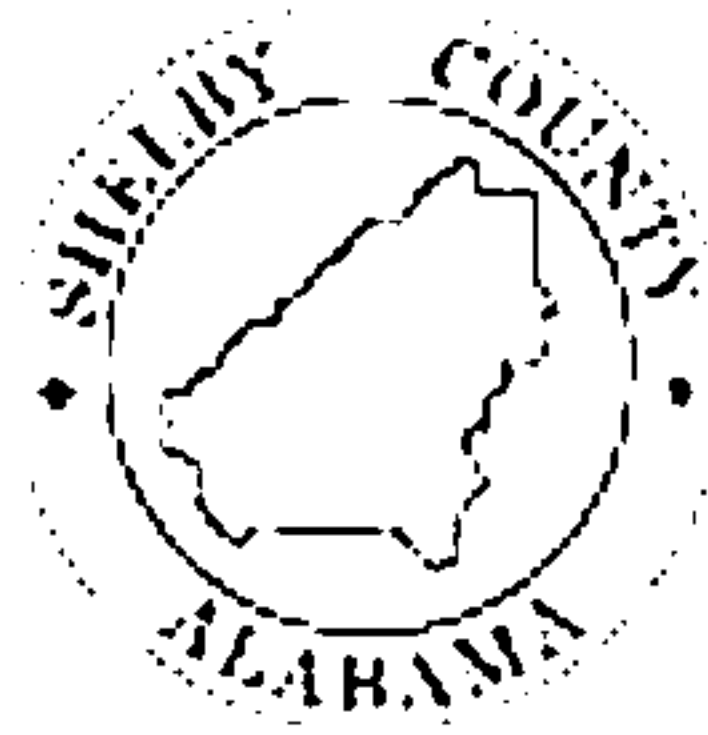
(ii) Easement Agreement dated 10-12-1993, by and between AmSouth Bank, N.A., as Ancillary Trustee for NationsBank of North Carolina, N.A., as Trustee for the Public Employees Retirement System of Ohio, and Brook Highland Limited Partnership, a Georgia Limited Partnership recorded in instrument 1993-32515, in the Probate Office of Shelby County, Alabama.

**ALSO**

All beneficial rights in easements granted to Developers Diversified of Alabama, Inc., an Alabama corporation by the "Easement Agreement" dated 12-30-1994, by and between Brook Highland Limited Partnership and Developers Diversified of Alabama, Inc., as recorded in Instrument 1994-37773 and in Instrument 1995-27233, in the Probate Office of Shelby County, Alabama.

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Non-exclusive; perpetual right and easement in and to the common property as described in Brook Highland Common Property Declaration of Covenants, Conditions and Restrictions recorded in Book 307, page 950, 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  
05/13/2021 02:37:52 PM  
\$55.00 CHERRY  
20210513000238330

*Allie S. Bayl*