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PREPARED BY, RECORDING  
REQUESTED  
BY AND WHEN  
RECORDED RETURN TO:

James L. Barkin, Esq.  
Dentons US LLP  
303 Peachtree Street, N.E.  
Suite 5300  
Atlanta, GA 30308

LSU: ALFA22-1321

**AMENDED AND RESTATED MORTGAGE, SECURITY AGREEMENT AND  
FIXTURE FILING**

**BY**

**ES 3610 HWY 31, LLC,  
a Delaware limited liability company,**

**as Borrower**

**TO**

**METLIFE REAL ESTATE LENDING LLC,  
a Delaware limited liability company,**

**as Lender**

April 13, 2022

**THE MAXIMUM PRINCIPAL AMOUNT SECURED BY THIS MORTGAGE,  
SECURITY AGREEMENT AND FIXTURE FILING SHALL IN NO EVENT EXCEED  
\$472,000,000.00, in accordance with the terms of Section 13.6.**

**DEFINED TERMS**

**Execution Date:** April 19, 2022

**Note:** Consolidated, Amended and Restated Promissory Note dated the Execution Date made by Borrower and those certain other borrowers described on Exhibit "B" attached hereto (collectively, the "Other Borrowers") to Lender in the principal amount of \$472,000,000.00.

**Lender & Address:**

MetLife Real Estate Lending LLC, a Delaware limited liability company  
One MetLife Way  
Whippany, New Jersey 07981-1449  
Attention: Senior Vice President, Real Estate Investors  
Re: Exeter Portfolio

with a copy to:

MetLife Real Estate Lending LLC  
One Alliance Center  
3500 Lenox Road NE, Suite 200  
Atlanta, GA 30326  
Attention: Regional Director  
Re: Exeter Portfolio

and:

MetLife Real Estate Lending LLC  
One Alliance Center  
3500 Lenox Road NE, Suite 200  
Atlanta, GA 30326  
Attention: Regional General Counsel  
Re: Exeter Portfolio

**Borrower & Address:**

ES 3610 Hwy 31, LLC  
c/o Exeter Property Group  
Five Radnor Corporate Center  
100 Matsonford Road, Suite 250  
Radnor, PA 19087  
Attention: Brian L. Ford

**Liabe Party & Address:**

Exeter Industrial Value Fund V, L.P.  
c/o Exeter Property Group  
Five Radnor Corporate Center

100 Matsonford Road, Suite 250  
Radnor, PA 19087  
Attention: Brian L. Ford

**County and State in which the Property is located:** Shelby County, State of Alabama (the "State").

**Loan Documents:** The Note, this Mortgage, the Other Security Instruments (as defined in Section 2.6 herein), that certain Amended and Restated Loan Agreement dated as of the Execution Date and executed by Borrower, Other Borrowers and Lender (the "Loan Agreement") and any other documents related to the Note, the Loan Agreement, this Mortgage and/or the Other Security Instruments and all renewals, amendments, modifications, restatements and extensions of these documents. Loan Documents shall not include (i) that certain Amended and Restated Unsecured Indemnity Agreement dated as of the Execution Date and executed by Borrower, Other Borrowers and Liable Party in favor of Lender (the "Indemnity Agreement") and (ii) that certain Amended and Restated Guaranty Agreement dated as of the Execution Date executed by Liable Party in favor of Lender (the "Guaranty"), which Indemnity Agreement and Guaranty are not Loan Documents and shall survive repayment of the Loan or other termination of the Loan Documents.

**Defined Terms:** Capitalized terms not defined below shall have the meanings ascribed to them in the Loan Agreement.



This AMENDED AND RESTATED MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") is entered into as of the Execution Date by Borrower to Lender with reference to the following Recitals:

#### RECITALS

A. Borrower, the Other Borrowers and Lender entered into that certain Loan Agreement dated as of October 29, 2020, as amended by that certain Consent to Transfer of Interests in Borrower, entered into and effective as of April 1, 2021, between Lender, Borrower and the Other Borrowers with Joinder by Liable Party (as amended, the "Original Loan Agreement");

B. Pursuant to the Original Loan Agreement, Borrower entered into that certain Mortgage, Security Agreement and Fixture Filing dated as of October 29, 2020 and recorded November 4, 2020 in the Office of Shelby County, Alabama in Instrument No. 20201104000500050 (the "Original Security Instrument");

C. Borrower, the Other Borrowers and Lender have executed and delivered the Loan Agreement, which amends and restates the Original Loan Agreement and increases the amount of the original loan to Borrower and the Other Borrowers thereunder from \$396,600,000.00 to \$472,000,000.00;

D. As a condition to the execution of the Loan Agreement, the Lender has required that Borrower execute this Mortgage to modify, amend and restate the terms and provisions of the Original Security Instrument and this Mortgage amends and restates the Original Security Instrument in its entirety;

E. This Mortgage secures: (1) the payment of the indebtedness evidenced by the Note with interest at the rates set forth in the Loan Agreement, together with all renewals, modifications, consolidations and extensions of the Note, all additional advances or fundings made by Lender, and any other amounts required to be paid by Borrower and the Other Borrowers under any of the Loan Documents, (collectively, the "Secured Indebtedness", and sometimes referred to as the "Loan") and (2) the full performance by Borrower and the Other Borrowers, respectively, of all of the terms, covenants and obligations set forth in any of the Loan Documents; and

F. Borrower makes the following covenants and agreements for the benefit of Lender or any party designated by Lender, including any prospective purchaser of the Loan Documents or participant in the Loan, and their respective officers, employees, agents, attorneys, representatives and contractors (all of which are collectively referred to as, "Lender").

NOW, THEREFORE, IN CONSIDERATION of the Recitals and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Borrower agrees as follows:

Article 1 - GRANTS OF SECURITY

Section 1.1 **Real Property Grant.** Borrower does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Lender and its successors and assigns, with power of sale and right of entry and possession, the following property, rights, interests and estates now owned, or hereafter acquired by Borrower, which are collectively referred to as the "Real Property":

(1) that certain real property located in the County and State which is more particularly described in Exhibit "A" attached to this Mortgage or any portion of the real property; all easements, rights-of-way, gaps, strips and gores of land; streets and alleys; sewers and water rights; privileges, licenses, tenements, and appurtenances appertaining to the real property, and the reversion(s), remainder(s), and claims of Borrower with respect to these items, and the benefits of any existing or future conditions, covenants and restrictions affecting the real property (collectively, the "Land");

(2) all things now or hereafter affixed to or placed on the Land, including all buildings, structures and improvements, all fixtures and all machinery, elevators, boilers, building service equipment (including, without limitation, all equipment for the generation or distribution of air, water, heat, electricity, light, fuel or for ventilating or air conditioning purposes or for sanitary or drainage purposes or for the removal of dust, refuse or garbage), partitions, appliances, furniture, furnishings, building materials, supplies, computers and software, window coverings and floor coverings, lobby furnishings, and other property now or in the future attached, or installed in the improvements and all replacements, repairs, additions, or substitutions to these items (collectively, the "Improvements");

(3) all present and future income, rents, revenue, profits, proceeds, accounts receivables and other benefits from the Land and/or Improvements and all deposits made with respect to the Land and/or Improvements, including, but not limited to, any security given to utility companies by Borrower, any advance payment of real estate taxes or assessments, or insurance premiums made by Borrower and all claims or demands relating to such deposits and other security, including claims for refunds of tax payments or assessments, and all insurance proceeds payable to Borrower in connection with the Land and/or Improvements whether or not such insurance coverage is specifically required under the terms of this Mortgage ("Insurance Proceeds") (all of the items set forth in this paragraph are referred to collectively as "Rents and Profits");

(4) all damages, payments and revenue of every kind that Borrower may be entitled to receive, from any person owning or acquiring a right to the oil, gas or mineral rights and reservations of the Land;

(5) all proceeds and claims arising on account of any damage to, or Condemnation of any part of the Land and/or Improvements, and all causes of action and recoveries for any diminution in the value of the Land and/or Improvements;



(6) all licenses, contracts, management agreements, guaranties, warranties, franchise agreements, permits, or certificates relating to the ownership, use, operation or maintenance of the Land and/or Improvements; and

(7) all names by which the Land and/or Improvements may be operated or known, and all rights to carry on business under those names, and all trademarks, trade names, and goodwill relating to the Land and/or Improvements.

Section 1.2 **Personal Property Grant.** Borrower irrevocably sells, transfers, grants, conveys, assigns and warrants to Lender, its successors and assigns, a security interest in Borrower's interest in the following personal property which is collectively referred to as "Personal Property":

(1) any portion of the Real Property which may be personal property, and all other personal property, whether now existing or acquired in the future which is attached to, appurtenant to, or used in the construction or operation of, or in connection with, the Real Property;

(2) all rights to the use of water, including water rights appurtenant to the Real Property, pumping plants, ditches for irrigation, all water stock or other evidence of ownership of any part of the Real Property that is owned by Borrower in common with others and all documents of membership in any owner's association or similar group;

(3) all plans and specifications prepared for construction of the Improvements; and all contracts and agreements of Borrower relating to the plans and specifications or to the construction of the Improvements;

(4) all equipment, machinery, fixtures, goods, accounts, general intangibles, letter of credit rights, commercial tort claims, deposit accounts, documents, instruments and chattel paper and all substitutions, replacements of, and additions to, any of these items;

(5) all sales agreements, deposits, escrow agreements, other documents and agreements entered into with respect to the sale of any part of the Real Property, and all proceeds of the sale; and

(6) all proceeds from the voluntary or involuntary disposition or claim respecting any of the foregoing items (including judgments, condemnation awards or otherwise).

All of the Real Property and the Personal Property are collectively referred to as the "Property."

#### CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Lender and its successors and assigns, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower and the Other Borrowers shall well and truly pay to Lender the Secured Indebtedness at the time and in the manner provided in the Note, the Loan Agreement, this Mortgage and the other Loan

Documents, and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note, the Loan Agreement and the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void; provided, however, that Borrower's obligation to indemnify and hold harmless Lender pursuant to the provisions hereof shall survive any such payment or release.

## Article 2- BORROWER COVENANTS

Borrower covenants and agrees that:

Section 2.1 **Performance by Borrower.** Borrower shall pay the Secured Indebtedness to Lender and shall keep and perform in all material respects each and every other obligation, covenant and agreement of the Loan Documents.

Section 2.2 **Incorporation by Reference.** All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Note and (c) all and any of the other Loan Documents, are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein. In the event of any conflict between the provisions of this Mortgage and the provisions of the Loan Agreement, the provisions of the Loan Agreement shall control.

Section 2.3 **Warranty of Title.**

(a) Borrower warrants that it holds marketable and indefeasible fee simple absolute title to the Real Property, and that it has the right and is lawfully authorized to sell, convey or encumber the Property subject only to the Permitted Exceptions. The Property is free from all past due and unpaid taxes, assessments and mechanics' and materialmen's liens.

(b) Borrower further covenants to warrant and forever defend Lender from and against all persons claiming any interest in the Property.

Section 2.4 **Taxes, Liens and Other Charges.**

(a) Borrower shall pay all Impositions in accordance with the Loan Agreement.

(b) In the event of the passage, after the Execution Date, of any law which deducts from the value of the Property, for the purposes of taxation, any lien or security interest encumbering the Property, or changing in any way the existing laws regarding the taxation of mortgages, deeds of trust, deeds to secure debt and/or security agreements or debts secured by these instruments, or changing the manner for the collection of any such taxes, and the law has the effect of imposing payment of any Impositions upon Lender, at Lender's option, the Secured Indebtedness shall become due and payable within sixty (60) days following written demand from Lender. Notwithstanding the preceding sentence, the Lender's election to accelerate the Loan shall not be effective if (1) Borrower is permitted by law (including, without limitation, applicable interest rate laws) to, and actually does, pay the Imposition or the increased portion of the Imposition and (2) Borrower agrees in writing to pay or reimburse Lender in accordance with Section 7.6 of this Mortgage for the payment of any such Imposition which becomes payable at any time when the Loan is outstanding.



Section 2.5 **Suits And Other Acts to Protect the Property.**

(a) Borrower shall promptly notify Lender of the commencement, or receipt of notice, of any and all actions or proceedings or other material matter or claim (i) affecting the Property, and/or (ii) arising under any of the Leases or that is connected with the obligations, duties or liabilities of the landlord, tenant or any guarantor under any Lease, and/or (iii) affecting the interest of Lender under the Loan Documents (collectively, "Actions"). Borrower shall appear in and defend any Actions.

(b) Lender shall have the right, at the cost and expense of Borrower, to institute, maintain and participate in Actions and take such other action, as it may deem appropriate in the good faith exercise of its discretion to preserve or protect the Property and/or the interest of Lender under the Loan Documents. Any money paid by Lender under this Section shall be reimbursed to Lender in accordance with Section 7.6 hereof.

Section 2.6 **Collateral Security Instruments.** Borrower covenants and agrees that if Lender at any time holds additional security for any obligations secured by this Mortgage, it may enforce its rights and remedies with respect to the security, at its option, either before, concurrently or after a sale of the Property is made pursuant to the terms of this Mortgage. Lender may apply the proceeds of the additional security to the Secured Indebtedness without affecting or waiving any right to any other security, including the security under this Mortgage and the other security instruments from the Other Borrowers securing the Note (collectively, the "Other Security Instruments"), and without waiving any breach or default of Borrower under this Mortgage or of Borrower or any Other Borrower under any other Loan Document.

Section 2.7 **Performance of Other Agreements.** Borrower shall observe and perform in all material respects each and every term, covenant and provision to be observed or performed by Borrower pursuant to the Loan Agreement, any other Loan Document and any other agreement or recorded instrument affecting or pertaining to the Property and any amendments, modifications or changes thereto.

Article 3 - INSURANCE

Section 3.1 **Required Insurance and Terms of Insurance Policies.** During the term of this Mortgage, Borrower shall obtain and maintain, or cause to be obtained and maintained, in full force and effect at all times insurance with respect to Borrower and the Property as required pursuant to the Loan Agreement.

Section 3.2 **Assignment to Lender.** To the extent the insurance requirements in Section 6.1 of the Loan Agreement are satisfied using a stand-alone policy(ies) covering only the Property, then in the event of the foreclosure of this Mortgage or other transfer of the title to the Property in extinguishment of the Secured Indebtedness, all right, title and interest of Borrower in and to such insurance policy(ies), or premiums or payments in satisfaction of claims or any other rights under these insurance policy(ies) shall pass to the transferee of the Property. Notwithstanding the foregoing, to the extent the insurance requirements in Section 6.1 of the Loan Agreement are satisfied using a blanket policy, then in the event of the foreclosure of this Mortgage or other transfer of the title to the Property in extinguishment of the Secured Indebtedness, all right,



title and interest of Borrower in and to any premiums or payments in satisfaction of claims or any other rights under such insurance policy(ies) relating to the Property shall pass to the transferee of the Property.

#### Article 4 - LEASES

Pursuant to the Assignment of Leases of even date herewith, Borrower has assigned the Leases and the Rents and Profits to Lender. Borrower acknowledges that it is permitted to collect certain of the Rents and Profits pursuant to a revocable license as set forth in the Assignment of Leases.

#### Article 5 - BORROWER AGREEMENTS AND FURTHER ASSURANCES

Section 5.1 **Further Assurances.** Borrower shall, without expense to Lender, execute, acknowledge and deliver all further acts, deeds, conveyances, mortgages, deeds of trust, assignments, security agreements, and financing statements as Lender shall from time to time reasonably require, to assure, convey, assign, transfer and confirm unto Lender the Property and rights conveyed or assigned by this Mortgage or which Borrower may become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or any of the other Loan Documents, or for filing, refiling, registering, reregistering, recording or rerecording this Mortgage. If Borrower fails to comply with the terms of this Section, Lender may, at Borrower's expense, upon ten (10) days prior written notice to Borrower, perform Borrower's obligations for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender as its attorney-in-fact to do so. The appointment of Lender as attorney-in-fact is coupled with an interest.

Section 5.2 **Splitting of Mortgage.** Lender, without in any way limiting Lender's other rights hereunder, in its sole and absolute discretion, shall have the right to divide the Loan into two or more tranches which may be evidenced by two or more notes, which notes may be pari passu or senior/subordinate, provided that (i) the aggregate principal amount of the notes immediately following such division shall equal the outstanding principal balance of the Loan and (ii) the weighted average interest rate of the Loan immediately following such division shall equal the interest rate which was applicable to the Loan immediately prior to such division. Borrower shall cooperate with reasonable requests of Lender in order to divide the Loan and shall execute and deliver such documents as shall reasonably be required by Lender in connection therewith, including, without limitation, new notes to replace the original Note, all in form and substance reasonably satisfactory to Lender, provided that such documents shall contain terms, provisions and clauses (x) no less favorable to Borrower than those contained herein and in the Note, and (y) which do not increase Borrower's obligations hereunder or decrease Borrower's rights under the Loan Documents. If Lender redefines the interest rate, the amount of interest payable under the modified notes, in the aggregate, shall at all times equal the amount of interest which would have been payable under the Note at the Interest Rate. In the event Borrower fails to execute and deliver such documents to Lender within five (5) Business Days following such request by Lender, Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or

desirable to effect such transactions, Borrower ratifying all that such attorney shall do by virtue thereof.

Section 5.3 **Replacement of Note.** Upon notice to Borrower of the loss, theft, destruction or mutilation of the Note, Borrower will execute and deliver, in lieu of the original Note, a replacement note, identical in form and substance to the Note and dated as of the Execution Date. Upon the execution and delivery of the replacement note, all references in any of the Loan Documents to the Note shall refer to the replacement note.

Section 5.4 **Subrogation.** Lender shall be subrogated to the lien of any and all encumbrances against the Property paid out of the proceeds of the Loan and to all of the rights of the recipient of such payment.

#### Article 6 - DUE ON SALE/ENCUMBRANCE

Section 6.1 **Lender Reliance.** Borrower acknowledges that Lender has examined and relied on the experience of Borrower and its general partners, members, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Secured Indebtedness and the performance of any other obligations under the Loan Documents. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Secured Indebtedness or the performance of any other obligations under the Loan Documents, Lender can recover the Secured Indebtedness by a sale of the Property.

Section 6.2 **No Transfer.** Borrower shall not permit or suffer any Transfer to occur, unless specifically permitted by Article VIII of the Loan Agreement, the provisions of which such Article are hereby incorporated by reference into this Mortgage to the same extent and with the same force as if fully set forth herein.

Section 6.3 **Lender's Rights.** Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Secured Indebtedness immediately due and payable upon a Transfer without Lender's consent. This provision shall apply to every Transfer, other than any Transfer permitted pursuant to the Loan Agreement, regardless of whether voluntary or not, or whether or not Lender has consented to any previous Transfer.

#### Article 7 - DEFAULTS AND REMEDIES

Section 7.1 **Event of Default.** The term "Event of Default" as used in this Mortgage shall have the meaning assigned to such term in the Loan Agreement.

Section 7.2 **Remedies.** During the continuance of an Event of Default, the Secured Indebtedness shall, at the option of Lender, become immediately due and payable, without further notice or demand, and Lender may suspend any or all performance required of Lender under the Loan Documents, and Lender shall have all rights and remedies available under the Loan



Documents or applicable law. Without limitation, Lender may undertake any one or more of the following remedies:

(a) Foreclosure. Institute a foreclosure action in accordance with the law of the State, or take any other action as may be allowed, at law or in equity, for the enforcement of the Loan Documents and realization on the Property or any other security afforded by the Loan Documents. In the case of a judicial proceeding, Lender may proceed to final judgment and execution for the amount of the Secured Indebtedness owed as of the date of the judgment, together with all costs of suit, reasonable attorneys' fees and interest on the judgment at the maximum rate permitted by law from the date of the judgment until paid. If Lender is the purchaser at the foreclosure sale of the Property, the foreclosure sale price shall be applied against the total amount due Lender; and/or

(b) Power of Sale. Whether or not possession of the Property is taken, after giving notice by publication once a week for three (3) consecutive weeks of the time, place and terms of each such sale, together with a description of the property, in a newspaper published in the county or counties wherein the Property or any part thereof is located, to sell the Property (or such part or parts thereof as the Lender may from time to time elect to sell) at the appropriate courthouse door considered the front or main door to the courthouse, at public outcry, to the highest bidder for cash. The Lender, its successors and assigns, may bid at any sale or sales had under the terms of this Mortgage and may purchase the Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. At any foreclosure sale, any part or all of the Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, the Borrower hereby waiving the application of any doctrine of marshaling or like proceeding. In case the Lender, in the exercise of the power of sale herein given, elects to sell the Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Property not previously sold shall have been sold or all the Secured Indebtedness shall have been paid in full.

(c) Entry. Enter into possession of the Property, lease the Improvements, collect all Rents and Profits and, after deducting all costs of collection and administration expenses, apply the remaining Rents and Profits in such order and amounts as Lender, in Lender's sole discretion, may elect to the payment of Impositions, operating costs, costs of maintenance, restoration and repairs, Premiums and other charges, including, but not limited to, costs of leasing the Property and fees and costs of counsel and receivers, and in reduction of the Secured Indebtedness; and/or

(d) Receivership. Have a receiver appointed to enter into possession of the Property, lease the Property, collect the Rents and Profits and apply them as the appropriate court may direct. Lender shall be entitled to the appointment of a receiver without the necessity of proving either the inadequacy of the security or the insolvency of Borrower or the Liable Party. Borrower and Liable Party shall be deemed to have consented to the appointment of the receiver. The collection or receipt of any of the Rents and Profits by Lender or any receiver shall not affect or cure any Event of Default.



Section 7.3 **Application of Proceeds.** In the event of a sale of the Property pursuant to Section 7.2 of this Mortgage, to the extent permitted by law, the Lender shall determine in its sole discretion the order in which the proceeds from the sale shall be applied to the payment of the Secured Indebtedness, including without limitation, the expenses of the sale and of all proceedings in connection with the sale, including reasonable attorneys' fees and expenses; Impositions, Premiums, liens, and other charges and expenses; the outstanding principal balance of the Secured Indebtedness; any accrued interest; any Prepayment Fee; and any other amounts owed under any of the Loan Documents.

Section 7.4 **Waiver of Jury Trial.** To the fullest extent permitted by law, Borrower and Lender HEREBY WAIVE THEIR RESPECTIVE RIGHT TO TRIAL BY JURY in any action, proceeding and/or hearing on any matter whatsoever arising out of, or in any way connected with, the Note, this Mortgage or any of the Loan Documents, or the enforcement of any remedy under any law, statute, or regulation. Neither party will seek to consolidate any such action in which a jury has been waived, with any other action in which a jury trial cannot or has not been waived. Each party has received the advice of counsel with respect to this waiver.

Section 7.5 **Lender's Right to Perform Borrower's Obligations.** Borrower agrees that, if Borrower fails to perform any act or to pay any money which Borrower is required to perform or pay under the Loan Documents beyond any applicable notice and/or cure period (unless such action or payment is necessary to protect or preserve any Property or other collateral or Lender's lien, security title and/or security interest in any Property or other collateral, in which case no notice need be given and/or cure period need have expired), Lender may make the payment or perform the act at the cost and expense of Borrower and in Borrower's name or in its own name. Any money paid by Lender under this Section 7.5 shall be reimbursed to Lender in accordance with Section 7.6 hereof.

Section 7.6 **Lender Reimbursement.** All payments made, or funds expended or advanced by Lender pursuant to the provisions of any Loan Document, shall (1) become a part of the Secured Indebtedness, (2) bear interest at the Interest Rate (as defined in the Loan Agreement) from the date such payments are made or funds expended or advanced, (3) become due and payable by Borrower upon demand by Lender, and (4) bear interest at the Default Rate (as defined in the Loan Agreement) from the date of such demand. Borrower shall reimburse Lender within ten (10) Business Days after receipt of written demand for such amounts.

Section 7.7 **Fees and Expenses.** If Lender becomes a party (by intervention or otherwise) to any action or proceeding affecting, directly or indirectly, Borrower, the Other Borrowers, the Property or the title thereto or Lender's interest under this Mortgage, or any of the other Properties or the title thereto or Lender's interest under the Other Security Instruments, or employs an attorney to collect any of the Secured Indebtedness or to enforce performance of the obligations, covenants and agreements of the Loan Documents, Borrower shall reimburse Lender in accordance with Section 7.6 hereof for all expenses, costs, charges and legal fees incurred by Lender (including, without limitation, the fees and expenses of experts and consultants), whether or not suit is commenced.

Section 7.8 **Waiver of Consequential and/or Punitive Damages.** Borrower covenants and agrees that in no event shall Lender be liable for consequential damages and/or punitive

damages, and to the fullest extent permitted by law, Borrower expressly waives all existing and future claims that it may have against Lender for consequential damages and/or punitive damages.

#### Article 8 - SECURITY AGREEMENT

##### Section 8.1 **Security Agreement.**

(a) THIS MORTGAGE CREATES A LIEN ON THE PROPERTY. IN ADDITION, TO THE EXTENT THE PROPERTY IS PERSONAL PROPERTY OR FIXTURES UNDER APPLICABLE LAW, THIS MORTGAGE CONSTITUTES A SECURITY AGREEMENT UNDER THE UNIFORM COMMERCIAL CODE OF THE STATE IN WHICH THE PROPERTY IS LOCATED (THE "U.C.C.") AND ANY OTHER APPLICABLE LAW AND IS FILED AS A FIXTURE FILING. UPON THE OCCURRENCE OF AN EVENT OF DEFAULT, LENDER MAY, AT ITS OPTION, PURSUE ANY AND ALL RIGHTS AND REMEDIES AVAILABLE TO A SECURED PARTY WITH RESPECT TO ANY PORTION OF THE PROPERTY WHICH CONSTITUTES PERSONAL PROPERTY OR FIXTURES, AND/OR LENDER MAY, AT ITS OPTION, PROCEED AS TO ALL OR ANY PART OF THE PROPERTY IN ACCORDANCE WITH LENDER'S RIGHTS AND REMEDIES WITH RESPECT TO THE LIEN CREATED BY THIS MORTGAGE. THIS FINANCING STATEMENT SHALL REMAIN IN EFFECT AS A FIXTURE FILING UNTIL THIS MORTGAGE IS RELEASED OR SATISFIED OF RECORD.

(b) This Mortgage constitutes a UCC financing statement which is being filed in the real estate records as a fixture filing. Borrower holds fee interest in the real property described on Exhibit "A" attached to this Mortgage. The collateral is described herein, some of which is or may become fixtures on the real property described on Exhibit "A" attached to this Mortgage. The names and mailing addresses of the Debtor ("Borrower" herein) and Secured Party ("Lender" herein) are set forth in the Defined Terms set forth above. Debtor is a limited liability company organized under the laws of the State of Delaware and its organizational identification number is 3872043. Borrower agrees to furnish Lender, promptly upon request, with any additional information reasonably required by Lender in connection with this Section 8.1.

(c) Borrower hereby irrevocably authorizes Lender at any time and from time to time to file, in any jurisdiction, financing statements (including any amendments thereto) that cover the Personal Property and that (a) indicate the Personal Property as all assets of Borrower or words of similar effect, or as being of an equal or lesser scope or with greater detail, and (b) contain any other information required by the applicable uniform commercial code in effect for the sufficiency or filing office acceptance of any initial financing statement or amendment, including (1) whether Borrower is an organization, the type of organization and any organization identification number issued to Borrower and, (2) in the case of a financing statement filed as a fixture filing or indicating the Property as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Personal Property relates. Borrower agrees to furnish any such information to Lender promptly upon request.

Section 8.2 **Characterization of Property.** The grant of a security interest to Lender in this Mortgage shall not be construed to limit or impair the lien of this Mortgage or the rights of Lender with respect to any property which is real property or which the parties have agreed to treat



as real property. To the fullest extent permitted by law, everything used in connection with the production of Rents and Profits is, and at all times and for all purposes and in all proceedings, both legal and equitable, shall be regarded as real property, irrespective of whether or not the same is physically attached to the Land and/or Improvements.

Section 8.3 **Protection Against Purchase Money Security Interests.** It is understood and agreed that in order to protect Lender from the effect of U.C.C. Section 9-334, as amended from time to time and as enacted in the State, in the event that Borrower intends to purchase any goods which may become fixtures attached to the Property, or any part of the Property, and such goods will be subject to a purchase money security interest held by a seller or any other party:

(a) Before executing any security agreement or other document evidencing or perfecting the security interest, Borrower shall obtain the prior written approval of Lender. All requests for such written approval shall be in writing and contain the following information: (i) a description of the fixtures; (ii) the address at which the fixtures will be located; and (iii) the name and address of the proposed holder and proposed amount of the security interest.

(b) Borrower shall pay all sums and perform all obligations secured by the security agreement. A default by Borrower under the security agreement shall constitute a default under this Mortgage and the Other Security Instruments. If Borrower fails to make any payment on an obligation secured by a purchase money security interest in the Personal Property or any fixtures, Lender, at its option, may pay the secured amount and Lender shall be subrogated to the rights of the holder of the purchase money security interest.

(c) Lender shall have the right to acquire by assignment from the holder of the security interest for the Personal Property or fixtures, all contract rights, accounts receivable, negotiable or non-negotiable instruments, or other evidence of indebtedness and to enforce the security interest as assignee.

(d) The provisions of subparagraphs (b) and (c) of this Section 8.3 shall not apply if the goods which may become fixtures are of at least equivalent value and quality as the Personal Property being replaced and if the rights of the party holding the security interest are expressly subordinated to the lien and security interest of this Mortgage in a manner satisfactory to Lender.

#### Article 9 - EXCULPATION

The provisions of Section 12.20 of the Loan Agreement are hereby incorporated by reference into this Mortgage to the same extent and with the same force as if fully set forth herein.

#### Article 10 - NOTICES

All notices or other written communications hereunder shall be delivered in accordance with Section 12.5 of the Loan Agreement.

#### Article 11 - APPLICABLE LAW

This Mortgage shall be construed and enforced in accordance with the laws of the State.



## Article 12 - MISCELLANEOUS PROVISIONS

Section 12.1 **No Waiver.** No single or partial exercise by Lender, or delay or omission in the exercise by Lender, of any right or remedy under the Loan Documents shall preclude, waive or limit the exercise of any other right or remedy. During the continuance of an Event of Default, Lender shall have the right to proceed against any portion of, or interest in, the Property and/or any of the other Properties without waiving any other rights or remedies with respect to any other portion of the Property and/or any of the other Properties. No right or remedy under any of the Loan Documents is intended to be exclusive of any other right or remedy but shall be cumulative and may be exercised concurrently with or independently from any other right and remedy under any of the Loan Documents or under applicable law.

Section 12.2 **Heirs and Assigns; Terminology.**

(a) This Mortgage applies to Lender, Liable Party (with respect to the provisions herein expressly referring to Liable Party) and Borrower, and their heirs, legatees, devisees, administrators, executors, successors and assigns, as applicable. The term "Borrower" shall include both the original Borrower and any subsequent owner or owners of any of the Property. The term "Liable Party" shall include both the original Liable Party and any subsequent or substituted Liable Party(ies).

(b) In this Mortgage, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

Section 12.3 **Severability.** If any provision of this Mortgage should be held unenforceable or void, then that provision shall be separated from the remaining provisions and shall not affect the validity of this Mortgage except that if the unenforceable or void provision relates to the payment of any monetary sum, then, Lender may, at its option, declare the Secured Indebtedness immediately due and payable.

Section 12.4 **Captions.** The captions are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope or intent of any provisions of this Mortgage.

Section 12.5 **Time of the Essence.** Time shall be of the essence with respect to all of Borrower's obligations under this Mortgage and the other Loan Documents.

Section 12.6 **No Merger.** In the event that Lender should become the owner of the Property, there shall be no merger of the estate created by this Mortgage with the fee estate in the Property.

Section 12.7 **No Modifications.** This Mortgage may not be changed, amended or modified, except in a writing expressly intended for such purpose and executed by Borrower and Lender.

Section 12.8 **Cross-Collateralization and Cross-Default.** Borrower acknowledges that in order to induce Lender to make the Loan, (i) this Mortgage and (ii) the Other Security Instruments are hereby cross-collateralized and cross-defaulted as provided herein. In accordance

with the terms and provisions of the Loan Agreement, without limitation of any other right or remedy provided to Lender in this Mortgage or in any of the other Loan Documents, Borrower agrees that this Mortgage and the Other Security Instruments are and will be cross-collateralized and cross-defaulted with each other so that (i) an Event of Default by Borrower under this Mortgage shall constitute an Event of Default under the Other Security Instruments and an Event of Default by any Other Borrower under any of the Other Security Instruments shall constitute an Event of Default under this Mortgage; (ii) an Event of Default under the Note, the Loan Agreement or this Mortgage shall constitute an Event of Default under the Other Security Instruments and an Event of Default under the Loan Agreement or the Other Security Instruments shall constitute an Event of Default under this Mortgage and the Note; and (iii) this Mortgage and each of the Other Security Instruments shall constitute security for the Note as if a single blanket lien were placed on all of the Individual Properties (as defined in the Loan Agreement) as security for the Note. Notwithstanding the foregoing, Borrower shall have the right, from time to time, to obtain a release of the Property from this Mortgage and related UCC financing statements pursuant to and in accordance with the terms and conditions of Section 8.5 of the Loan Agreement.

Section 12.9 **Multi-State Real Estate Transactions.** Borrower acknowledges that this Mortgage is one of a number of mortgages and other security documents that secure the Secured Indebtedness. Borrower agrees that the lien, security title and security interest of this Mortgage shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Lender, and without limiting the generality of the foregoing, the lien, security title and security interest hereof shall not be impaired by any acceptance by Lender of any security for or guarantees of the Secured Indebtedness, or by any failure, neglect or omission on the part of Lender to realize upon or protect any Secured Indebtedness or any collateral security therefore including the Other Security Instruments. The lien, security title and security interest of this Mortgage shall not in any manner be impaired or affected by any release (except as to the property released), sale, pledge, surrender, compromise, settlement, renewal, extension, indulgence, alteration, changing, modification or disposition of any of the Secured Indebtedness or of any of the collateral security therefor, including the Other Security Instruments or any guarantee thereof, and, to the fullest extent permitted by applicable law, Lender may at its discretion foreclose, exercise any power of sale, or exercise any other remedy available to it under any or all of the Other Security Instruments without first exercising or enforcing any of its rights and remedies hereunder. Such exercise of Lender's rights and remedies under any or all of the Other Security Instruments shall not in any manner impair the lien of any of the Other Security Instruments or any of Lender's rights and remedies thereunder. To the fullest extent permitted by applicable law, Borrower specifically consents and agrees that Lender may exercise its rights and remedies hereunder and under the Other Security Instruments separately or concurrently and in any order that it may deem appropriate and waives any right of subrogation. - STATE-SPECIFIC PROVISIONS

Section 13.1 **Principles Of Construction.** In the event of any inconsistencies between the terms and conditions of this Article 13 and the other terms and conditions of this Mortgage, the terms and conditions of this Article 13 shall control and be binding.

Section 13.2 **Attorneys Fees; Costs of Enforcement and Property Preservation.** In any action to enforce or to foreclose the lien of this Mortgage, Lender shall be entitled to recover



from Borrower its reasonable attorneys' and paralegals' fees, and all costs and expenses incurred, whether incurred in court-ordered mediation, at trial, on appeal, or in bankruptcy and administrative proceedings, and including but not limited to any costs for environmental reports, appraisals, property inspections and inspection reports, title searches and reports, surveys, and costs of a similar nature incurred by Lender for the Property.

Section 13.3 **Foreclosure Deeds.** To the extent permitted by applicable law, the Borrower hereby authorizes and empowers the Lender or the auctioneer at any foreclosure sale had hereunder, for and in the name of the Borrower, to execute and deliver to the purchaser or purchasers of any of the Property sold at foreclosure good and sufficient deeds of conveyance or bills of sale thereto.

Section 13.4 **Multiple Sales.** If an Event of Default exists, the Lender shall have the option to proceed with foreclosure, either through the courts or by power of sale as provided for in this Mortgage, but without declaring the whole obligations due. Any such sale may be made subject to the unmaturing part of the obligations, and such sale, if so made, shall not affect the unmaturing part of the obligations, but as to such unmaturing part of the obligations this Mortgage shall remain in full force and effect as though no sale had been made under this section. Several sales may be made hereunder without exhausting the right of sale for any remaining part of the obligations, whether then matured or unmaturing, the purpose hereof being to provide for a foreclosure and sale of the Property for any matured part of the obligations without exhausting the power of foreclosure and the power to sell the Property for any other part of the obligations, whether matured at the time or subsequently maturing.

Section 13.5 **Fixture Filing.** This Mortgage shall be effective as a financing statement filed as a fixture filing for purposes of Article 9A of the Uniform Commercial Code of Alabama. As such, this Mortgage covers all goods that are or are to become fixtures to the Land. The goods are described by item or type in Section 1.1. The Borrower is the debtor, and the Lender is the secured party. The names of the debtor (Borrower) and the secured party (Lender) are given in the first paragraph of this Mortgage. The mailing address of the Lender set out in the first paragraph of page 2 is an address of the secured party from which information concerning the security interest may be obtained. The mailing address of the Borrower set out in the first paragraph of page 2 is a mailing address for the debtor. A statement indicating the types, or describing the items, of collateral is set forth in this section and in Section 1.1. The real estate to which the goods are or are to be affixed is described in Exhibit A. The Borrower is a record owner of the real estate.

Section 13.6 **Maximum Principal Indebtedness.** **SUBJECT TO THE PROVISIONS OF SECTION 13.6 BELOW, THE DEBT SECURED BY THIS MORTGAGE SHALL IN NO EVENT EXCEED \$472,000,000.00.**

Notwithstanding the foregoing or anything to the contrary contained herein, the following provisions shall apply:

(a) **Maximum Principal Amount.** Notwithstanding anything contained herein to the contrary, the maximum principal indebtedness which is or under any contingency may be secured



by this Mortgage is Four Hundred Seventy Two Million and 00/100 Dollars (\$472,000,000.00) (the "Maximum Principal Amount"), together with (i) taxes, charges or assessments which may be imposed by law upon the Property, (ii) premiums on insurance policies covering the Property, and (iii) expenses incurred in upholding the lien of this Mortgage including, but not limited to, (a) the expenses of any litigation to prosecute or defend the rights and lien created by this Mortgage, (b) any amount, cost or charge to which the Lender becomes subrogated, upon payment, whether under recognized principles of law or equity, or under express statutory authority, and (c) interest at the default rate (or regular interest rate) and penalties provided for herein.

(b) Reduction of Maximum Principal Amount. The Maximum Principal Amount shall be reduced only by the last and final sums that Borrower repays with respect to the Secured Indebtedness, and shall not be reduced by any intervening repayments of the Secured Indebtedness by Borrower. Borrower and Lender understand and agree that the Maximum Principal Amount may, from time to time, be a sum which is significantly less than the total Secured Indebtedness outstanding.

**[NO FURTHER TEXT ON THIS PAGE]**

IN WITNESS WHEREOF, THIS MORTGAGE has been executed by Borrower as of the Execution Date.

**BORROWER:**

**ES 3610 HWY 31, LLC**, a Delaware limited liability company

By: ES Holdings I, LLC, a Delaware limited liability company,  
its sole member

By: ES REIT I, LLC, a Delaware limited liability  
company, its sole member

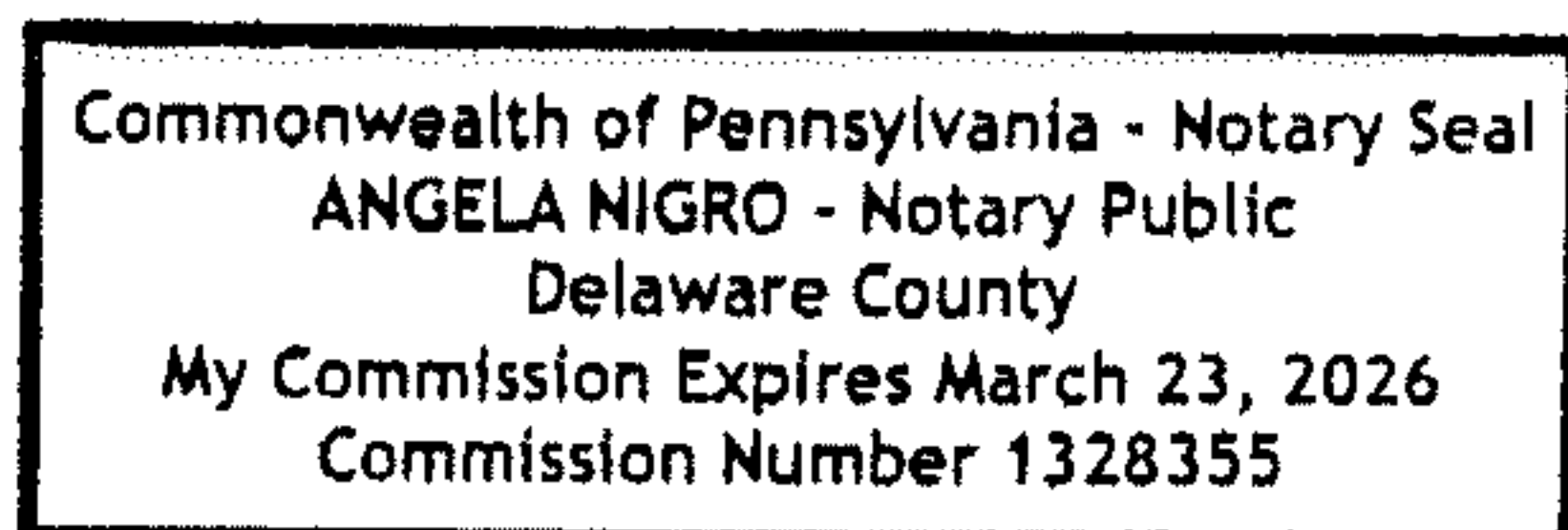
By:   
Name: J. Peter Lloyd  
Title: Vice President

**ACKNOWLEDGMENT**

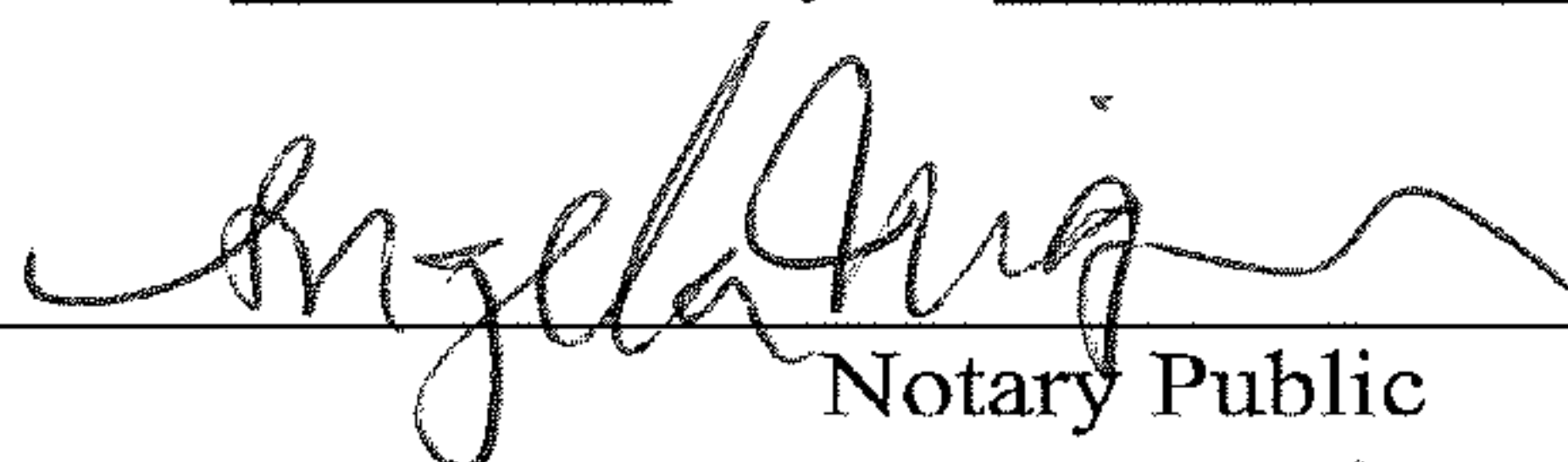
STATE OF PENNSYLVANIA                    )  
  :  
DELAWARE COUNTY                        )

I, the undersigned, a notary public in and for said county in said state, hereby certify that J. Peter Lloyd, whose name as Vice President of ES REIT I, LLC, a Delaware limited liability company, which is the sole member of ES HOLDINGS I, LLC, a Delaware limited liability company, which is the sole member of ES 3610 Hwy 31, LLC, a Delaware 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 said instrument, he, as such VP and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this 8<sup>th</sup> day of April, 2022.



[NOTARIAL SEAL]

  
Notary Public

My commission expires: 3/23/26

**EXHIBIT A**

**LEGAL DESCRIPTION**

All that certain lot or parcel of land situate in the **County of Shelby**, State of Alabama, and being more particularly described as follows:

Tract 1

Lot 2A of Graham's Resurvey of Lot 2, Shelby Commerce Park, as recorded in Map Book 35, Page 18, in the Office of the Judge of Probate of Shelby County, Alabama.

Tract 2

Access Easement, Detention Pond Easement, Sewer Lift Station Easement and Sewer Line Easements as set forth in Declaration of Easements recorded as Instrument No. 20051114000593080.

For informational purposes only:

Address reference: 3610 Hwy 31, Calera, AL 35040



**EXHIBIT B**

**OTHER BORROWERS**

1. **ES 2500 13<sup>th</sup>, LLC**, a Delaware limited liability company
2. **ES 1200 ROBERTS, LLC**, a Delaware limited liability company
3. **ES 2700 13<sup>th</sup>, LLC**, a Delaware limited liability company
4. **ES 115 BUSINESS PARK, LLC**, a Delaware limited liability company
5. **ES 120 WOODLAKE, LLC**, a Delaware limited liability company
6. **ES 133 INDUSTRIAL, LLC**, a Delaware limited liability company
7. **ES 148 SPORTSMAN, LLC**, a Delaware limited liability company
8. **ES 293 INDUSTRIAL, LLC**, a Delaware limited liability company
9. **ES 294 JOHN MARTIN, LLC**, a Delaware limited liability company
10. **ES 3001 GATEWAY CENTRE, LLC**, a Delaware limited liability company
11. **ES 304 JOHN MARTIN, LLC**, a Delaware limited liability company
12. **ES 310 JOHN MARTIN, LLC**, a Delaware limited liability company
13. **ES 320 JOHN MARTIN, LLC**, a Delaware limited liability company
14. **ES 404 CENTURA, LLC**, a Delaware limited liability company
15. **ES 525 DUNNETT, LLC**, a Delaware limited liability company
16. **ES 6047-6049 FULTON INDUSTRIAL, LLC**, a Delaware limited liability company
17. **ES 75 ODELL SCHOOL, LLC**, a Delaware limited liability company
18. **ES 4030 DEER PARK, LLC**, a Delaware limited liability company
19. **ES 432-434 INDUSTRIAL, LLC**, a Delaware limited liability company
20. **ES GAZELLE, LLC**, a Delaware limited liability company
21. **ES 6600 JEFFERSON METROPOLITAN, LLC**, a Delaware limited liability company
22. **ES 19925 INDEPENDENCE, LLC**, a Delaware limited liability company
23. **ES 335-365 E. SPRINGDALE, LLC**, a Delaware limited liability company
24. **ES 5065-5075 BUFORD, LLC**, a Delaware limited liability company
25. **ES 11530 NEW BERLIN, LLC**, a Delaware limited liability company
26. **ES 3850 OLD TAMPA, LLC**, a Delaware limited liability company
27. **ES 150 PORTSIDE, LLC**, a Delaware limited liability company
28. Intentionally omitted
29. **ES 1040 SOUTHERN, LLC**, a Delaware limited liability company
30. **ES 4300 WESTPARK, LLC**, a Delaware limited liability company
31. **ES 3400 HWY 31, LLC**, a Delaware limited liability company
32. **ES WOODLAKE LAND, LLC**, a Delaware limited liability company
33. **ES HWY 31 LAND, LLC**, a Delaware limited liability company

**STATE OF ALABAMA           §                         A proceeding authorized**

**MONTGOMERY COUNTY§                                 by § 40-22-2(8),**

**BEFORE THE ALABAMA DEPARTMENT OF REVENUE,           Code of Alabama (1975), as amended**

6. The value of the Alabama Collateral collectively described in the Restated Mortgages is no more than **\$166,250,000.00**.



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7. That the relative values of the Alabama Collateral are as follows:

<u>County</u>	<u>Value</u>	<u>Percentage</u>
Jefferson	\$108,000,000.00	65.00%
Shelby	<u>\$57,900,000.00</u>	<u>35.00%</u>
Total	\$166,250,000.00	100.00%

8. Based on the foregoing valuations, the percentage of the total collateral located in the State of Alabama is **22.60%**.

9. Therefore, the amount of the Secured Obligations allocable to the State of Alabama pursuant to Section 40-22-2(8) is \$106,672,000.00.

10. Therefore, the amount of recording privilege tax which is attributable to the Alabama Collateral in connection with the Loan Increase and payable upon the recording of the first of the Restated Mortgages to be recorded, is \$17,053.50.<sup>1</sup>

\* \* \*

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<sup>1</sup> Total tax due on that portion of the increased Secured Obligations allocable to the State of Alabama (\$106,672,000.00\*0.0015 = \$160,008.00) minus the amount of tax paid upon the initial recording of the Mortgage (\$142,954.50) = \$17,053.50.

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**IT IS ORDERED, THEREFORE,** that the Probate Judge of Jefferson County, the county wherein the first Restated Mortgage is recorded, shall collect mortgage recording tax in the amount of \$17,053.50, and pursuant to §40-22-2(7), Code of Alabama (1975), as amended, after deducting such Probate Judge's five percent (5%) commission, shall make distribution of such mortgage recording tax to the State of Alabama and to Shelby County, Alabama in the percentage set out in Paragraph 7. The Probate Judge of Jefferson County is also entitled to collect any applicable recording fees. Upon payment of the mortgage recording tax and upon the filing of the first Restated Mortgage in Jefferson County, the other Restated Mortgages shall be accepted for recordation in Jefferson County and Shelby County pursuant to §40-22-2(5), Code of Alabama (1975), as amended, without the payment of any further mortgage recording tax. The Probate Judge of Shelby County is entitled, however, to collect applicable recording fees.

DONE this 19<sup>th</sup> day of April, 2022.

**ALABAMA DEPARTMENT OF REVENUE**

BY: *Derrick Coleman*  
Deputy Commissioner of Revenue

LEGAL DIVISION:

BY: *Mary Martin Mitchell*  
Secretary

BY: *K. Elizabeth Jehle*  
K. Elizabeth Jehle





**JEFFERSON COUNTY PROBATE COURT  
BIRMINGHAM DIVISION**

JAMES P. NAFTEL II, PROBATE JUDGE  
716 RICHARD ARRINGTON BLVD NORTH  
BIRMINGHAM, AL 35203  
(205) 325-5411

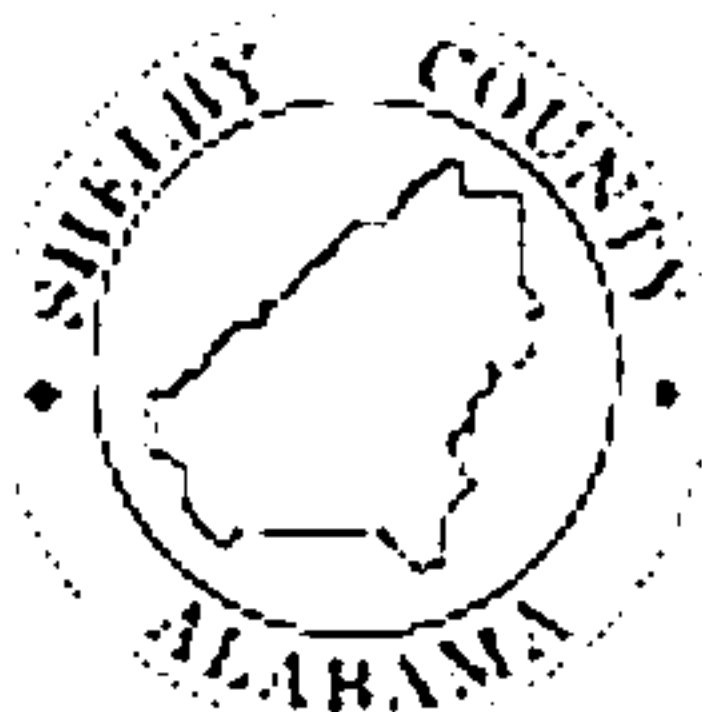
To: Judge of Probate

Shelby County

I, James P. Naftel II, Judge of Probate of Jefferson County, Alabama, do hereby certify that on the 28th day of April, 2022, this office collected a total tax of \$ 17,053.50 on a mortgage/deed from ES 2500 13th LLC to MethLife Real Estate Lending, LLC and recorded as Instrument No. 2022047836. If you have questions or need additional information, please do not hesitate to contact my office.

A handwritten signature in black ink, appearing to read "J.P. Naftel II", written over a horizontal line.

James P. Naftel, II  
Judge of Probate



Filed and Recorded  
Official Public Records  
Judge of Probate, Shelby County Alabama, County  
Clerk  
Shelby County, AL  
05/02/2022 10:47:43 AM  
\$95.00 JOANN  
20220502000177530

*Allen S. Bayl*