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**BROOK HIGHLAND SC LLC,
BROOK HIGHLAND SC TIC 1 LLC,
BROOK HIGHLAND SC TIC 2 LLC,
BROOK HIGHLAND SC TIC 3 LLC,
BROOK HIGHLAND SC TIC 4 LLC,
BROOK HIGHLAND SC TIC 5 LLC,
BROOK HIGHLAND SC TIC 8 LLC,
BROOK HIGHLAND SC TIC 9 LLC,
BROOK HIGHLAND SC TIC 10 LLC, collectively, as mortgagor
(Borrower)**

to

**FS CREIT ORIGINATOR LLC, as mortgagee
(Lender)**

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

Dated: July 7, 2022

Location: 5291 US 280, Birmingham, Alabama 35242

County: Shelby County

PREPARED BY AND UPON
RECORDATION RETURN TO:

POLSINELLI

900 W. 48th Place, Suite 900

Kansas City, MO 64112

Attention: Marla R. Bell, Esq.

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, FIXTURE FILING AND SECURITY AGREEMENT (this “**Indenture**”) is made as of the 7th day of July, 2022 by **BROOK HIGHLAND SC LLC**, a Delaware limited liability company, (“**SC Borrower**”), **BROOK HIGHLAND SC TIC 1 LLC**, a Delaware limited liability company (“**TIC 1 Borrower**”), **BROOK HIGHLAND SC TIC 2 LLC**, a Delaware limited liability company (“**TIC 2 Borrower**”), **BROOK HIGHLAND SC TIC 3 LLC**, a Delaware limited liability company (“**TIC 3 Borrower**”), **BROOK HIGHLAND SC TIC 4 LLC**, a Delaware limited liability company (“**TIC 4 Borrower**”), **BROOK HIGHLAND SC TIC 5 LLC**, a Delaware limited liability company (“**TIC 5 Borrower**”), **BROOK HIGHLAND SC TIC 8 LLC**, a Delaware limited liability company (“**TIC 8 Borrower**”), **BROOK HIGHLAND SC TIC 9 LLC**, a Delaware limited liability company (“**TIC 9 Borrower**”), and **BROOK HIGHLAND SC TIC 10 LLC**, a Delaware limited liability company (“**TIC 10 Borrower**”; and together with SC Borrower, TIC 1 Borrower, TIC 2 Borrower, TIC 3 Borrower, TIC 4 Borrower, TIC 5 Borrower, TIC 8 Borrower, and TIC 9 Borrower, as tenants in common, individually, collectively, jointly and severally, and together with their permitted successors and assigns, “**Borrower**” or sometimes each individually as “**Individual Borrower**”), each having an address at 151 Bodman Place, Suite 201, Red Bank, NJ 07701, Attention: Anthony Grosso, to **FS CREIT ORIGINATOR LLC**, a Delaware limited liability company, having an address at c/o Rialto Capital Management, LLC, 600 Madison Avenue, 12th Floor, New York, New York 10022, as mortgagee (together with its successors and assigns, “**Lender**”).

RECITALS:

This Indenture is given to secure a loan (the “**Loan**”) in the principal sum of FIFTY SEVEN MILLION TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$57,250,000.00) made pursuant to that certain Loan Agreement, dated as of the date hereof, between Borrower and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Loan Agreement**”) and evidenced by that certain Promissory Note, dated the date hereof, made by Borrower in favor of Lender (such Promissory Note, together with all extensions, renewals, replacements, restatements, amendments, supplements, severances or modifications thereof being hereinafter referred to as the “**Note**”).

Borrower desires to secure the payment of the Debt (as defined in the Loan Agreement) and the performance of all of its obligations under the Note, the Loan Agreement and the other Loan Documents (as herein defined). All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Loan Agreement.

ARTICLE 1 - GRANTS OF SECURITY

Section 1.1 **PROPERTY MORTGAGED.** Borrower does hereby irrevocably mortgage, grant, bargain, sell, convey to and grant a security interest to Lender and its successors and assigns **WITH ALL POWERS OF SALE** in, the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the “**Property**”):

(a) **Land.** The real property described in Exhibit A attached hereto and made a part hereof (the “**Land**”);



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(b) Additional Land. All additional lands, estates and development rights hereafter acquired by Borrower for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Indenture (the “**Additional Land**”);

(c) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land and/or the Additional Land (collectively, the “**Improvements**”);

(d) Easements and other Beneficial Interests. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) Fixtures and Personal Property. All machinery, equipment, fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures, inventory and goods) and all other property of every kind and nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land, the Additional Land, and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Land, the Additional Land, and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land, the Additional Land, and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Land and the Improvements (collectively, the “**Personal Property**”), and the right, title and interest of Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the State or States where any of the Property is located (the “**Uniform Commercial Code**”), superior in lien to the lien of this Indenture and all proceeds and products of the above;

(f) Leases and Rents. All leases, subleases, subsubleases, lettings, licenses, concessions, rental agreements, and/or other agreements, whether or not in writing, affecting the use, enjoyment or occupancy of the Land and/or the Improvements heretofore or hereafter entered into and all extensions, amendments and modifications thereto, whether before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (the “**Leases**”) and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, any guaranties of the lessees’ obligations thereunder, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, payments in connection with any termination, cancellation or surrender of any Lease, revenues, issues and profits (including all oil and gas or other mineral royalties and



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bonuses) from the Land and/or the Improvements whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code and all proceeds from the sale or other disposition of the Leases (the “**Rents**”) and the right to receive and apply the Rents to the payment of the Debt;

(g) Condemnation Awards. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including but not limited to any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(h) Insurance Proceeds. All proceeds of and any unearned premiums on any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

(i) Tax Certiorari. All refunds, rebates or credits in connection with a reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

(j) Conversion. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing including, without limitation, proceeds of insurance and condemnation awards, into cash or liquidation claims;

(k) Rights. The right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Lender in the Property;

(l) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Borrower thereunder;

(m) Interest Rate Protection Agreement. The Interest Rate Protection Agreement, including, but not limited to all “accounts”, “chattel paper”, and “investment property” (as such terms are defined in the Uniform Commercial Code as from time to time in effect) constituting or relating to the foregoing, and all products and proceeds of the foregoing;

(n) Intangibles. All trade names, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(o) Accounts. All accounts, account collateral, reserves, escrows and deposit accounts maintained by Borrower with respect to the Property including, without limitation, the Clearing Account and the Cash Management Account, and all complete securities, investments, property

and financial assets held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof;

(p) Causes of Action. All causes of action and claims (including, without limitation, all causes of action or claims arising in tort, by contract, by fraud or by concealment of material fact) against any Person for damages or injury to the Property or in connection with any transactions financed in whole or in part by the proceeds of the Loan ("Cause of Action");

(q) Tenant in Common Agreement. All of Borrower's right, title and interest in the Tenant in Common Agreement (as defined in the Loan Agreement) and any tenant in common agreement executed hereafter, management agreements, and related agreements and documents and all general intangibles and other rights arising from or in connection with all such agreements (including any rights of first refusal, options to purchase or similar rights, and any right of first refusal arising under the Bankruptcy Code or other creditors' rights laws), and all products and proceeds thereof and additions thereto, and all tenant in common ownership interests therein; and

(r) Other Rights. Any and all other rights of Borrower in and to the items set forth in Subsections (a) through (q) above.

Section 1.2 ASSIGNMENT OF LEASES AND RENTS. Borrower hereby absolutely and unconditionally assigns to Lender, Borrower's right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of this Section 1.2, the Loan Agreement and the Cash Management Agreement, Lender grants to Borrower a revocable license to collect and receive the Rents. Borrower shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums.

Section 1.3 SECURITY AGREEMENT. This Indenture is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Indenture, Borrower hereby grants to Lender, as security for the Obligations, (as herein defined) a security interest in the Property to the full extent that the Property may be subject to the Uniform Commercial Code.

Section 1.4 FIXTURE FILING. Certain of the Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land, described or referred to in this Indenture, and this Indenture, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures.

Section 1.5 PLEDGE OF MONIES HELD. Borrower hereby pledges to Lender any and all monies now or hereafter held by Lender, including, without limitation, any Reserve Funds, the Clearing Account, the Cash Management Account, the Net Proceeds and the Net Proceeds Deficiency, as additional security for the Obligations until expended or applied as provided in the Loan Agreement or this Indenture.

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 shall well and truly pay to Lender the Debt at the time and in the manner provided in the Note and this Indenture, shall well and truly perform the Other Obligations (as herein defined) as set forth in this Indenture and shall well and truly abide by and comply with each and every covenant and condition set forth herein, in the Note and in the Loan Agreement, these presents and the estate hereby granted shall cease, terminate and be void.

ARTICLE 2 - DEBT AND OBLIGATIONS SECURED

Section 2.1 DEBT. This Indenture and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the Obligations.

Section 2.2 OTHER OBLIGATIONS. This Indenture and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the following (the "**Other Obligations**"):

- (a) the performance of all other obligations of Borrower contained herein;
- (b) the performance of each obligation of Borrower contained in any other agreement given by Borrower to Lender which is for the purpose of further securing the obligations secured hereby, and any renewals, extensions, substitutions, replacements, amendments, modifications and changes thereto; and
- (c) the performance of each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, the Loan Agreement, this Indenture or the other Loan Documents.

Section 2.3 DEBT AND OTHER OBLIGATIONS. Borrower's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively below as the "**Obligations**."

Section 2.4 FUTURE ADVANCES. In addition to securing the full, prompt and complete payment when due of the Debt, this Indenture shall also secure any and all other, further or future loans, advances, readvances, reborrowings and borrowings made to or at the request of Borrower from or by Lender and all other debts, obligations and liabilities of every kind and character of Borrower now or hereafter existing in favor of Lender (including, without limitation, all indebtedness incurred or arising pursuant to any Loan Document) whether such debts, obligations or liabilities be direct or indirect, primary or secondary, joint or several, fixed or contingent, and whether originally payable to any of such parties or to a third party, and subsequently acquired by any of such parties, and whether such debts, obligations and liabilities are evidenced by note, open account, overdraft, endorsement, surety agreement or otherwise, it being presently contemplated by Borrower and such other parties that Borrower may and will hereafter become indebted to Lender in other, further and future sum or sums.

ARTICLE 3 - BORROWER COVENANTS

Borrower covenants and agrees that:

Section 3.1 PAYMENT OF DEBT. Borrower will pay the Debt at the time and in the manner provided in the Note, the Loan Agreement and in this Indenture.

Section 3.2 INCORPORATION BY REFERENCE. All the covenants, conditions and agreements contained in the Loan Agreement, the Note and all and any of the other Loan Documents, are hereby made a part of this Indenture to the same extent and with the same force as if fully set forth herein.

Section 3.3 Warranty of Title. Borrower has good, indefeasible, marketable and insurable title to the Property and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same. Borrower possesses an unencumbered fee simple absolute estate in the Land and the Improvements except for the Permitted Encumbrances, such other liens as are permitted pursuant to the Loan Documents and the liens created by the Loan Documents. This Indenture, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority lien on the Property, subject only to Permitted Encumbrances and the liens created by the Loan Documents and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances, such other liens as are permitted pursuant to the Loan Documents and the liens created by the Loan Documents. Borrower shall forever warrant, defend and preserve the title and the validity and priority of the lien of this Indenture and shall forever warrant and defend the same to Lender against the claims of all Persons whomsoever.

Section 3.4 PAYMENT FOR LABOR AND MATERIALS. Borrower will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials ("**Labor and Material Costs**") incurred in connection with the Property and never permit to exist beyond the due date thereof in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests created hereby and by the other Loan Documents, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests created hereby and by the other Loan Documents, except for the Permitted Encumbrances. After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Labor and Material Costs, provided that (i) no Event of Default has occurred and is continuing under the Loan Agreement, the Note, this Indenture or any of the other Loan Documents, (ii) Borrower is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting the Property, (iii) such proceeding shall suspend the collection of the Labor and Material Costs from Borrower and from the Property or Borrower shall have paid all of the Labor and Material Costs under protest, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder, (v) neither the Property nor any part thereof or interest therein will be in imminent danger of being

sold, forfeited, terminated, canceled or lost, and (vi) Borrower shall have furnished the security as may be required in the proceeding, or as may be reasonably requested by Lender to insure the payment of any contested Labor and Material Costs, together with all interest and penalties thereon.

Section 3.5 PERFORMANCE OF OTHER AGREEMENTS. Borrower shall observe and perform each and every term, covenant and provision to be observed or performed by Borrower pursuant to the terms of the Loan Agreement, any other Loan Documents and any agreement or recorded instrument affecting or pertaining to the Property, or given by Borrower to Lender for the purpose of further securing the Obligations and any amendments, modifications or changes thereto.

Section 3.6 TENANT IN COMMON. Each Borrower hereby agrees to each of the following:

(a) The Tenant in Common Agreement shall govern the respective rights, responsibilities and obligations of each Borrower.

(b) Each Borrower hereby waives, for so long as the Loan is outstanding, plus a period of 367 days, (i) any right it may have to place a lien against the Property in connection with a claim against any other Borrower for failure to comply with the Tenant in Common Agreement, and (ii) any right it may have to institute a partition action against the Property.

(c) Each Borrower agrees that its rights under the Tenant in Common Agreement are and shall be at all times subject and subordinate to the lien of the Mortgage and the rights of Lender under the Loan Documents. Each Borrower agrees that the Tenant in Common Agreement shall automatically terminate upon Lender's (or its nominees and designees) acquisition of fee title to the Property (whether by judicial or non-judicial foreclosure, deed in lieu of foreclosure, or otherwise). To the extent that there are any inconsistencies between the terms of the Tenant in Common Agreement and the terms of the Loan Documents, the terms of the Loan Documents shall prevail.

(d) Each Borrower agrees that, if following a bankruptcy proceeding affecting any Borrower, another Borrower subsequently commences a bankruptcy proceeding, each Borrower shall: (i) agree that "cause" for termination of the automatic stay exists and that Lender shall be entitled, and each Borrower hereby does and shall consent, to relief from the automatic stay imposed by Section 362 of the Bankruptcy Code and that, immediately upon the request of Lender, each Borrower and any Affiliate thereof shall take all actions necessary to afford such relief to Lender including the execution and filing of such documents as Lender may deem necessary or appropriate to obtain such relief; and (ii) hereby does waive any right it may have to file an objection to any motion to dismiss filed by Lender in connection with such bankruptcy proceeding.

(e) Following the commencement of a bankruptcy proceeding affecting any Borrower, neither Borrower nor any Affiliate of any Borrower shall propose or support, directly or indirectly, (i) any plan of reorganization that modifies or seeks to modify any term or provision of any Loan Document, or (ii) any use of Cash Collateral (as defined below) without the prior consent of Lender. For purposes of the immediately preceding sentence, "Cash Collateral" shall mean all

proceeds, product, offspring, rents and profits of the Property that constitute cash collateral under Section 363 of the Bankruptcy Code.

ARTICLE 4 - OBLIGATIONS AND RELIANCES

Section 4.1 RELATIONSHIP OF BORROWER AND LENDER. The relationship between Borrower and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Borrower, and no term or condition of any of the Loan Agreement, the Note, this Indenture and the other Loan Documents shall be construed so as to deem the relationship between Borrower and Lender to be other than that of debtor and creditor.

Section 4.2 NO RELIANCE ON LENDER. The general partners, officers, shareholders, members, principals and/or other beneficial owners of Borrower are experienced in the ownership and operation of properties similar to the Property, and Borrower and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Borrower is not relying on Lender's expertise, business acumen or advice in connection with the Property.

Section 4.3 NO LENDER OBLIGATIONS. (a) Notwithstanding the provisions of Subsections 1.1(f) and (l) or Section 1.2, Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to this Indenture, the Loan Agreement, the Note or the other Loan Documents, including without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Lender.

Section 4.4 RELIANCE. Borrower recognizes and acknowledges that in accepting the Note, the Loan Agreement, this Indenture and the other Loan Documents, (i) Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Article 3 of the Loan Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; (ii) that such reliance existed on the part of Lender prior to the date hereof; (iii) that the warranties and representations are a material inducement to Lender in accepting the Note, the Loan Agreement, this Indenture and the other Loan Documents; and that Lender would not be willing to make the Loan and accept this Indenture in the absence of the warranties and representations as set forth in Article 3 of the Loan Agreement.

ARTICLE 5 - FURTHER ASSURANCES

Section 5.1 RECORDING OF INDENTURE, ETC. Borrower forthwith upon the execution and delivery of this Indenture and thereafter, from time to time, will cause this Indenture and any of the other Loan Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish

notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Borrower will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, the Loan Agreement, this Indenture, the other Loan Documents, and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Indenture, the other Loan Documents, or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

Section 5.2 FURTHER ACTS, ETC. Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the Property and rights hereby deeded, mortgaged, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Indenture or for filing, registering or recording this Indenture, or for complying with all Legal Requirements, and Borrower hereby authorizes Lender to execute any of the foregoing in the name of Borrower or without the signature of Borrower to the extent that Lender may lawfully do so. Borrower hereby authorizes Lender to file in the appropriate filing or recording offices, with or without the signature of Borrower, one or more financing statements (including any amendment or continuation thereof), chattel mortgages or other instruments to establish, maintain, or evidence more effectively the validity, perfection or priority of the security interest of Lender in the Property, and Lender is hereby authorized to describe the collateral as "all assets" of Borrower on such financing statements, amendments thereto and continuation statements. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including without limitation such rights and remedies available to Lender pursuant to this Section 5.2.

Section 5.3 CHANGES IN TAX, DEBT CREDIT AND DOCUMENTARY STAMP LAWS.

(a) If any law is enacted or adopted or amended after the date of this Indenture which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Borrower will pay the tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then Lender shall have the option, exercisable by written notice of not less than one-hundred twenty (120) days, to declare the Debt immediately due and payable.

(b) Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Indenture or the Debt.

If such claim, credit or deduction shall be required by law, Lender shall have the option, exercisable by written notice of not less than one-hundred twenty (120) days, to declare the Debt immediately due and payable.

(c) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note, the Loan Agreement, this Indenture, or any of the other Loan Documents or impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.

Section 5.4 REPLACEMENT DOCUMENTS. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other Loan Documents, Borrower will issue, in lieu thereof, a replacement Note or other Loan Documents, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Documents in the same principal amount thereof and otherwise of like tenor.

Section 5.5 PERFORMANCE AT BORROWER'S EXPENSE. Borrower acknowledges and confirms that Lender shall impose certain administrative processing and/or commitment fees in connection with (a) the extension, renewal, modification, amendment and termination of the Loan, (b) the release or substitution of collateral therefor, (c) obtaining certain consents, waivers and approvals with respect to the Property, or (d) the review of any Lease or proposed Lease or the preparation or review of any subordination, non-disturbance agreement (the occurrence of any of the above shall be called an "**Event**"). Borrower further acknowledges and confirms that it shall be responsible for the payment of all costs of reappraisal of the Property or any part thereof, whether required by law, regulation, Lender or any governmental or quasi-governmental authority. Borrower hereby acknowledges and agrees to pay, immediately, with or without demand, all such fees (as the same may be increased or decreased from time to time), and any additional fees of a similar type or nature which may be imposed by Lender from time to time, upon the occurrence of any Event. Wherever it is provided for herein that Borrower pay any costs and expenses, such costs and expenses shall include, but not be limited to, all legal fees and disbursements of Lender, whether with respect to retained firms, the reimbursement for the expenses of in-house staff or otherwise.

Section 5.6 LEGAL FEES FOR ENFORCEMENT. (a) Borrower shall pay all reasonable legal fees actually incurred by Lender in connection with the preparation of the Loan Agreement, the Note, this Indenture and the other Loan Documents and (b) Borrower shall pay to Lender on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by Lender in protecting its interest in the Property or in collecting any amount payable hereunder or in enforcing its rights hereunder with respect to the Property (including commencing any foreclosure action), whether or not any legal proceeding is commenced hereunder or thereunder, together with interest thereon at the Default Rate from the date paid or incurred by Lender until such expenses are paid by Borrower.

Section 5.7 SPLITTING OF MORTGAGE. This Indenture and the Note shall, at any time until the same shall be fully paid and satisfied, at the sole election of Lender, be split or divided into two or more notes and two or more security instruments, each of which shall cover all or a

portion of the Property to be more particularly described therein. To that end, Borrower, upon written request of Lender, shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered by the then owner of the Property, to Lender and/or its designee or designees substitute notes and security instruments in such principal amounts, aggregating not more than the then unpaid principal amount of the Note, and containing terms, provisions and clauses similar to those contained herein and in the Note, and such other documents and instruments as may be required by Lender.

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 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 Debt and the performance of the Other Obligations. 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 Debt or the performance of the Other Obligations, Lender can recover the Debt by a sale of the Property.

Section 6.2 NO SALE/ENCUMBRANCE. Neither Borrower nor any Restricted Party shall Transfer the Property or any part thereof or any interest therein or permit or suffer the Property or any part thereof or any interest therein to be Transferred other than as expressly permitted pursuant to the terms of the Loan Agreement.

ARTICLE 7 - PREPAYMENT

Section 7.1 PREPAYMENT. The Debt may not be prepaid in whole or in part except in accordance with the express terms and conditions of the Loan Agreement.

ARTICLE 8 - RIGHTS AND REMEDIES

Section 8.1 REMEDIES. Upon the occurrence of any Event of Default, Borrower agrees that Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Indenture under any applicable provision of law in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Indenture for



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the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Indenture for the balance of the Debt not then due, unimpaired and without loss of priority;

(d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, in one or more parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

(e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, the Loan Agreement, or in the other Loan Documents;

(f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Indenture or the other Loan Documents;

(g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, which appointment is hereby authorized and consented to by Borrower, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower, any Guarantor or of any person, firm or other entity liable for the payment of the Debt or any part thereof;

(h) the license granted to Borrower under Section 1.2 hereof shall automatically be revoked and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct business thereon; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (vi) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment and performance of the Debt and Obligations, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, Insurance Premiums and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of any Property (including, without limitation, the Personal Property) or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Property (including without limitation, the Personal Property), and (ii) request Borrower at its expense to assemble the Property, including without limitation, the Personal Property, and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Property, including without limitation, the Personal Property, sent to Borrower in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Borrower;

(j) apply any sums then deposited in the Accounts and any other sums held in escrow or otherwise by or on behalf of Lender in accordance with the terms of this Indenture, the Loan Agreement, or any other Loan Documents to the payment of the following items in any order in its sole discretion:

- (i) Taxes and Other Charges;
- (ii) Insurance Premiums;
- (iii) interest on the unpaid principal balance of the Note;
- (iv) amortization of the unpaid principal balance of the Note; or

(v) all other sums payable pursuant to the Note, the Loan Agreement, this Indenture and the other Loan Documents, including without limitation advances made by Lender pursuant to the terms of this Indenture;

(k) surrender the Policies, collect the unearned Insurance Premiums and apply such sums as a credit on the Debt in such priority and proportion as Lender in its discretion shall deem proper, and in connection therewith, Borrower hereby appoints Lender as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Borrower to collect such Insurance Premiums;

(l) apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Lender shall deem to be appropriate in its discretion;

(m) foreclose by power of sale or otherwise and apply the proceeds of any recovery to the Debt in accordance with Section 8.2 or to any deficiency under this Indenture;

(n) exercise all rights and remedies under any Causes of Action, whether before or after any sale of the Property by foreclosure, power of sale, or otherwise and apply the proceeds of any recovery to the Debt in accordance with Section 8.2 or to any deficiency under this Indenture; or

(o) pursue such other remedies as Lender may have under applicable law.

In the event of a sale, by foreclosure, power of sale, or otherwise, of less than all of the Property, this Indenture shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority.

Section 8.2 APPLICATION OF PROCEEDS. The purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Lender pursuant to the Note, this Indenture, the Loan Agreement, or the other Loan Documents, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper.

Section 8.3 RIGHT TO CURE DEFAULTS. Upon the occurrence of any Event of Default or if Borrower fails to make any payment or to do any act as herein provided, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make or do the same in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Indenture or collect the Debt. The cost and expense of any cure hereunder (including reasonable attorneys' fees to the extent permitted by law), with interest as provided below, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or in bringing any such action or proceeding, shall bear interest at the Default Rate for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender and shall be deemed to constitute a portion of the Debt and be secured by this Indenture and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

Section 8.4 ACTIONS AND PROCEEDINGS. Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and, after the occurrence and during the continuance of an Event of Default, to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its discretion, decides should be brought to protect its interest in the Property.

Section 8.5 RECOVERY OF SUMS REQUIRED TO BE PAID. Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for an Event of Default existing at the time such earlier action was commenced.

Section 8.6 OTHER RIGHTS, ETC. (a) The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Indenture. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Borrower or any Guarantor to take any action to foreclose this Indenture or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, the Loan Agreement, this Indenture or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Borrower, and Lender shall have no liability whatsoever for decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Lender shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to the Property or any other Property not in Lender's possession.

(c) Lender may resort for the payment of the Debt and performance of the Obligations to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Indenture. The rights of Lender under this Indenture shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

Section 8.7 RIGHT TO RELEASE ANY PORTION OF THE PROPERTY. Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Indenture, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Indenture shall continue as a lien and security interest in the remaining portion of the Property.

Section 8.8 VIOLATION OF LAWS. If the Property is not in compliance with Legal Requirements, Lender may impose additional requirements upon Borrower in connection herewith including, without limitation, monetary reserves or financial equivalents.

Section 8.9 RIGHT OF ENTRY. Upon reasonable prior notice and subject to the terms of the Loan Agreement, Lender and its agents shall have the right to enter and inspect the Property at all reasonable times.

Section 8.10 SUBROGATION. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, and the performance and discharge of the Obligations.

Section 8.11 RECOURSE AND CHOICE OF REMEDIES. Notwithstanding any other provision of this Indenture or the Loan Agreement, including, without limitation, Section 8.6 of the Loan Agreement, Lender and other Indemnified Parties are entitled to enforce the obligations of



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Borrower contained in Section 9.13(c) and (d) of the Loan Agreement without first resorting to or exhausting any security or collateral and without first having recourse to the Note or any of the Property, through foreclosure or acceptance of a deed in lieu of foreclosure or otherwise, and in the event Lender commences a foreclosure action against the Property, Lender is entitled to pursue a deficiency judgment with respect to such obligations against Borrower and any guarantor or indemnitor with respect to the Loan. The provisions of Section 9.13(c) and (d) of the Loan Agreement are exceptions to any non-recourse or exculpation provisions in the Loan Agreement, the Note, this Indenture or the other Loan Documents, and Borrower is fully and personally liable for the obligations pursuant to Section 9.13(c) and (d) of the Loan Agreement. The liability of Borrower with respect to the Loan pursuant to Section 9.13(c) and (d) of the Loan Agreement is not limited to the original principal amount of the Note. Notwithstanding the foregoing, nothing herein shall inhibit or prevent Lender from foreclosing or exercising any other rights and remedies pursuant to the Loan Agreement, the Note, this Indenture and the other Loan Documents, whether simultaneously with foreclosure proceedings or in any other sequence. A separate action or actions may be brought and prosecuted against Borrower pursuant to Section 9.13(c) and (d) of the Loan Agreement, whether or not action is brought against any other Person or whether or not any other Person is joined in the action or actions.

Section 8.12 MORTGAGE AND/OR INTANGIBLE TAX. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless Lender from and against any and all Losses imposed upon or incurred by or asserted against Lender directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Indenture, the Note or any of the other Loan Documents, but excluding any income, franchise or other similar taxes.

ARTICLE 9 - WAIVERS

Section 9.1 WAIVER OF COUNTERCLAIM. Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents.

Section 9.2 MARSHALLING AND OTHER MATTERS. To the fullest extent permitted by applicable Legal Requirements, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's partners and others with interests in Borrower, and of the Property, or to a sale in inverse order of alienation in the event of foreclosure of all or part of this Indenture, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Property for the collection of the Debt without any prior or different resort for collection or of the right of Lender to the payment of the Debt out of the net proceeds of the Property in preference to every other claimant whatsoever.

Section 9.3 WAIVER OF NOTICE. Borrower shall not be entitled to any notices of any nature whatsoever from Lender except (a) with respect to matters for which this Indenture, the Loan Agreement or any other Loan Document, specifically and expressly provides for the giving of notice by Lender to Borrower, and (b) with respect to matters for which Lender is required by any applicable law to give notice, and Borrower hereby expressly waives the right to receive any

notice from Lender with respect to any matter for which this Indenture does not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 9.4 WAIVER OF STATUTE OF LIMITATIONS. Borrower hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Debt or performance of its Other Obligations.

Section 9.5 WAIVER OF TRIAL BY JURY. **BORROWER (AND LENDER BY ACCEPTANCE HEREOF), HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS SECURITY INSTRUMENT, THE NOTE OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER.**

ARTICLE 10 - EXCULPATION

Section 10.1 EXCULPATION. Notwithstanding anything to the contrary contained in this Indenture or the other Loan Documents, the liability of Borrower to pay the Debt and for the performance of the other agreements, covenants and obligated contained here and in the Note, Loan Agreement and other Loan Documents shall be limited as set forth in Section 8.6 of the Loan Agreement and the provision thereof are hereby incorporated by reference into this Indenture to the same extent and with the same force as if fully set forth herein.

ARTICLE 11 - APPLICABLE LAW

Section 11.1 GOVERNING LAW. The provisions of Section 9.3 of the Loan Agreement are hereby incorporated by reference into this Indenture to the same extent and with the same force as if fully set forth herein.

ARTICLE 12 - DEFINITIONS

Section 12.1 GENERAL DEFINITIONS. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Indenture may be used interchangeably in singular or plural form and the word "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "Lender" shall mean "Lender and any subsequent holder of the Note," the word "Note," shall mean "the Note and any other evidence of indebtedness secured by this Indenture," the word "Property" shall include any portion of the Property and any interest therein, and the phrases "legal fees", "attorneys' fees" and "counsel fees" shall include any and all reasonable attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, reasonable fees and



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disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

Section 12.2 HEADINGS, ETC. The headings and captions of various Articles and Sections of this Indenture are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 12.3 USURY. This Indenture and the Note are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, by the terms of this Agreement or the other Loan Documents, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of the Maximum Legal Rate, the Applicable Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by applicable Legal Requirements, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the Maximum Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

ARTICLE 13 - MISCELLANEOUS PROVISIONS

Section 13.1 MODIFICATION, WAIVER IN WRITING. No modification, amendment, extension, discharge, termination or waiver of any provision of this Security Agreement, the Note, or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

Section 13.2 LIABILITY. If Borrower consists of more than one (1) Person, the representations, warranties, covenants, obligations and liabilities of each Person shall be joint and several. This Indenture shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

Section 13.3 SEVERABILITY. Wherever possible, each provision of this Security Agreement shall be interpreted in such manner as to be effective and valid under applicable Legal Requirements, but if any provision of this Security Agreement shall be prohibited by or invalid under Legal Requirement, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Security Agreement.

Section 13.4 DUPLICATE ORIGINALS; COUNTERPARTS. This Indenture may be executed in one or more counterparts by some or all of the parties hereto, each of which counterparts shall be an original and all of which together shall constitute a single agreement. The failure of any party hereto to execute this Security Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder. For the purposes of this Security Agreement, electronic signatures shall be considered original signatures.

Section 13.5 NUMBER AND GENDER. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 13.6 NOTICE. All notices or other written communications hereunder shall be delivered in accordance with Section 9.6 of the Loan Agreement.

Section 13.7 VARIABLE INTEREST RATE. The Loan secured by this Indenture is a variable interest rate loan, as more particularly set forth in the Loan Agreement.

Section 13.8 LIMITATION ON LENDER'S RESPONSIBILITY. No provision of this Indenture shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession."

ARTICLE 14 - INTENTIONALLY OMITTED

ARTICLE 15 - STATE SPECIFIC PROVISIONS

Section 15.1 PRINCIPLES OF CONSTRUCTION. In the event of any inconsistencies between the terms and conditions of this Section 15 and the terms and conditions of this Indenture, Lender shall have the right to elect in its sole discretion which one or more provisions to enforce or rely upon; Lender's rights and remedies in this Indenture and the Loan Documents are cumulative, and in case of any conflict between any provision within this Indenture or between this Indenture and those of other Loan Documents, Lender shall have the right to enforce any of the same Lender determines to be most beneficial to Lender to the end of affording Lender with maximum security and rights under law, the intention being that any inconsistencies may be resolved by Lender, and Lender's enforcement of any specific remedy in one case shall not bar Lender from enforcing that remedy or another remedy in a different manner in another case.

Section 15.2 ADDITIONAL REMEDIES. In addition to the remedies set forth in this Indenture, Lender shall have the following additional remedies:

- (a) Bring a court action at law or in equity to foreclose this Indenture or to enforce its provisions or any of the indebtedness or obligations secured by this Indenture, either or both, concurrently or otherwise, and one action or suit shall not abate or be a bar to or waiver of Lender's right to institute or maintain the other, provided that Lender shall have only one payment and satisfaction of the Debt;

(b) Cause any or all of the Property to be sold under the power of sale granted hereby in any manner permitted by applicable law;

(c) Exercise any other right or remedy available under law or in equity or under the Loan Documents;

(d) Sell the Property at public outcry to the highest bidder for cash in front of the front or main door of the court house of the county where said Property, or a substantial and material part thereof, is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale, together with a description of the Property, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in the county (or all counties, if more than one) in which the Property is located (but if no newspaper is published in any such county, the notice shall be published in a newspaper published in an adjoining county for three successive weeks), and upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the Property so purchased. Any such sale shall be held between the hours of 11:00 a.m. and 4:00 p.m. on the day designated for the exercise of the power of sale hereunder. Lender may bid at said sale and purchase said Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale, the Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Lender may elect in its sole discretion. Any such sale shall operate as a foreclosure of this Indenture only as to the Property sold, and if the Debt and all other sums secured hereby are not thereby satisfied in full, the other Property shall continue as security therefor and there may be a further foreclosure of this Indenture either by sale under power of sale or by judicial foreclosure.

Section 15.3 PROCEEDS. The proceeds of any sale under this Indenture will be applied in the following manner:

FIRST: Payment of the costs and expenses of the sale, including but not limited to, Lender's fees, legal fees and disbursements, title charges and transfer taxes, and payment of all expenses, liabilities and advances of Lender, together with interest at the Default Rate provided under the Note on all advances made by Lender.

SECOND: Payment of all sums expended by Lender under the terms of this Indenture and not yet repaid, together with interest on such sums at the Default Rate provided under the Note.

THIRD: Payment of the indebtedness and obligations of Borrower secured by this Indenture in any order that Lender chooses.

FOURTH: The remainder, if any, to the person or persons appearing of record to be the owner of the Property at the time of such sale.

Section 15.4 LENDER'S OPTION ON FORECLOSURE. At the option of Lender, this Indenture may be foreclosed as provided by law or in equity, in which event Lender's attorney's fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event

Lender exercises its option to foreclose the Indenture in equity, Lender may, at its option, foreclose this Indenture subject to the rights of any tenants of the Property, and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted by Borrower to be a defense to any proceedings instituted by Lender to collect the sums secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Property.

Section 15.5 WAIVER. Borrower waives all rights to direct the order or manner in which any of the Property will be sold in the event of any sale under this Indenture and also any right to have any of the Property marshalled upon any sale. Lender may in its discretion sell all the personal and real property together or in parts, in one or more sales, and in any sequence Lender selects.

ADDITIONAL WAIVER. AFTER CONSULTATION WITH COUNSEL AND RECOGNIZING THAT ANY DISPUTE HEREUNDER WILL BE COMMERCIAL IN NATURE AND COMPLEX, AND IN ORDER TO MINIMIZE THE COSTS AND TIME INVOLVED IN ANY DISPUTE RESOLUTION PROCESS, THE PARTIES HERETO KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED UPON, ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH THIS TRANSACTION, THIS INSTRUMENT, OR ANY OF THE OTHER LOAN DOCUMENTS EXECUTED IN CONNECTION WITH THIS TRANSACTION, OR RESPECTING ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF ANY PARTY AND ACKNOWLEDGE THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR ENTERING INTO THIS LOAN TRANSACTION BY ALL PARTIES.

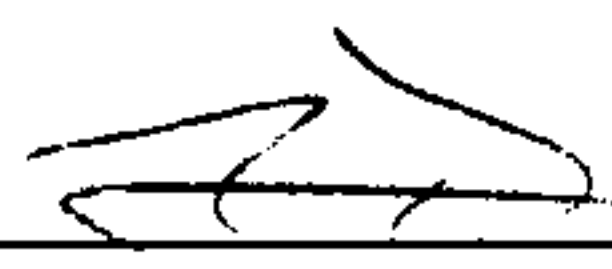
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IN WITNESS WHEREOF, THIS SECURITY INSTRUMENT has been executed by
Borrower the day and year first above written.

BORROWER:

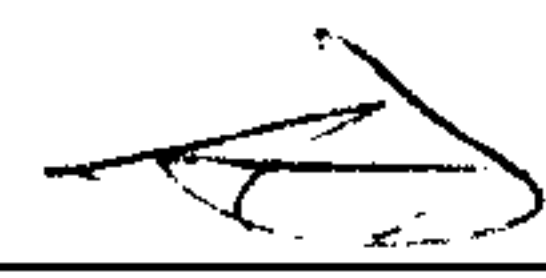
BROOK HIGHLAND SC LLC,
a Delaware limited liability company

By: FNRP Realty Advisors LLC,
a Delaware limited liability company
its Manager

By: 
Name: Andrew DeNardo
Title: Authorized Signatory


BROOK HIGHLAND SC TIC 1 LLC,
a Delaware limited liability company

By: FNRP TIC Manager LLC,
a Delaware limited liability company
its Manager

By: 
Name: Andrew DeNardo
Title: Authorized Signatory

BROOK HIGHLAND SC TIC 2 LLC,
a Delaware limited liability company

By: FNRP TIC Manager LLC,
a Delaware limited liability company
its Manager

By: 
Name: Andrew DeNardo
Title: Authorized Signatory



20220708000270800 24/28 \$85985.00
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07/08/2022 12:37:06 PM FILED/CERT

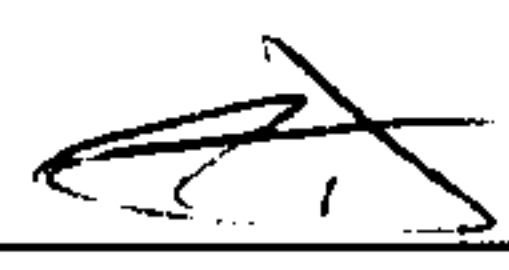
BROOK HIGHLAND SC TIC 3 LLC,
a Delaware limited liability company

By: FNRP TIC Manager LLC,
a Delaware limited liability company
its Manager

By: 
Name: Andrew DeNardo
Title: Authorized Signatory

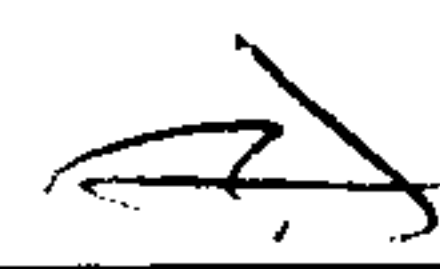
BROOK HIGHLAND SC TIC 4 LLC,
a Delaware limited liability company

By: FNRP TIC Manager LLC,
a Delaware limited liability company
its Manager

By: 
Name: Andrew DeNardo
Title: Authorized Signatory

BROOK HIGHLAND SC TIC 5 LLC,
a Delaware limited liability company

By: FNRP TIC Manager LLC,
a Delaware limited liability company
its Manager

By: 
Name: Andrew DeNardo
Title: Authorized Signatory



20220708000270800 25/28 \$85985.00
Shelby Cnty Judge of Probate, AL
07/08/2022 12:37:06 PM FILED/CERT

BROOK HIGHLAND SC TIC 8 LLC,
a Delaware limited liability company

By: FNRP TIC Manager LLC,
a Delaware limited liability company
its Manager

By: 
Name: Andrew DeNardo
Title: Authorized Signatory

BROOK HIGHLAND SC TIC 9 LLC,
a Delaware limited liability company

By: FNRP TIC Manager LLC,
a Delaware limited liability company
its Manager

By: 
Name: Andrew DeNardo
Title: Authorized Signatory

BROOK HIGHLAND SC TIC 10 LLC,
a Delaware limited liability company

By: FNRP TIC Manager LLC,
a Delaware limited liability company
its Manager

By: 
Name: Andrew DeNardo
Title: Authorized Signatory

Mortgage

STATE OF New Jersey)
COUNTY OF Monmouth)

20220708000270800 26/28 \$85985.00
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I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Andrew DeNardo, whose name as Authorized Signatory of FNRP Realty Advisors LLC, a Delaware limited liability company, the Manager of Brook Highland SC LLC, and as Authorized Signatory of FNRP TIC Manager LLC, a Delaware limited liability company, the Manager of each of Brook Highland SC TIC 1 LLC, Brook Highland SC TIC 2 LLC, Brook Highland SC TIC 3 LLC, Brook Highland SC TIC 4 LLC, Brook Highland SC TIC 5 LLC, Brook Highland SC TIC 8 LLC, Brook Highland SC TIC 9 LLC, and Brook Highland SC TIC 10 LLC, each 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 officer and with full authority, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date. Given under my hand and official seal this 14 day of June, 2022.

Valerie Antista
Notary Public

My Commission Expires: 12/17/26


PREPARED BY AND UPON
RECORDATION RETURN TO:

POLSINELLI
900 W. 48th Place, Suite 900
Kansas City, Missouri 64112
Attention: Marla R. Bell, Esq.



Mortgage

EXHIBIT A
(Legal Description)


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

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 EXCEPT 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, page 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.

PARCEL V:

Lot 2A, according to the Amended Map of Lowe's Addition of 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 interests 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



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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.

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.

Tax ID Nos.: 03-9-31-0-001-018.005; 03-9-31-0-001-018.020; 03-9-31-0-001-018.013; 03-9-31-0-001-018.051; 03-9-31-0-001-018.010

Mortgage