

This document was prepared
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be returned to:

POLSINELLI
900 W. 48th Place, Ste. 900
Kansas City, Missouri 64112
Attn: Marla R. Bell



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(space above reserved for recorder's use)

SUBORDINATION AGREEMENT

(Tenants in Common Agreement)

by

**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,** each a Delaware limited liability company,
as tenants in common,


in favor of

FS CREIT ORIGINATOR LLC,
a Delaware limited liability company
(Lender)

Dated: July 7, 2022

Location: 5291 US 280, Birmingham, Alabama 35242

**SUBORDINATION AGREEMENT
(Tenants In Common Agreement)**


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NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS SUBORDINATION AGREEMENT ("Agreement") is made as of this 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, each referred to herein as a "**TIC**", and collectively, the "**TICs**"), each having an address at 151 Bodman Place, Suite 201, Red Bank, NJ 07701, Attention: Anthony Grosso, in favor of **FS CREIT ORIGINATOR LLC**, a Delaware limited liability company (together with its successors and assigns, "**Lender**").

RECITALS

A. The TICs are the owner of certain real property described in Exhibit A attached hereto (which property, together with all improvements now or hereafter located on the property, is hereinafter referred to as the "**Property**").

B. The TICs have entered into that certain Tenants In Common Agreement dated as of July 7, 2022, a memorandum of which was recorded on July 8, 2022, in the official records of Shelby County, Alabama, as Instrument ~~20220708000270860~~ 20220708000270860 (as the same may be or may have been amended, restated, replaced, supplemented or otherwise modified from time to time, the "**TIC Agreement**"), to govern themselves as tenants in common of the Property.

C. The TICs have executed a Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing ("**Security Instrument**"), dated as of the date hereof, and recorded immediately prior to this Agreement, securing, among other things, a Loan Agreement ("**Loan Agreement**") and a Promissory Note ("**Note**") in the principal sum of up to Fifty-Seven Million Two Hundred Fifty Thousand and No/100 Dollars (\$57,250,000.00) in favor of Lender ("**Loan**").

D. As a condition precedent to Lender making the Loan, Lender has required that the TICs furnish certain assurances to, and make certain agreements with Lender, as set forth below.

NOW THEREFORE, for good and valuable consideration and to induce Lender to make the Loan, the TICs hereby agree for the benefit of Lender as follows:

1. SUBORDINATION, WAIVERS AND AGREEMENTS

1.1 **Subordination.** Each TIC intentionally and unconditionally waives, relinquishes and subordinates all of its right, title and interest in and to the TIC Agreement to the lien or charge of the Security Instrument, and understands that in reliance upon, and in consideration of, this waiver, relinquishment and subordination, specific loans and advances are being and will be made by Lender and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination. Each TIC further agrees that all of the terms, covenants, and provisions of the TIC Agreement, and all rights, remedies and options of each TIC thereunder (including without limitation all indemnifications by and among the TICs, all options to purchase and all rights of first refusal), are and shall at all times continue to be subject and subordinate in all respects to the terms, covenants, and provisions of the Security Instrument, and to the lien of the Security Instrument, including without limitation, all renewals, increases, modifications, spreaders, consolidations, replacements, and extensions thereof and to all sums secured thereby and advances made thereunder with the same force and effect as if the Security Instrument had been executed, delivered, and recorded prior to the execution and delivery of the TIC Agreement.

1.2 **Waivers.** Each TIC further acknowledges and agrees that so long as the Loan remains unpaid and outstanding, such TIC waives and subordinates in all respects to the rights of Lender the following:

- (a) any lien rights that such TIC may have under the TIC Agreement;
- (b) any rights such TIC may have to force the sale of any portion or all of the Property;
- (c) any right of first refusal or option to purchase or similar rights set forth in the TIC Agreement (including any such rights arising under Section 363(i) of the United States Bankruptcy Code);
- (d) any right to seek partition of all or any portion of the Property; and
- (e) any right to withdraw from the terms of the TIC Agreement without compliance with the Loan Agreement and all other documents evidencing and securing the Loan.

1.3 **Additional Covenants.** So long as any indebtedness secured by the Security Instrument remains unpaid and outstanding, each TIC agrees that:



20220708000270860 4/11 \$59.00
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(a) the commencement of an action for partition of the Property shall, at Lender's option, constitute an Event of Default under the Security Instrument;

(b) the TIC Agreement shall not be amended or modified in any material respect without the Lender's prior written consent, which consent shall not be unreasonably withheld;

(c) without limiting the generality of any provision of any Loan Document, the TICs hereby assign to Lender, as additional collateral security for the Loan, all of the rights of the TICs under the TIC Agreement;

(d) Lender and Lender's successors and assigns shall be a third party beneficiary with respect to each and all of the provisions of the TIC Agreement; and

(e) in the event of any conflict between the terms of this Agreement and the terms of the TIC Agreement, the terms of this Agreement shall control.

1.4 **Disbursements.** Lender, in making disbursements pursuant to the Loan Agreement, the Note, the Security Instrument or any loan agreements with respect to the Property, is under no obligation or duty to, nor has Lender represented that it will, see to the application of such proceeds by the person or persons to whom Lender disburses such proceeds, and any application or use of such proceeds for purposes other than those provided for in such agreement or agreements shall not defeat the subordination herein made in whole or in part.


2. **MISCELLANEOUS.**

2.1 **Attorneys' Fees.** If any legal action, suit or proceeding is commenced between any TIC and Lender regarding their respective rights and obligations under this Agreement, the prevailing party shall be entitled to recover, in addition to the damages or other relief, costs and expenses, attorneys' fees and court costs (including, without limitation, expert witness fees). As used herein, the term "prevailing party" shall mean the party which obtains the principal relief it has sought, whether by compromise settlement or judgment. If the party which commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

2.2 **Heirs, Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of, the heirs, successors and assigns of the parties hereto.

2.3 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute and be construed as one and the same instrument.

2.4 **Headings.** Section headings in this Agreement are for convenience only and are not to be construed as part of this Agreement or in any way limiting or applying the provisions hereof.


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2.5 **Incorporation.** Exhibit A is attached hereto and incorporated herein by this reference.

NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.

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


[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, this Subordination Agreement has been executed by each TIC
as of 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

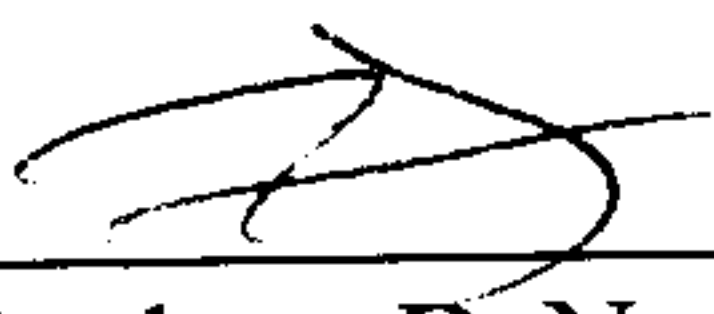
BROOK HIGHLAND SC TIC 3 LLC,
a Delaware limited liability company

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

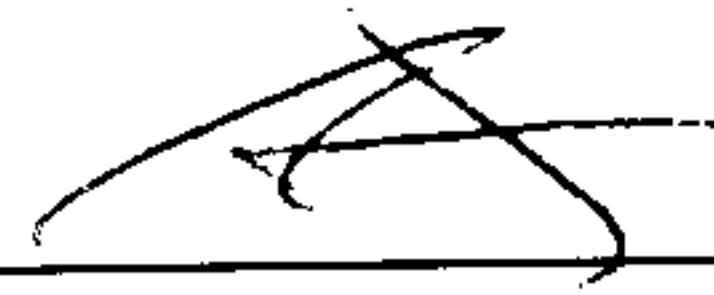
By: 
Name: Andrew DeNardo
Title: Authorized Signatory



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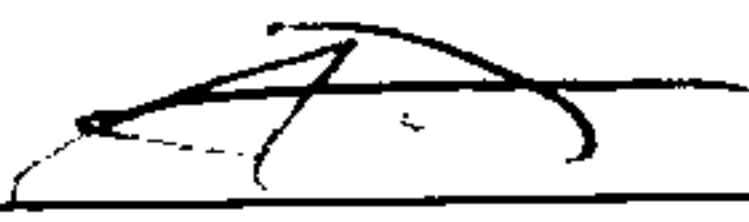
BROOK HIGHLAND SC TIC 8 LLC,
a Delaware limited liability company

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

By: 
Name: Andrew DeNardo
Title: Authorized Signatory

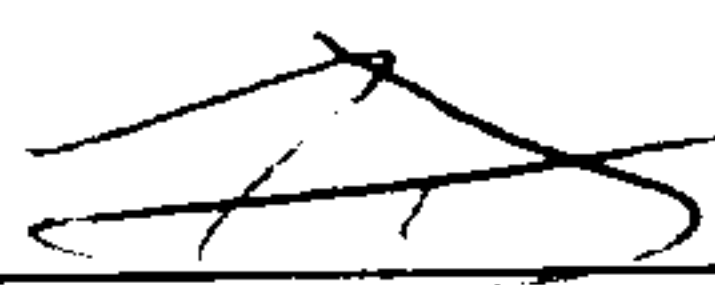
BROOK HIGHLAND SC TIC 9 LLC,
a Delaware limited liability company

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

STATE OF New Jersey
COUNTY OF Monmouth


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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 21 day of June, 2022.

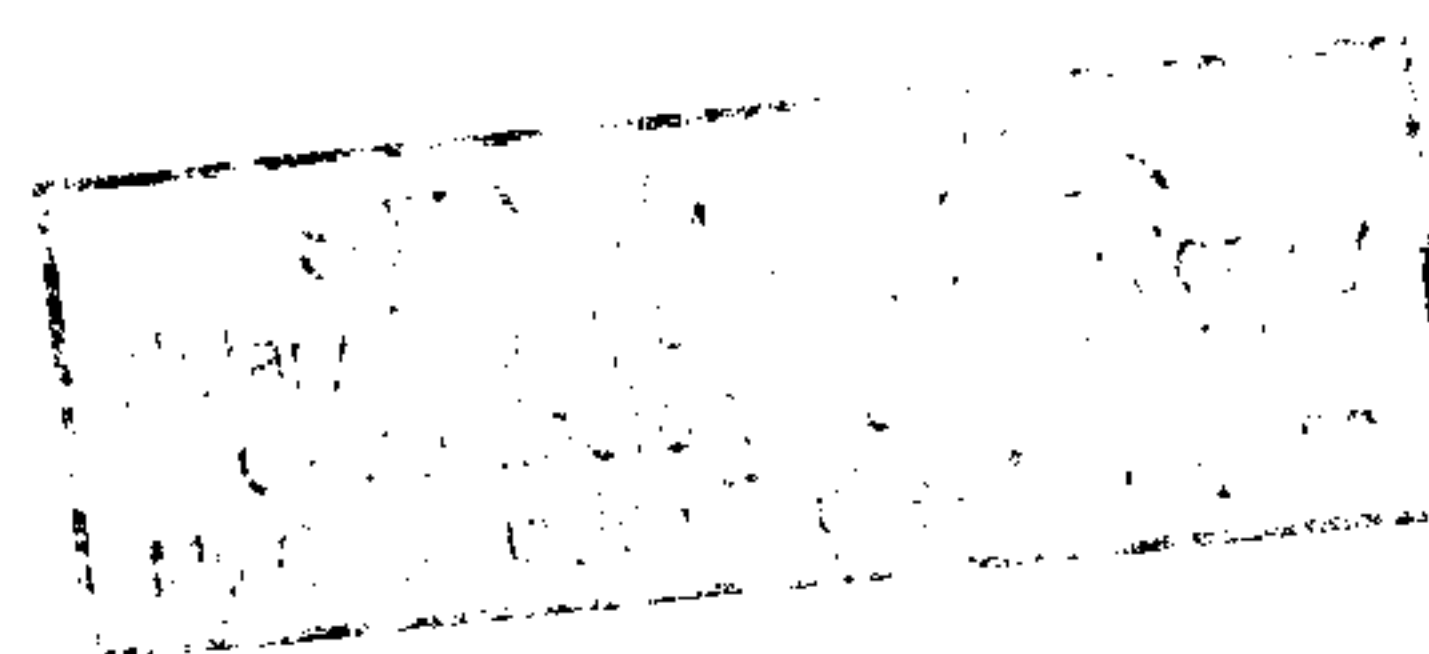


Notary Public

My Commission Expires: 11/18/2026

PREPARED BY AND UPON
RECORDATION RETURN TO:

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



[Subordination Agreement (Tenants in Common Agreement)]

EXHIBIT A

LEGAL DESCRIPTION



20220708000270860 10/11 \$59.00
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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.

EXHIBIT A



20220708000270860 11/11 \$59.00
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07/08/2022 01:16:22 PM FILED/CERT

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

ALSO:

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

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

EXHIBIT A