

**This Instrument Prepared by:**

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THIS MORTGAGE IS INTENDED TO BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING PURSUANT TO ALABAMA CODE SECTION 7-9A-502(C). PORTIONS OF THE GOODS AND PERSONAL PROPERTY COMPRISING A PART OF THE MORTGAGED PROPERTY ARE OR ARE TO BECOME FIXTURES RELATED TO THE LAND DESCRIBED IN *EXHIBIT A* ATTACHED HERETO. THE ADDRESSES OF MORTGAGOR (DEBTOR) AND BANK (SECURED PARTY) ARE SPECIFIED IN THIS MORTGAGE. THE MAXIMUM PRINCIPAL AMOUNT SECURED BY THIS MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING SHALL NOT EXCEED \$890,000.00, IN ACCORDANCE WITH THE TERMS OF SECTION 1.07 OF THIS MORTGAGE.

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

**THIS MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING** (the "Mortgage") is made and entered into as of September 19, 2022, by **HEATHERBROOKE SURGICAL, LLC**, an Alabama limited liability company ("1031 Titleholder"), whose address is 101 Heatherbrooke Park Dr., Birmingham, AL 35242, and **MANISCALCO PROPERTIES, LLC**, an Alabama limited liability company ("Properties"), whose address is 101 Heatherbrooke Park Dr., Birmingham, AL 35242 (1031 Titleholder and Properties hereinafter, individually, collectively, jointly and severally, the "Mortgagor") in favor of **FIRSTBANK**, a banking corporation organized under the laws of the State of Tennessee, whose address is c/o FirstBank, 3500 Blue Lake Dr., Suite 400, Birmingham, AL 35243, Attention: Mrs. Megan Anglin-Jeter (the "Bank"). Any capitalized term used herein but not defined shall have the meaning ascribed to such term in that certain Credit Agreement dated as of even date herewith between and among Mortgagor, MANISCALCO ORAL AND FACIAL SURGERY LLC, an Alabama limited liability company ("Practice Entity") (Properties

and Practice Entity, hereafter, individually and collectively, the "Borrower") and Bank (as amended as of the date hereof and from time to time, the "Credit Agreement").

**WITNESSETH:**

**WHEREAS**, 1031 Titleholder has been formed for holding title to the Mortgaged Property (as such term is hereinafter defined) in connection with a Reverse 1031 Exchange in accordance with and subject to all Reverse 1031 Laws;

**WHEREAS**, Borrower Parties are justly indebted to Bank for the Obligations or such portion thereof that as has been disbursed from time to time under the provisions of the Credit Agreement such indebtedness being evidenced by the Notes, and payable to Bank with interest thereon as provided for in the Credit Agreement, and in order to secure the maximum principal amount of **EIGHT HUNDRED NINETY THOUSAND AND 00/100 DOLLARS (\$890,000.00)**, Mortgagor, who is under common control and ownership with Holdings, desires to secure the Obligations, including, but not limited to, the obligations (i) to pay the principal of and interest on the Notes in accordance with the respective terms thereof and/or of the Credit Agreement (including any and all extensions, modifications, and renewals thereof and substitutions therefor), and (ii) to pay, repay or reimburse Bank for all amounts owing under any of the Loan Documents, including all Indemnified Losses and Default Cost; and

**WHEREAS**, Mortgagor represents and warrants it will receive direct financial benefit from the extension of credit to the Borrower Parties and desires to execute and deliver this Mortgage to secure the Obligations as stated herein to induce Bank to enter the Credit Agreement and extend such Obligations as set forth therein to Borrower Parties;

**NOW, THEREFORE**, for and in consideration of Bank making the Loans and to secure the prompt payment and performance of the Obligations, Mortgagor does hereby irrevocably CONVEY, MORTGAGE, WARRANT, GRANT, BARGAIN, SELL, ASSIGN, TRANSFER, PLEDGE and set over unto Bank, and the successors and assigns of Bank, all of Mortgagor's right, title and interest of whatever kind, nature and description, whether now owned or hereafter acquired, and wherever located (the "Mortgagor's Interest") in and to all of the following described land and interests in land, estates, easements, rights, improvements, personal property, fixtures, equipment, furniture, furnishings, appliances and appurtenances, whether now owned or hereafter acquired, and including replacements and additions thereto (herein referred to collectively as the "Mortgaged Property");

(a) All those certain tracts, pieces or parcels of land, and interests in land, located in Shelby County, Alabama, more particularly described in Exhibit A attached hereto and by this reference made a part hereof (the "Land");

(b) All buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, and all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, carpeting and other floor coverings, water heaters, awnings and storm sashes, and cleaning apparatus which are or shall be attached to said buildings, structures or improvements, and all other furnishings, furniture, fixtures, machinery, equipment, appliances, vehicles and personal property of every kind

and nature whatsoever now or hereafter owned by Mortgagor and located in, on or about, or used or intended to be used with or in connection with the construction, use, operation or enjoyment of the Mortgaged Property, including all extensions, additions, improvements, betterments, renewals and replacements, substitutions, or proceeds from a permitted sale of any of the foregoing, and all building materials and supplies of every kind now or hereafter placed or located on the Land (collectively the "Improvements"), all of which are hereby declared and shall be deemed to be fixtures and accessions to the Land and a part of the Mortgaged Property as between the parties hereto and all persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the indebtedness herein described and to be secured by this Mortgage;

(c) All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, minerals, timber, flowers, shrubs, crops, trees, timber and other emblements now or hereafter located on the Land or under or above the same or any part or parcel thereof, and all ground leases, estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversions, and remainders whatsoever, in any way belonging, relating or appertaining to the Mortgaged Property or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor;

(d) Any and all (i) furniture, furnishings, equipment, machinery, Tangible Property, and goods located within, used in the operation of or derived from the Improvements, (ii) crops, farm products, timber and timber to be cut; (iii) general intangibles (including payment intangibles), money, insurance proceeds, accounts, contract and subcontract rights, trademarks, trade names, copyrights, monetary obligations, chattel paper (including electronic chattel paper), instruments, investment property, documents, letter of credit rights, inventory and commercial tort claims; (iv) all cash funds, fees (whether refundable, returnable or reimbursable), deposit accounts or other funds or evidences of cash, credit or indebtedness deposited by or on behalf of Mortgagor with any governmental agencies, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs, any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Land, Improvements, fixtures, or other Mortgaged Property, including but not limited to those for any vacation of, or change of grade in, any streets affecting the Land or the Improvements and those for municipal utility district or other utility costs incurred or deposits made in connection with the Land; (v) all building and construction materials and equipment; and (vi) all other personal property of any kind or character as defined in and subject to the provisions of the Uniform Commercial Code (Article 9 - Secured Transactions) ("UCC"); any and all of which are now owned or hereafter acquired by Mortgagor, and which are now or hereafter situated in, on, or about the Land or the Improvements, or used in or necessary to the complete and proper planning, design, development, construction, financing, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use in or on the Land or the Improvements, together with all accessions, replacements and substitutions thereto or therefor and the proceeds thereof;

(e) Any and all: (i) contracts for the purchase and/or sale of all or any portion of the Mortgaged Property, whether such contracts are now or at any time hereafter existing, including but without limitation, any and all earnest money or other deposits escrowed or to be



escrowed or letters of credit provided or to be provided by the purchasers under the contracts, including all amendments and supplements to and renewals and extensions of the contracts at any time made, and together with all payments, earnings, income, and profits arising from the sale of all or any portion of the Mortgaged Property or from the contracts and all other sums due or to become due under and pursuant thereto and together with any and all earnest money, security, letters of credit or other deposits under any of the contracts; (ii) all contracts, licenses, permits, and rights relating to living unit equivalents or other entitlements with respect to water, wastewater, and other utility services whether executed, granted, or issued by a Person, which are directly or indirectly related to, or connected with, the development, ownership, maintenance or operation of the Mortgaged Property, whether such contracts, licenses, permits, rights and entitlements are now or at any time thereafter existing, including without limitation, any and all certificates, licenses, zoning variances, permits, and no-action letters from each Governmental Authority required: (a) to evidence compliance by Mortgagor and all improvements constructed or to be constructed on the Mortgaged Property with all legal requirements applicable to the Mortgaged Property; (b) for the construction and/or development of any improvements on the Mortgaged Property or rehabilitation thereof, if applicable; and (c) to develop and/or operate the Mortgaged Property; (iii) financing arrangements relating to the financing of or the purchase of all or any portion of the Mortgaged Property by future purchasers; (iv) economic incentives or similar agreements or understandings; (v) agreements relating in any way to the construction, development or rehabilitation of the Land or Improvements or provision of materials therefor; (vi) contracts with architects or engineers or others for the preparation or provision of any plans and specifications, including all amendments and supplements to and renewals and extensions of such contracts at any time made; and (vii) all other contracts which in any way relate to the use, enjoyment, occupancy, operation, maintenance, repair, management or ownership of the Mortgaged Property (save and except any and all Assigned Leases);

(f) All rents, issues, profits, revenues and proceeds from any sale or other disposition of the Mortgaged Property, or any part thereof, from time to time accruing (including without limitation all payments under leases, ground leases or tenancies, proceeds of insurance, condemnation payments, tenant security deposits and escrow funds), and all of the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Mortgagor of, in and to the same; and

(g) All of the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Mortgagor of, in and to any of the foregoing.

**TO HAVE AND TO HOLD** the Mortgaged Property and all parts, rights, members and appurtenances thereof, to the use and benefit of Bank and the successors, successors-in-title and assigns of Bank, forever; and Mortgagor covenants that Mortgagor is lawfully seized and possessed of Mortgagor's Interest in the Mortgaged Property as aforesaid and has good right to convey the same, that the same are unencumbered except for those matters expressly set forth in Exhibit A hereto, and Mortgagor does hereby warrant and will forever defend the title thereto against the claims of all persons whomsoever, except Permitted Liens.

The Lien of this Mortgage automatically will attach to any further, greater, additional or different estate, rights, titles or interests in or to any of the Mortgaged Property at any time

hereafter acquired by Mortgagor by whatsoever means and without any further action or filing or recording on the part of Mortgagor or Bank or any other Person.

**MORTGAGOR HEREBY COVENANTS AND AGREES WITH BANK AS FOLLOWS:**

**ARTICLE I**

**1.01 Payment and Performance of Loan Documents.** Mortgagor will perform, observe and comply with all the provisions hereof, and of each of the other Loan Documents, including, but not limited to, the due and punctual payment of the principal amount due under the Note, together with interest thereon, and all other sums of money required to be paid by Mortgagor pursuant to any one or more of the Loan Documents.

**1.02 Assignment of Rents and Leases.** To further secure the Obligations, Mortgagor hereby sells, assigns, transfers and sets over unto Bank, its successors and assigns, all of Mortgagor's Interest in and to all Assigned Leases including, without limitation, all the Rents under or by virtue of the Assigned Leases, together with all claims and rights to the payment of money at any time arising in connection with any rejection or breach of any of the Assigned Leases under Section 365 of the Bankruptcy Code, 11 U.S.C. § 365 (and any successor or replacement provision), all rights to recover damages arising out of such breach or rejection, all rights to charges payable by a tenant or trustee in respect of the leased premises following the entry of an order for relief under the Bankruptcy Code in respect of a tenant and all rentals and charges outstanding under the Assigned Lease as of the date of entry of such order for relief. Notwithstanding the foregoing, so long as there shall not exist any Event of Default, then Mortgagor shall have the right to continue to exercise all its rights and perform its obligations under the Assigned Leases, including the right to collect each payment of Rents at the time provided in the applicable Assigned Leases.

**1.03 Security Agreement.** With respect to all personal property (the "Personal Property") constituting part of the Mortgaged Property which is subject to the provisions of the UCC in the state wherein the Land is situated, this Mortgage is hereby made and declared to be a security agreement encumbering each and every item of such Personal Property in compliance with the provisions of the UCC, and Mortgagor hereby grants to Bank a security interest in said Personal Property. Mortgagor authorizes Bank to file a financing statement or statements reciting this Mortgage to be a security agreement affecting all of such Personal Property. The remedies for any violation of the covenants, terms and conditions of the security agreement contained in this Mortgage, or otherwise in respect of an Event of Default, shall be (a) as prescribed herein or in any other Loan Document with respect thereto, or (b) as prescribed by applicable Law, including the UCC, all at Bank's sole election. Mortgagor agrees that the filing of such financing statement(s) in the records normally having to do with personal property shall not in any way affect the agreement of Mortgagor and Bank that everything used in connection with the production of income from the Mortgaged Property or adapted for use therein or which is described or reflected in this Mortgage, is, and at all times and for all purposes and in all proceedings both legal or equitable, shall be regarded as part of the real estate conveyed hereby regardless of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain items capable of being thus identified in an Exhibit to this Mortgage, or

(iii) any such item is referred to or reflected in any such financing statement(s) so filed at any time. Similarly, the mention in any such financing statement(s) of the rights in and to (A) the proceeds of any fire and/or hazard insurance policy, or (B) any award in eminent domain proceedings for taking or for loss of value, or (C) Mortgagor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Mortgaged Property, whether pursuant to lease or otherwise, shall not in any way alter any of the rights of Bank as determined by this instrument or affect the priority of Bank's security interest granted hereby or by any other recorded document, it being understood and agreed that such mention in such financing statement(s) is solely for the protection of Bank in the event any court shall at any time hold, with respect to the foregoing items (A), (B), or (C), that notice of Bank's priority of interest, to be effective against a particular class of persons, must be filed in the UCC records. This Mortgage may be filed as a financing statement in any office where Bank deems such filing necessary or desirable and Mortgagor will promptly upon demand reimburse Bank for the costs therefor.

**1.04 Use of Mortgaged Property.** Mortgagor shall not be permitted to alter or change the use of the Mortgaged Property without the prior written consent of Bank from the permitted uses under the Credit Agreement except as otherwise agreed to in writing by Bank.

**1.05 Conveyance of Mortgaged Property.** Except for Permitted Leases and Other Transfers of Collateral, Permitted Transfers or as otherwise expressly permitted by the Credit Agreement, Mortgagor shall not directly or indirectly encumber (by Lien, junior mortgage, or otherwise), pledge, convey, transfer or assign any or all of its interest in the Mortgaged Property without the prior written consent of Bank.

**1.06 Acquisition of Collateral.** Except as otherwise expressly permitted by the Credit Agreement, Mortgagor shall not acquire any Personal Property subject to any Lien taking precedence over the Lien of this Mortgage.

**1.07 Maximum Principal Indebtedness.** SUBJECT TO THE PROVISIONS OF THIS SECTION 1.07, THE OBLIGATIONS SECURED BY THIS MORTGAGE SHALL IN NO EVENT EXCEED **EIGHT HUNDRED NINETY THOUSAND AND 00/100 DOLLARS (\$890,000.00)**. Notwithstanding the foregoing or anything to the contrary contained herein, the following provisions shall apply:

(a) **Maximum Principal Amount.** Notwithstanding anything contained herein to the contrary, the maximum principal amount of Obligations which is or under any contingency may be secured by this Mortgage is **EIGHT HUNDRED NINETY THOUSAND AND 00/100 DOLLARS (\$890,000.00)** (the "Maximum Principal Amount"), which in addition to the indebtedness under the Notes, secures and includes all (i) taxes, charges or assessments which may be imposed by law upon the Mortgaged Property, (ii) premiums on insurance policies covering the Mortgaged Property, and (iii) Default Costs, Indemnified Losses and all other expenses incurred in upholding the lien of this Mortgage, including, but not limited to, (aa) the expenses of any litigation to prosecute or defend the rights and lien created by this Mortgage, (bb) any amount, cost or charge to which the Bank becomes subrogated, upon payment, whether under recognized principles of law or equity, or express statutory authority, and (cc) interest at the Default Rate (or regular interest rate) and penalties provided for herein.



(b) Reduction of Maximum Principal Amount. The Maximum Principal Amount shall be reduced only by the last and final sums that a Borrower Party repays with respect to the Obligations secured hereby and shall not be reduced by any intervening repayments of such Obligations by any Borrower Party otherwise. Mortgagor and Bank understand and agree that the Maximum Principal Amount may, from time to time, be a sum which is significantly less than the total Obligations secured by this Mortgage outstanding.

**1.08 Use Violations.** Except to the extent permitted under the Credit Agreement, Mortgagor shall not initiate, join in, acquiesce in or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Mortgaged Property. If under applicable zoning provisions the use of the Mortgaged Property is or shall become a nonconforming use, Mortgagor shall not cause or permit such nonconforming use to be discontinued or abandoned without the consent of Bank, except to the extent permitted under the Credit Agreement. Mortgagor will not use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of, the Mortgaged Property in any manner which (i) materially violates any legal requirement; (ii) may be materially dangerous, unless safeguarded as required by law and/or appropriate insurance; (iii) constitutes a public or private nuisance; (iv) makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto; (v) changes the use of the Mortgaged Property; (vi) permits or suffers to occur any material waste on or to the Mortgaged Property; or (vii) converts the Mortgaged Property to a condominium or cooperative form of ownership.

**1.09 Fixture Filing.** This Mortgage shall constitute a "fixture filing" for the purposes of Alabama law. The information concerning the security interest herein granted may be obtained from the parties hereto at the addresses set forth on the first page hereof. For purposes of the security interest herein granted, the address of Debtor (Mortgagor) and the address of the Secured Party (Bank) is set forth in the first paragraph of this Mortgage.

## **ARTICLE II**

**2.01 Events of Default.** The term "Event of Default", wherever used in this Mortgage, shall mean an "Event of Default" as defined in the Credit Agreement together with any of the following: (A) Failure by Mortgagor duly to observe or perform any other term, covenant, condition or agreement of this Mortgage; (B) the Mortgaged Property is subjected to actual or threatened waste, or any part thereof is removed, demolished or altered without the prior written consent of Bank; (C) any material adverse claim relating to the Mortgaged Property, by title, lien or otherwise is established in any legal or equitable proceeding; or (D) unless the written consent of Bank is first obtained (which consent may be withheld in Bank's sole discretion), there occurs any transfer of the Mortgaged Property, or any interest therein, or any further encumbrance of the Mortgaged Property (other Permitted Leases and Other Transfers of Collateral and Permitted Transfers). Provided that with respect to any of the foregoing, such Event of Default will be deemed to have occurred upon the occurrence of such event without notice being required if Bank is prevented from giving notice by bankruptcy or other applicable law.

**2.02 Rights and Remedies.**

(a) If an Event of Default shall have occurred, then in addition to the rights and remedies provided for under any other Loan Document or under applicable Law, then at the option of Bank this Mortgage may be foreclosed in any manner now or hereafter provided by Alabama law, and to the extent provided or allowed by Alabama law, Bank, or its agent, may sell the Mortgaged Property or any part of the Mortgaged Property at one or more public sales before the front or main door of the courthouse of the county or counties, as may be required, in which the Land or any part of the Land is situated, after having first given notice of the time, place and terms of sale at least once a week for three (3) successive weeks preceding the date of such sale in some newspaper published in said county or counties, as may be required by applicable Laws. At any such sale, Bank may execute and deliver to the purchaser a conveyance of the Mortgaged Property or any part of the Mortgaged Property. Bank shall have the right to enforce any of its remedies set forth herein without notice to Mortgagor, except for such notice as may be required by law. In the event of any sale under this Mortgage by virtue of the exercise of the powers herein granted, or pursuant to any order in any judicial proceedings or otherwise, the Mortgaged Property may be sold as an entirety or in separate parcels and in such manner or order as Bank in its sole discretion may elect, and if Bank so elects, Bank may sell the personal property covered by this Mortgage at one or more separate sales in any manner permitted by the UCC, and one or more exercises of the powers herein granted shall not extinguish or exhaust such powers, until the entire Mortgaged Property is sold or the Obligations are paid in full. If the Obligations are now or hereafter further secured by any chattel mortgages, pledges, contracts of guaranty, assignments of lease or other security instruments, Bank at its option may exhaust the remedies granted under any of said security instruments or this Mortgage either concurrently or independently, and in such order as Bank may determine. Said sale may be adjourned by Bank, or its agent, and reset at a later date without additional publication; provided that an announcement to that effect be made at the scheduled place of sale at the time and on the date the sale is originally set.

Upon, or at any time after, the occurrence of any Event of Default, and without in any way waiving such Event of Default or releasing Mortgagor from any obligation under this Mortgage, at Bank's option and in its discretion, and irrespective of whether Bank shall have commenced any other remedy under applicable law or any other Loan Document, then Bank may, without notice and with or without bringing any action or proceeding except as required by applicable law, (i) exercise any and all rights available under applicable law, (ii) revoke the rights of Mortgagor as set forth in Section 1.02 (c), (iii) proceed to perform any and all of the duties and obligations and exercise all the rights and remedies of Mortgagor contained in the Assigned Leases as fully as Mortgagor could itself, (iv) lease all or any portion of the Mortgaged Property and collect the Rents, and/or (v) take possession of the Mortgaged Property or the Rents and have, hold, manage, lease and operate the Mortgaged Property on such terms and for such period of time as Bank may in its discretion deem proper, and, either with or without taking possession of the Mortgaged Property in Bank's own name: (aa) make any payment or perform any act which Mortgagor has failed to make or perform, in such manner and to such extent as Bank may deem necessary to protect the security provided for in this Mortgage, or otherwise, including without limitation, the right to appear in and defend any action or proceeding purporting to affect the security provided for in this Mortgage, or the rights or powers of Bank; (bb) lease the Mortgaged Property or any portion thereof in such manner and for such Rents as Bank shall determine in its sole and absolute discretion; or (cc) demand, sue for, or otherwise collect and receive from all persons all Rents, including those past due and unpaid, with full power to make from time to time all alterations, renovations, repairs or replacements of and to the Mortgaged Property (or any part thereof) as may



seem proper to Bank and to apply the Rents to the payment of (in such order of priority as Bank, in its sole discretion, may determine): (aa) all expenses of managing the Mortgaged Property, including, without limitation, the salaries, fees and wages of a managing agent and such other employees as Bank may deem necessary or desirable; (bb) all taxes, charges, claims, assessments, water rents, sewer rents, and any other liens, and premiums for all insurance which Bank may deem necessary or desirable, and the cost of all alterations, renovations, repairs, or replacements, and all expenses incidental to taking and retaining possession of the Mortgaged Property; (cc) all or any portion of the Loan; and/or (dd) all costs and Attorneys' Fees incurred in connection therewith. Mortgagor hereby specifically authorizes Bank, and hereby constitutes and appoints Bank as Mortgagor's agent and attorney-in-fact, in Mortgagor's name or in Bank's name, to do any of the foregoing. The foregoing power of attorney is coupled with an interest and cannot be revoked by insolvency, Bankruptcy, death, dissolution or otherwise. The foregoing remedies are cumulative of and in addition to, and not restrictive of or in lieu of, the rights and remedies provided for or allowed by any one or more of the Loan Documents or provided for or allowed by law or in equity.

(b) In the event of any sale of the Mortgaged Property as authorized by this Section, all prerequisites of such sale shall be presumed to have been performed, and in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the non-payment or non-performance of the Obligations or as to the advertisement of sale, or the time, place and manner of sale, or as to any other fact or thing, shall be taken in all courts of law or equity as prima facie evidence that the facts so stated or recited are true.

**2.03 Purchase by Bank.** Upon any foreclosure sale or sale of all or any portion of the Mortgaged Property under the power herein granted, Bank may bid for and purchase the Mortgaged Property and shall be entitled to apply all or any part of the Obligations as a credit to the purchase price.

**2.04 Mortgagor as Tenant Holding Over.** In the event of any such foreclosure sale or sale under the powers herein granted, Mortgagor (if Mortgagor shall remain in possession) and all Persons holding under Mortgagor shall be deemed tenants holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable to tenants holding over.

**2.05 Waiver of Appraisement, Valuation, Etc.** Mortgagor agrees, to the full extent permitted by law, that in case of a default on the part of Mortgagor hereunder, neither Mortgagor nor anyone claiming through or under Mortgagor will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension, homestead, exemption or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Mortgaged Property, or the delivery of possession thereof immediately after such sale to the purchaser at such sale, and Mortgagor, for itself and all who may at any time claim through or under it, hereby waives to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets subject to the security interest of this Mortgage marshaled upon any foreclosure or sale under the power herein granted. The exercise by Bank of any rights or powers under Section 1.02(ii), including, without limitation, the collection of the Rents, and the application of the Rents as provided in this Mortgage, shall not be considered a waiver by Bank of any default by Mortgagor under any Loan Document.

**2.06 Bank Not Liable Except For Its Willful Misconduct, Gross Negligence or Bad Faith.** Bank shall not be liable for any loss sustained by Mortgagor resulting from (1) Bank's failure to let the Mortgaged Property, or (2) any act or omission of Bank in exercising its rights and remedies hereunder, unless and to the extent such loss is caused by the willful misconduct, gross negligence or bad faith of Bank. Nor shall Bank be obligated to perform or discharge, nor does Bank hereby undertake to perform or discharge, any obligation, duty or liability under the Assigned Leases or under or by reason of this Mortgage, and Mortgagor shall, and does hereby agree, to indemnify Bank for, and to hold Bank harmless from, any and all liability, loss or damage which may or might be incurred under the Assigned Leases or under or by reason of this Mortgage and from any and all claims and demands whatsoever which may be asserted against Bank by reason of any alleged obligations and undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Assigned Leases, unless resulting from the willful misconduct, gross negligence or bad faith of Bank. Should Bank incur any such liability under any Assigned Lease, or under or by reason of this Mortgage, or in defense of any claims or demands specified above in this paragraph, then the amount of all such liability, including, without limitation, costs, expenses and Attorneys' Fees, shall be secured by this Mortgage and Mortgagor shall reimburse Bank for all such liability immediately upon demand by Bank. This Mortgage shall not operate to place responsibility for the control, care, management or repair of the Mortgaged Property upon Bank, nor for the carrying out of any of the terms and conditions of the Assigned Leases; nor shall it operate to make Bank responsible or liable for any waste committed on the Mortgaged Property by the tenants or any other parties, nor for any dangerous or defective condition of the Mortgaged Property, nor for any negligence in the management, upkeep, repair or control of the Mortgaged Property resulting in loss, injury or death to any tenant, employee or others, unless and to the extent resulting from the willful misconduct, gross negligence or bad faith of Bank.

**2.07 Waiver of Homestead.** Mortgagor hereby waives and renounces all homestead and exemption rights provided for by the Constitution and the laws of the United States and of any state, in and to the Mortgaged Property as against the collection of the Obligations, or any part thereof.

**2.08 Leases.** Bank, at its option, is authorized to foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by Mortgagor, a defense to any proceeding instituted by Bank to collect the sums secured hereby.

**2.09 Discontinuance of Proceedings.** In case Bank shall have proceeded to enforce any right, power or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Bank, then in every such case, Mortgagor and Bank shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Bank shall continue as if no such proceedings had occurred.

**2.10 Remedies Cumulative.** No right, power or remedy conferred upon or reserved to Bank by this Mortgage is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition

to any other right, power and remedy given hereunder or now or hereafter existing at law, in equity or by statute.

**2.11 Suits to Protect the Mortgaged Property.** Bank shall have power to institute and maintain such suits and proceedings as it may deem expedient (a) to prevent any impairment of the Lien of this Mortgage; (b) to preserve or protect its interest in the Mortgaged Property and in the Rents; and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would materially impair the security hereunder or be prejudicial to the interest of Bank.

**2.12 Proofs of Claim.** In the case of any receivership, insolvency, Bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Mortgagor, its creditors or its property, Bank, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Bank allowed in such proceedings for the entire amount due and payable by Mortgagor under this Mortgage at the date of the institution of such proceedings and for any additional amount which may become due and payable by Mortgagor hereunder after such date.

### **ARTICLE III**

**3.01 Successors and Assigns.** This Mortgage shall be binding upon Mortgagor and Bank and their respective successors and assigns and subsequent owners of the Mortgaged Property, or any part thereof, and shall inure to the benefit of Mortgagor and Bank and their respective successors and assigns and any holder of the Obligations.

**3.02 Applicable Law.** This Mortgage shall be interpreted, construed and enforced according to the laws of the State of Alabama.

**3.03 Notices.** All notices provided for herein shall be given and deemed received when given and received in accordance with the terms of the Credit Agreement.

**3.04 Assignment.** This Mortgage is assignable by Bank and any assignment of this Mortgage by Bank shall operate to vest in the assignee all rights and powers herein conferred upon and granted to Bank.

**3.05 Future Advances.** This is a future advance mortgage. Such future advances, with interest thereon, shall be secured hereby if made under the terms of this Mortgage, the Note or the Credit Agreement, or if made pursuant to any other promissory note, instrument or agreement stating that sums advanced thereunder are secured hereby between in connection therewith.

**3.06 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 Mortgaged Property, then, to the extent of such funds so used, Bank shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Mortgaged 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 Bank and are merged with the lien and



security interest created herein as cumulative security for the repayment of the Obligations and the performance and discharge of the Obligations

**3.07 Rights Cumulative.** Bank shall have all rights, remedies, and recourses granted in the Loan Documents and available at law or in equity (including, without limitation, those granted by the Code and applicable to the Mortgaged Property or any portion thereof), and the same (i) shall be cumulative and concurrent, (ii) may be pursued separately, successively, or concurrently against Mortgagor or others obligated for the Obligations or any part thereof, or against any one or more of them, or against the Mortgaged Property, at the sole discretion of Bank, (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Mortgagor that the exercise, discontinuance of the exercise of or failure to exercise any of the same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse, and (iv) are intended to be, and shall be, nonexclusive. All rights and remedies of Bank shall extend to any period after the initiation of foreclosure proceedings, judicial or otherwise, with respect to the Mortgaged Property.

**3.08 Performance at Mortgagor's Expense.** Mortgagor shall (i) pay all reasonable legal fees incurred by Bank in connection with the preparation of the Loan Documents (including any amendments thereto or consents, releases, or waivers granted thereunder); and (ii) reimburse Bank, promptly upon demand, for all amounts expended, advanced, or incurred by Bank to satisfy any obligation of Mortgagor under the Loan Documents, which amounts shall include all court costs, reasonable attorneys' fees (including, without limitation, for trial, appeal, or other proceedings), reasonable fees of auditors and accountants and other investigation expenses reasonably incurred by Bank in connection with any such matters. Except to the extent that costs and expenses are included within the definition of "Obligations," the payment of such costs and expenses shall not be credited, in any way and to any extent, against any installment on or portion of the Obligations.

**3.09 Credit Agreement.** (A) Conflicts. Reference is hereby made for all purposes to the Credit Agreement pertaining to the funding of the principal amount of the Notes. In event of a conflict between the terms and provisions hereof and the Credit Agreement, the Credit Agreement shall govern. (B) Incorporation of Covenants, Conditions and Agreements. All covenants, conditions and agreements contained in the Credit Agreement and all and any of the other Loan Documents, are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein. Without limiting the generality of the foregoing, Mortgagor (i) agrees to insure, repair, maintain and restore damage to the Mortgaged Property, pay all property taxes and other Impositions, and comply with all terms and conditions of the with the Credit Agreement, and (ii) agrees that the proceeds of insurance and awards for condemnation shall be settled, held and applied in accordance with the Credit Agreement. (C) Incorporation of Warranties and Representations. All the warranties, representations, conditions and agreements contained in (i) the Credit Agreement, (ii) the Notes and (iii) all and any of the other Loan Documents, are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein.

\*\*\*

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be duly executed and delivered as of the day and year first above written.

**HEATHERBROOKE SURGICAL, LLC,**  
an Alabama limited liability company



\_\_\_\_\_  
Lee M. Maniscalco, its Manager

**MANISCALCO PROPERTIES, LLC,**  
an Alabama limited liability company



\_\_\_\_\_  
Lee M. Maniscalco, its Authorized Member

STATE OF ALABAMA

§

COUNTY OF JEFFERSON

§

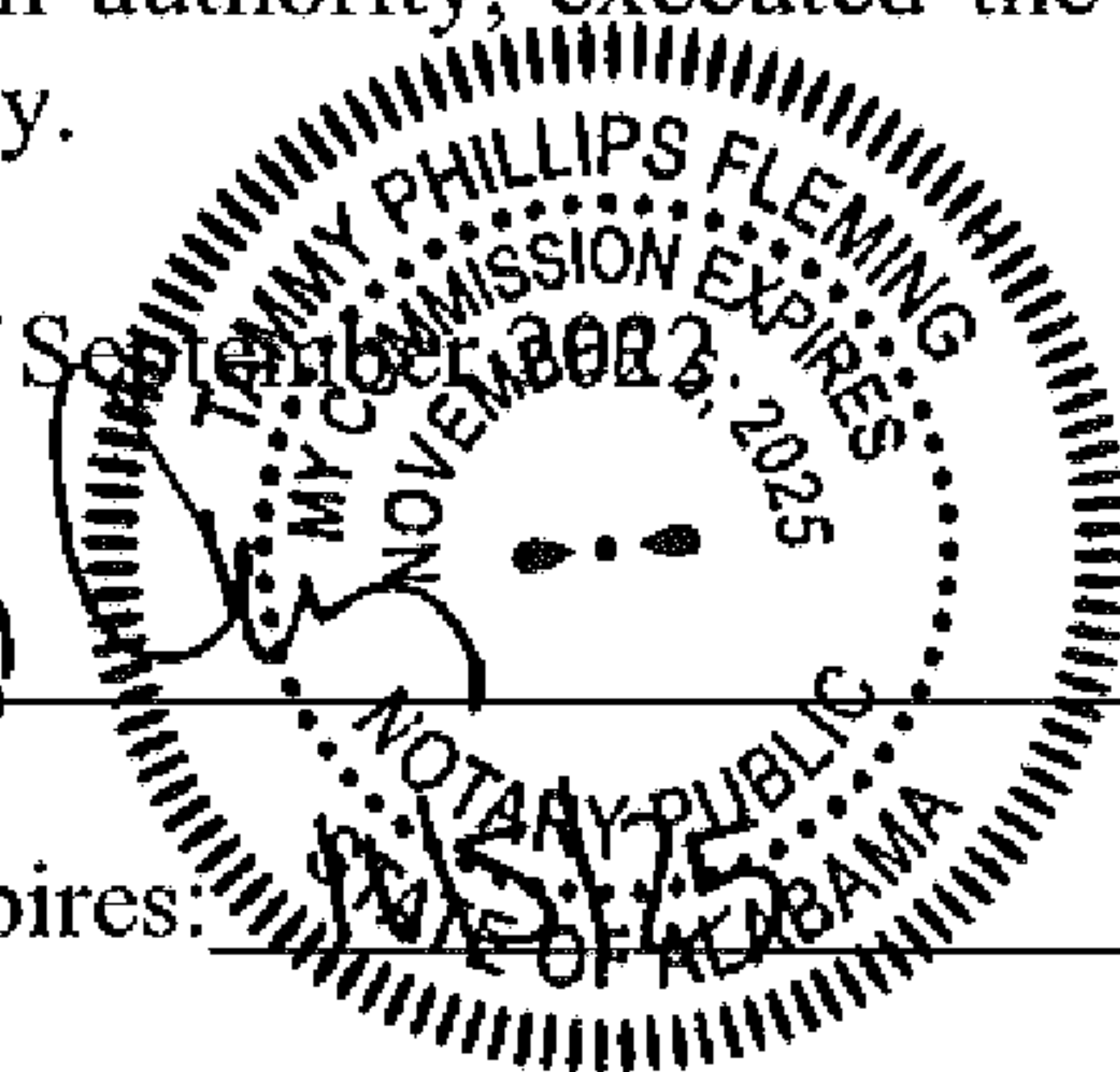
I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Lee M. Maniscalco, whose name as Manager of **HEATHERBROOKE SURGICAL, LLC**, an Alabama limited liability company, and as Authorized Member of **MANISCALCO PROPERTIES, LLC**, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, in such capacity and with full authority, executed the same voluntarily for and as the act of each said limited liability company.

Given under my hand and official seal, this the 19 day of September, 2022.



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

My Commission Expires: 11/15/25



[SEAL]

**EXHIBIT "A"**

**(DESCRIPTION OF LAND)**

Lot 1-A, according to the Survey of Heatherbrooke Office Park, as recorded in Map Book 14, Page 15, in the Probate Office of Shelby County, Alabama.



Filed and Recorded  
Official Public Records  
Judge of Probate, Shelby County Alabama, County  
Clerk  
Shelby County, AL  
09/21/2022 12:09:42 PM  
\$1396.00 JOANN  
20220921000364550

*Allen S. Bayl*