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**THIS DOCUMENT PREPARED BY AND  
UPON RECORDATION RETURN TO:**

Norton Rose Fulbright US LLP  
7676 Forsyth Boulevard, Suite 2230  
St. Louis, Missouri 63105  
Attention: Danette Davis

STATE OF ALABAMA       )  
COUNTY OF SHELBY     )

**THIS SECURITY INSTRUMENT IS FILED AS, AND SHALL CONSTITUTE A FIXTURE FILING IN ACCORDANCE WITH THE PROVISIONS OF SECTION 7-9A-502 OF THE CODE OF ALABAMA. THIS INSTRUMENT (1) COVERS GOODS WHICH ARE OR ARE TO BECOME FIXTURES, (2) IS A FIXTURE FILING UNDER THE UCC, AND (3) IS TO BE FILED IN THE REAL ESTATE RECORDS AND ALSO TO BE INDEXED IN THE INDEX OF FINANCING STATEMENTS. THE NAME OF THE GRANTOR AS DEBTOR AND BENEFICIARY AS SECURED PARTY AND THE MAILING ADDRESS OF EACH ARE DESCRIBED ON PAGES 1 AND 2 OF THIS DOCUMENT AND THE COLLATERAL IS DESCRIBED IN THE GRANTING CLAUSES BELOW, ALL IN COMPLIANCE WITH SECTION 7-9A-502 OF THE CODE OF ALABAMA.**

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

This **MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING** (this "**Security Instrument**") is dated as of September 30, 2022, by **TWC BIRMINGHAM LLC**, a Delaware limited liability company, having an office at c/o Three Wall Capital, 40 West 57th Street, 29th Floor, New York, New York 10019 ("**Grantor**"), to and for the benefit of **GUGGENHEIM REAL ESTATE, LLC**, a Delaware limited liability company, having an address at c/o Guggenheim Partners Investment Management, LLC, 100 Wilshire Boulevard, Suite 500, Santa Monica, California 90401, Attention: Head of Real Estate ("**Beneficiary**").

**RECITALS:**

A. Grantor is the owner of a fee estate in that certain real property described in **Exhibit A** attached hereto and made a part hereof (the "**Premises**").

B. Grantor and each of the other entities listed on **Schedule 1** attached hereto (collectively, the "**Grantors**") have requested that Beneficiary, and Beneficiary has agreed to, loan the aggregate amount of Forty-Four Million Six Hundred Thirty Thousand and 00/100 Dollars (\$44,630,000.00) (the "**Loan**") to the Grantors to be evidenced by those certain promissory notes dated as of the date hereof executed by the Grantors (collectively, as subsequently amended, modified, renewed, refinanced and restated from time to time, the "**Note**"), which Note evidences the Loan being made to Grantors pursuant to that certain Term Loan Agreement of even date herewith by and between Grantors and Beneficiary (as subsequently amended, modified, renewed, and restated from time to time, the "**Loan Agreement**").

IN CONSIDERATION OF THE FOREGOING and to secure the payment of an indebtedness in the principal sum of Forty-Four Million Six Hundred Thirty Thousand and 00/100 Dollars (\$44,630,000.00) lawful money of the United States of America, to be paid with interest according to the Note and the Loan Agreement (including, without limitation, any so called "additional interest," the Yield Maintenance Amount, accrued but unpaid interest at the Contract Rate and the Default Rate, and any other Obligations outstanding under the Loan Documents), Grantor (for itself and its successors and assigns) has mortgaged, given, granted, bargained, sold, aliened, enfeoffed, conveyed, confirmed and assigned, and by these presents does mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm and assign unto Beneficiary, its successors and assigns, forever, with all powers of sale, all right, title and interest of Grantor now owned, or hereafter acquired, in and to the following property, rights and interest (such property, rights and interests, collectively, the "**Mortgaged Property**"):

(1) the real property described in **Exhibit A**, together with any greater estate therein as hereafter may be acquired by Grantor (the "**Land**"),

(2) all buildings, structures and other improvements, now or at any time situated, placed or constructed upon the Land (the "**Improvements**"),

(3) all fixtures (as defined in the UCC hereinafter described), including, without limitation, all materials, supplies, equipment (as defined in the UCC) not owned by, paid for by or leased from third parties, apparatus and other items of personal property now owned or hereafter acquired by Grantor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, and water, gas, electrical, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (the "**Fixtures**"),

(4) all right, title and interest of Grantor in and to all goods, accounts, general intangibles (including payment intangibles), deposit accounts, instruments, investment property, commercial tort claims, letter-of-credit rights, letters of credit, money, documents and chattel paper (as such terms are defined in the UCC) and all other personal property of any kind or character, including such items of personal property as defined in the UCC, now owned or hereafter acquired by Grantor and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Land and Improvements or which may be used in or relating to the planning, development, financing or operation of the Mortgaged Property, including, without limitation, furniture, furnishings, equipment, machinery, inventory and articles of personal property and accessions thereof and renewals, replacements thereof and substitutions therefor (including, but not limited to, beds, bureaus, chiffonniers, chests, chairs, desks, lamps, mirrors, bookcases, tables, rugs, carpeting, drapes, draperies, curtains, shades, venetian blinds, screens, paintings, hangings, pictures, divans, couches, luggage carts, luggage racks, stools, sofas, chinaware, linens,

pillows, blankets, glassware, silverware, foodcarts, cookware, dry cleaning facilities, dining room wagons, keys or other entry systems, bars, bar fixtures, liquor and other drink dispensers, icemakers, radios, television sets, intercom and paging equipment, electric and electronic equipment, dictating equipment, private telephone systems, medical equipment, potted plants, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air-conditioning systems, elevators, escalators, fittings, plants, apparatus, stoves, ranges, refrigerators, laundry machines, tools, machinery, engines, dynamos, motors, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, call systems, brackets, electrical signs, bulbs, bells, ash and fuel, conveyors, cabinets, lockers, shelving, spotlighting equipment, dishwashers, garbage disposals, washers and dryers), other customary hotel equipment and other tangible property of every kind and nature owned by Grantor, money, insurance proceeds, accounts, contract rights, trademarks, goodwill, chattel paper, documents, trade names, licenses and/or franchise agreements (other than any of the foregoing which are not assignable pursuant to the terms and conditions of the Franchise Agreement), rights of Grantor under leases of Fixtures or other personal property or equipment, inventory, all refundable, returnable or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Grantor with any governmental authorities, 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 (the "**Personalty**"),

(5) all reserves, escrows or impounds required under the Loan Agreement and all deposit accounts maintained by Grantor or Beneficiary with respect to the Mortgaged Property,

(6) all plans, specifications, shop drawings and other technical descriptions prepared for construction, repair or alteration of the Improvements, and all amendments and modifications thereof (the "**Plans**"),

(7) all leases, subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant a possessory interest in, or the right to use, all or any part of the Mortgaged Property, together with all related security and other deposits (the "**Leases**"),

(8) all of the rents, revenues, income, proceeds, profits, security and other types of deposits, and other benefits paid or payable by parties to the Leases other than Grantor for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying the Mortgaged Property, all income, rents, room rates, issues, profits, revenues, deposits, accounts and other benefits from the operation of the hotel on the Land and/or the Improvements, including, without limitation, all revenues and credit card receipts collected from guest rooms, restaurants, bars, mini-bars, meeting rooms, banquet rooms and recreational facilities and otherwise, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of sale, lease, sublease, subsublease, license, concession or other grant of the right of the possession, use or occupancy of all or any portion of the Land and/or Improvements, or personalty located thereon, or rendering of services by Grantor or any operator or manager of the hotel or the commercial space located in the Improvements or acquired from others including, without limitation, from the rental of any office space, retail space, commercial space, guest room or other space, halls, stores or offices, including any deposits securing reservations of such space, exhibit or sales space of every kind, license, lease, sublease, subsublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales, service charges, vending machine sales and proceeds, if any, from business interruption or other loss of income insurance relating to the use, enjoyment or occupancy of the Land and/or the Improvements (the "**Rents**"),

(9) to the extent assignable, all other agreements, such as construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, management agreements, service contracts, permits, licenses, certificates and entitlements in any way relating to the development,

construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property (the "**Property Agreements**"),

(10) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Grantor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof,

(11) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof,

(12) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Grantor,

(13) all mineral, water, oil and gas rights now or hereafter acquired and relating to all or any part of the Mortgaged Property,

(14) all of Grantor's right, title and interest in and to 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 Personalty,

(15) all of Grantor's contractual rights in any escrow agreements in connection with security deposits and/or contract deposits,

(16) all of Grantor's right, title and interest in and to any and all air and/or development rights and any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, the Improvements, the Fixtures or the Personalty,

(17) to the extent assignable, all software (other than software which is not assignable pursuant to the terms and conditions of the Franchise Agreement) embedded within or used in connection with any of the collateral described above,

(18) all right, title and interest of Grantor arising from the operation of the Land and the Improvements in and to all payments for goods or property sold or leased or for services rendered, whether or not yet earned by performance, and not evidenced by an instrument or chattel paper (hereinafter referred to as "**Accounts Receivable**") including, without limiting the generality of the foregoing, (i) all accounts, contract rights, book debts, and notes arising from the operation of a hotel on the Land and the Improvements or arising from the sale, lease or exchange of goods or other property and/or the performance of services, (ii) Grantor's rights to payment from any consumer credit/charge card organization or entities which sponsor and administer such cards as the American Express Card, the Visa Card and the Mastercard, (iii) Grantor's rights in, to and under all purchase orders for goods, services or other property, (iv) Grantor's rights to any goods, services or other property represented by any of the foregoing, (v) monies due to or to become due to Grantor under all contracts for the sale, lease or exchange of goods or other property and/or the performance of services including the right to payment of any interest or finance charges in respect thereto (whether or not yet earned by performance on the part of Grantor) and (vi) all collateral security and guaranties of any kind given by any person or entity with respect to any of the foregoing. Accounts Receivable shall include those now existing or hereafter created, substitutions therefor, proceeds (whether cash or non-cash, movable or immovable, tangible or intangible) received upon the sale, exchange, transfer, collection or other disposition or substitution thereof and any and all of the foregoing and proceeds therefrom, and

(19) all so-called air rights, development rights, density bonuses and the like, giving Grantor the right to construct floor area on the Land, including, without limitation, by causing a zoning lot to contain the Land and the other land (all of those so-called air rights, development rights, density bonus and the like, collectively, the “**Development Rights**”).

As used in this Security Instrument, the term “**Mortgaged Property**” shall mean all or, where the context permits or requires, any portion of the above or any interest therein.

TO HAVE AND TO HOLD the above granted and described Mortgaged Property unto and to the proper use and benefit of Beneficiary, and the successors and assigns of Beneficiary, forever.

AND Grantor covenants and agrees with and represents and warrants to Beneficiary as follows:

## **ARTICLE 1 DEFINITIONS**

**Section 1.01 Definitions.** As used herein, the following terms shall have the following meanings:

(a) “**Permitted Encumbrances**”: The outstanding Liens, easements, restrictions, security interests and other exceptions to title set forth in the policy of title insurance insuring the Lien of this Security Instrument, together with the Liens and security interests in favor of Beneficiary created by the Loan Documents.

(b) “**UCC**”: The Uniform Commercial Code of the State of Alabama or, if the creation, perfection and enforcement of any security interest herein granted is governed by the laws of a state other than the State of Alabama, then, as to the matter in question, the Uniform Commercial Code in effect in that state.

Capitalized terms not defined herein shall have the meanings ascribed thereto in the Loan Agreement.

## **ARTICLE 2 WARRANTIES, REPRESENTATIONS AND COVENANTS**

Grantor warrants, represents and covenants to Beneficiary as follows:

**Section 2.01 Title to Mortgaged Property and Lien of this Instrument.** Grantor owns the Mortgaged Property free and clear of any Liens, claims or interests, except the Permitted Encumbrances, none of which, individually or in the aggregate, materially interferes with the benefits intended to be provided by this Security Instrument, materially and adversely affects the value of the Mortgaged Property, impairs the use or operations of the Mortgaged Property, or impairs Grantor’s ability to pay its obligations in a timely manner. This Security Instrument creates a valid, enforceable first priority Lien and security interest against the Mortgaged Property.

**Section 2.02 First Lien Status.** Grantor shall preserve and protect the first Lien and security interest status of this Security Instrument and the other Loan Documents. If any Lien or security interest other than the Permitted Encumbrances is asserted against the Mortgaged Property, Grantor shall promptly, and at its expense, (a) give Beneficiary a detailed written notice of such Lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to

cause it to be released or contest the same in compliance with the requirements of the Loan Agreement (including the requirement of providing a bond or other security satisfactory to Beneficiary).

**Section 2.03 Payment and Performance.** Grantor shall pay and perform the Obligations in full when they are required to be paid and performed.

**Section 2.04 Replacement of Fixtures and Personalty.** Subject to Section 8.4 of the Loan Agreement, Grantor shall not, without the prior written consent of Beneficiary, permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete or the Grantor desires to upgrade or replace same and is replaced by an article of equal or better suitability and value, owned by Grantor subject to the Liens and security interests of this Security Instrument and the other Loan Documents, and free and clear of any other Lien or security interest (other than Permitted Encumbrances), except such as may be first approved in writing by Beneficiary.

**Section 2.05 Maintenance of Rights of Way, Easements and Licenses.** Grantor shall maintain all rights of way, easements, grants, privileges, licenses, certificates, permits, entitlements and franchises necessary for the use of the Mortgaged Property and will not, without the prior consent of Beneficiary, consent to any public restriction (including any zoning ordinance) or private restriction as to the use of the Mortgaged Property. Grantor shall comply with all restrictive covenants affecting the Mortgaged Property, and all zoning ordinances and other public or private restrictions as to the use of the Mortgaged Property.

**Section 2.06 Other Covenants.** All of the covenants in the Loan Agreement are incorporated herein by reference and, together with covenants in this **Article 2**, shall be covenants running with the land. The covenants set forth in the Loan Agreement are hereby made a part of this Security Instrument to the extent and with the same force as if fully set forth herein, subject to any qualifiers and/or notice or cure rights contained therein.

**Section 2.07 Condemnation Awards and Insurance Proceeds.**

(a) **Condemnation Awards.** Subject to the provisions of the Loan Agreement, Grantor assigns all awards and compensation for any condemnation or other taking, or any purchase in lieu thereof, to Beneficiary and authorizes Beneficiary to collect and receive such awards and compensation and to give proper receipts and acquaintances therefor, subject to the terms of the Loan Agreement. **Insurance Proceeds.** Subject to the provisions of the Loan Agreement, (i) Grantor assigns to Beneficiary all proceeds of any insurance policies insuring against loss or damage to the Mortgaged Property and (ii) Grantor authorizes Beneficiary to collect and receive such proceeds and authorizes and directs the issuer of each of such insurance policies to make payment for all such losses directly to Beneficiary, instead of to Grantor and Beneficiary jointly.

**Section 2.08 Covenants, Conditions and Restrictions.** Grantor shall promptly and completely observe, perform and discharge each and every condition, obligation, covenant and agreement in all material respects affecting the Mortgaged Property, whether the same is prior and superior or subject and subordinate hereto, including, without limitation, if the Mortgaged Property is or will be a condominium, community apartment or part of a planned development project, each and every provision to be performed by Grantor under any declaration of covenants, conditions and restrictions or other similar document pertaining thereto.

**Section 2.09 Floor Area.** Grantor shall not without Beneficiary's prior consent (which Beneficiary may withhold for any reason or no reason) or as the Loan Documents expressly allow:

(a) collaterally assign, encumber or grant a security interest in any Development Rights except in favor of Beneficiary; (b) use or allow use of any such Development Rights anywhere except in connection with the Land; (c) amend, modify or enlarge any agreement (a "**TDR Document**") with respect to any such Development Rights; or (d) exercise any right or take any action (or fail to exercise any right or to take any action) under any TDR Document that would or could (i) impair or limit any right to incorporate or use any such Development Rights in connection with the Land; (ii) transfer to a third party any such Development Rights or change the identity of the Land affected thereby or (iii) limit permitted use of any such Development Rights.

### **ARTICLE 3 DEFAULT AND FORECLOSURE**

**Section 3.01 Remedies.** If an Event of Default exists, Beneficiary may, at Beneficiary's election, exercise any or all of the following rights, remedies and recourses:

(a) **Acceleration.** Declare the Obligations to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Grantor), whereupon the same shall become immediately due and payable.

(b) **Entry on Mortgaged Property.** Enter the Mortgaged Property and take exclusive possession thereof and of all books, records and accounts relating thereto. If Grantor remains in possession of the Mortgaged Property after an Event of Default and without Beneficiary's prior written consent, Beneficiary may invoke any legal remedies to dispossess Grantor.

(c) **Operation of Mortgaged Property.** Hold, lease, develop, manage, operate or otherwise use the Mortgaged Property upon such terms and conditions as Beneficiary may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Beneficiary deems necessary or desirable), and apply all Rents and other amounts collected by Beneficiary in connection therewith in accordance with the provisions of **Section 3.07.**

(d) **Foreclosure and Sale.** Institute proceedings for the complete foreclosure of this Security Instrument, in which case the Mortgaged Property may be sold for cash or credit in one or more parcels. If (i) the Land shall consist of one or more parcels, whether or not contiguous and whether or not located in the same county, or (ii) in addition to this Security Instrument, Beneficiary shall now or hereafter hold one or more additional mortgages, Liens or other security (directly or indirectly) for the Obligations upon other property in the State, then to the fullest extent permitted by the law, Beneficiary may, at its election, commence or consolidate in a single foreclosure action all foreclosure proceedings against all such collateral securing the Obligations (including the Mortgaged Property), which action may be brought or consolidated in the courts of any county in which any of such collateral is located. Grantor acknowledges that the right to maintain a consolidated foreclosure action is a specific inducement to Beneficiary to extend the Obligations and, to the extent permitted by law, Grantor expressly and irrevocably waives any objections to the commencement or consolidation of the foreclosure proceedings in a single action and any objections to the laying of venue or based on the grounds of *forum non conveniens* which it may now or hereafter have. With respect to any notices required or permitted under the UCC, Grantor agrees that five (5) Business Days' prior written notice shall be deemed commercially reasonable. At any such sale by virtue of any judicial proceedings or any other legal right, remedy or recourse, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Grantor shall be completely and irrevocably divested of all of its right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both

at law and in equity against Grantor, and against all other Persons claiming or to claim the property sold or any part thereof, by, through or under Grantor. Beneficiary. Beneficiary may be a purchaser at such sale and if Beneficiary is the highest bidder, may credit the portion of the purchase price that would be distributed to Beneficiary against the Obligations in lieu of paying cash.

(e) Receiver. Make application to a court of competent jurisdiction for, and immediately obtain from such court as a matter of strict right and without notice to Grantor or regard to (i) the adequacy of the Mortgaged Property for the repayment of the Obligations or (ii) the solvency of Grantor or any other Person liable for the payment of the Obligations, the appointment of a receiver of the Mortgaged Property, and Grantor irrevocably consents to such appointment. Any such receiver shall be vested with the fullest powers permitted under applicable law and have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of **Section 3.07**. Grantor and every other Person liable for payment of the Obligations hereby waives and authorizes Beneficiary to waive any requirement that a receiver post a bond.

(f) Other. Exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity (including an action for specific performance of any covenant contained in the Loan Documents, or a judgment on the Note either before, during or after any proceeding to enforce this Security Instrument).

**Section 3.02 Separate Sales**. The Mortgaged Property may be sold in one or more parcels and in such manner and order as Beneficiary in its sole discretion, may elect; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

**Section 3.03 Remedies Cumulative, Concurrent and Nonexclusive**. Beneficiary shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including the UCC), which rights, (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Grantor or others obligated under the Note and the other Loan Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Beneficiary, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Beneficiary in the enforcement of any rights, remedies or recourses under the Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

**Section 3.04 Release of and Resort to Collateral**. Beneficiary may release, regardless of consideration and without the necessity for any notice to or a consent by the holder of any subordinate Lien on the Mortgaged Property, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the Lien or security interests created in or evidenced by the Loan Documents or their stature as a first and prior Lien and security interest in and to the Mortgaged Property. For payment of the Obligations, Beneficiary may resort to any other security in such order and manner as Beneficiary may elect.

**Section 3.05 Waiver of Redemption, Notice and Marshalling of Assets**. To the fullest extent permitted by law, Grantor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Grantor by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment, (b) all notices of any Event of Default or of Beneficiary's election to exercise or its actual

exercise of any right, remedy or recourse provided for under the Loan Documents, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

**Section 3.06 Discontinuance of Proceedings.** If Beneficiary shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Beneficiary shall have the unqualified right to do so and, in such an event, Grantor and Beneficiary shall be restored to their former positions with respect to the Obligations, the Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Beneficiary shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Beneficiary thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

**Section 3.07 Application of Proceeds.** Subject to the terms of the Loan Agreement below, the proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Mortgaged Property, shall be applied by Beneficiary (or the receiver, if one is appointed) in the following order unless otherwise required by applicable law:

(a) to the payment of the costs and expenses of taking possession of the Mortgaged Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation (1) receiver's fees and expenses, (2) court costs, (3) reasonable attorneys' and accountants' fees and expenses, (4) costs of advertisement, and (5) the payment of all ground rent, real estate taxes and assessments, except any taxes, assessments or other charges subject to which the Mortgaged Property shall have been sold;

(b) to the payment of all amounts (including interest), other than the unpaid principal balance of the Note and accrued but unpaid interest, which may be due to Beneficiary under the Loan Documents;

(c) to the payment and performance of the Obligations in such manner and order of preference as Beneficiary in its sole discretion may determine; and

(d) the balance, if any, to the payment of the Persons legally entitled thereto.

**Section 3.08 Occupancy After Foreclosure.** The purchaser at any foreclosure sale pursuant to **Section 3.01(d)** shall become the legal owner of the Mortgaged Property. All occupants of the Mortgaged Property shall, at the option of such purchaser, become tenants of the purchaser at the foreclosure sale and shall deliver possession thereof immediately to the purchaser upon demand. It shall not be necessary for the purchaser at said sale to bring any action for possession of the Mortgaged Property other than the statutory action of forcible detainer in any justice court having jurisdiction over the Mortgaged Property.

**Section 3.09 Additional Advances and Disbursements; Costs of Enforcement.**

(a) If any Event of Default exists, Beneficiary shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Grantor. All sums advanced and expenses incurred at any time by Beneficiary under this **Section 3.09(a)**, or otherwise under this Security Instrument or any of the other Loan Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the Default Rate, and all such sums, together with interest thereon, shall be secured by this Security Instrument.

(b) Grantor shall pay all expenses (including reasonable attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Security Instrument and the other Loan Documents, or the enforcement, compromise or settlement of the Obligations or any claim under this Security Instrument and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Beneficiary in respect thereof, by litigation or otherwise.

**Section 3.10 No Mortgagee in Possession.** Neither the enforcement of any of the remedies under this **Article 3**, the assignment of the Rents and Leases under **Article 4**, the security interests under **Article 5**, nor any other remedies afforded to Beneficiary under the Loan Documents, at law or in equity shall cause Beneficiary to be deemed or construed to be a mortgagee in possession of the Mortgaged Property, to obligate Beneficiary to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

#### **ARTICLE 4 ASSIGNMENT OF RENTS AND LEASES**

**Section 4.01 Assignment.** Grantor acknowledges and confirms that it has executed and delivered to Beneficiary an Assignment of Rents and Leases of even date (the "**Assignment of Rents and Leases**"), intending that such instrument create a present, absolute assignment to Beneficiary of the Leases and Rents. Without limiting the intended benefits or the remedies provided under the Assignment of Rents and Leases, Grantor hereby assigns to Beneficiary, as further security for the Obligations, the Leases and Rents. While any Event of Default exists, Beneficiary shall be entitled to exercise any or all of the remedies provided in the Assignment of Rents and Leases and in **Article 3** hereof, including the right to have a receiver appointed. If any conflict or inconsistency exists between the assignment of the Rents and the Leases in this Security Instrument and the absolute assignment of the Rents and the Leases in the Assignment of Rents and Leases, the terms of the Assignment of Rents and Leases shall control.

**Section 4.02 No Merger of Estates.** So long as any part of the Obligations secured hereby remain unpaid and undischarged, the fee and leasehold estates to the Mortgaged Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Grantor, Beneficiary, any lessee or any third party by purchase or otherwise.

#### **ARTICLE 5 SECURITY AGREEMENT**

**Section 5.01 Security Interest.** This Security Instrument constitutes both a real property mortgage and a "security agreement" within the meaning of the UCC and other applicable law with respect to the Personalty, the Fixtures, the Plans, the Leases, the Rents and the Property Agreements and all other Mortgaged Property which is collateral under the UCC (collectively, the "**Personal Property**"). To this end, but subject to any applicable provisions of the Loan Agreement, Grantor grants to Beneficiary, a first and prior, unconditional and continuing security interest in the Personal Property to secure the payment and performance of the Obligations, and agrees that Beneficiary shall have all the rights and remedies of a secured party under the UCC with respect to such Personal Property. Any notice of sale, disposition or other intended action by Beneficiary with respect to the Personal Property sent to Grantor at least five (5) Business Days prior to any action under the UCC shall constitute reasonable notice to Grantor.

**Section 5.02 Financing Statements.** Grantor shall file and/or hereby authorizes Beneficiary to file, at Grantor's expense, such financing, amendment and/or continuation statements as Beneficiary believes necessary or desirable to create, perfect and/or preserve Beneficiary's security interest hereunder. Grantor authorizes Beneficiary and its counsel to file UCC financing statements describing the collateral

as “all assets of the debtor, whether now owned or existing or hereafter acquired or arising and all proceeds and products thereof, including, without limitation, all fixtures on the Land and/or the Improvements,” and any limitations on such collateral description, notwithstanding that such collateral description may be broader in scope than the Personal Property. Grantor shall promptly notify Beneficiary if Grantor (a) re-domesticates to another state, (b) moves its chief executive office to another state, (c) changes its name, (d) is merged into another entity or (e) moves any of its tangible personal property to another state, unless such personal property is replaced by similar property of equal or greater value. For purposes of such filings, Grantor agrees to furnish any information requested by Beneficiary promptly upon request by Beneficiary. Grantor is a registered organization (as defined in the UCC), organized solely under the laws of the State of Delaware and registered to transact business in the State of Alabama as a foreign limited liability company. Grantor shall promptly notify Beneficiary of any change in its organizational identification number. If Grantor does not now have an organizational identification number and later obtains one, Grantor promptly shall notify Beneficiary of such organizational identification number.

**Section 5.03 Fixture Filing.**

(a) This Security Instrument shall also constitute a “fixture filing” for the purposes of the UCC, including, without limitation, Section 7-9A-502(c) thereof, against all of the Mortgaged Property which is or is to become fixtures. Grantor is the record owner of the Land, the Improvements and the Fixtures. This Security Instrument shall be recorded in the land records of the State of Alabama. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Grantor) and Secured Party (Beneficiary) as set forth in the first paragraph of this Security Instrument. Notwithstanding the foregoing, at Beneficiary’s election, Grantor shall also file and/or authorize Beneficiary to file, at Beneficiary’s expense, financing statements required or permitted in the filing office (as defined in the UCC) to perfect a security interest in the Fixtures.

(b) It is understood and agreed that, to protect Beneficiary against the effect of UCC § 7-9A-334, if any fixture owned by Grantor on the Mortgaged Property, or any part of any fixture, is replaced or added to, or any new fixture owned by Grantor is installed by Grantor, and in each case the fixture has a cost or fair market value in excess of Ten Thousand and 00/100 Dollars (\$10,000.00), and the fixture is or may be subject to a security interest held by a seller or any other party, the following will apply:

(i) Grantor or any owner of all or any part of the Mortgaged Property will, before the replacement, addition, or installation of any fixture, obtain the prior written approval of Beneficiary, and give Beneficiary written notice that a security agreement with respect to the fixture has been or will be consummated, and the notice will contain the following information:

(w) a description of the fixtures to be replaced, added to, installed, or substituted;

(x) a recital of the location at which the fixtures will be replaced, added to, installed, or substituted;

(y) a statement of the name and address of the holder and amount of the security interest; and

(z) the date of the purchase of the fixtures.

Neither this subsection nor any consent by Beneficiary pursuant to this subsection will constitute an agreement to subordinate any right of Beneficiary in fixtures or other property covered by this Security Instrument.

(ii) After the occurrence and during the continuance of a default thereunder, Beneficiary may at any time pay the balance due under the security agreement and the amount paid will be:

(x) secured by this Security Instrument and will be a Lien on the Mortgaged Property, enjoying the same priorities as this Security Instrument;

(y) added to the amount of the Note or other obligation secured by this Security Instrument; and

(z) payable on demand with interest at the Default Rate from the time of the payment; and if Grantor is in default for ten (10) days after demand, the entire principal sum secured hereby with all unpaid interest will, at Beneficiary's option, become immediately due, regardless of any contrary provision in this Security Instrument or the Note; or, unless prohibited by such security agreement, Beneficiary will have the privilege of acquiring by assignment from the holder of the security interest any contract rights, accounts receivable, chattel paper, negotiable or nonnegotiable instruments, or other evidence of Grantor's indebtedness for the fixtures, and, on acquiring these interests by assignment, will have the right to enforce the security interest as an assignee, in accordance with the UCC and other applicable law.

(iii) Whether Beneficiary has paid or taken an assignment of the security interest, if at any time Grantor is in default for a period of ten (10) days under the security agreement covering the fixtures, and the obligations secured by such security agreement exceed \$10,000.00, that default will be considered a material breach of Grantor's covenants under this Security Instrument, and will, at Beneficiary's option, constitute an Event of Default, and the principal sum secured will, at Beneficiary's option, become immediately due.

(iv) The provisions of subsections (ii) and (iii) above will not apply if the goods that may become fixtures are of at least equivalent value and quality as any property being replaced and if the rights of the party holding the security interest have been expressly subordinated, at no cost to Beneficiary, to the Lien of this Security Instrument in a manner satisfactory to Beneficiary, including, without limitation, at Beneficiary's option, providing to Beneficiary a satisfactory opinion of counsel that this Security Instrument constitutes a valid and subsisting first Lien on the fixtures that is not subordinate to the Lien of the security interest under any applicable law, including, without limitation, the provisions of UCC §§ 7-9A-334 and 7-9A-604.

## ARTICLE 6 MISCELLANEOUS

**Section 6.01** Notices. Any approval, consent, notice, request or other communication required or permitted to be given under this Security Instrument shall be given in accordance with Section 11.1 of the Loan Agreement.

**Section 6.02** Covenants Running with the Land. All Obligations contained in this Security Instrument are intended by Grantor and Beneficiary to be, and shall be construed as, covenants running with the Mortgaged Property. As used herein, "Grantor" shall refer to the party named in the first paragraph of this Security Instrument and to any subsequent owner of all or any portion of the Mortgaged Property (without in any way implying that Beneficiary has or will consent to any such conveyance or transfer of the Mortgaged Property). All Persons who may have or acquire an interest in the Mortgaged Property shall be deemed to have notice of, and be bound by, the terms of the Loan Agreement and the other Loan Documents;

however, no such party shall be entitled to any rights thereunder without the prior written consent of Beneficiary.

**Section 6.03 Attorney-in-Fact.** Grantor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest, if Grantor shall fail to do so within ten (10) days after written request by Beneficiary, (b) upon the issuance of a deed pursuant to the foreclosure of this Security Instrument or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Personalty, Fixtures, Plans and Property Agreements in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Beneficiary's security interests and rights in or to any of the collateral, and (d) while any Event of Default exists, to perform any obligation of Grantor hereunder; however: (1) Beneficiary shall not under any circumstances be obligated to perform any obligation of Grantor; (2) any sums advanced by Beneficiary in such performance shall be added to and included in the Obligations and shall bear interest at the Default Rate; (3) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (4) Beneficiary shall not be liable to Grantor or any other Person for any failure to take any action which it is empowered to take under this **Section 6.03**.

**Section 6.04 Successors and Assigns.** This Security Instrument shall be binding upon and inure to the benefit of Beneficiary and Grantor and their respective successors and assigns. Grantor shall not, without the prior written consent of Beneficiary, assign any rights, duties or obligations hereunder.

**Section 6.05 No Waiver.** Any failure by Beneficiary to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same, and Beneficiary shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

**Section 6.06 Subrogation.** To the extent proceeds of the Note have been used to extinguish, extend or renew any indebtedness against the Mortgaged Property, then Beneficiary shall be subrogated to all of the rights, Liens and interests existing against the Mortgaged Property and held by the holder of such indebtedness and such former rights, Liens and interests, if any, are not waived, but are continued in full force and effect in favor of Beneficiary.

**Section 6.07 Loan Agreement.** If any conflict or inconsistency exists between this Security Instrument and the Loan Agreement, the Loan Agreement shall govern (including, without limitation, with respect to all qualifiers and notice and cure rights contained therein).

**Section 6.08 Release.** Upon (x) payment and performance in full of the Obligations or (y) a Project Release of the Mortgaged Property in accordance with the Loan Agreement, Beneficiary, at Grantor's expense, shall release the Liens and security interests created by this Security Instrument; provided, however, that in lieu of such release, so long as at the time of such payment no Event of Default exists, Beneficiary shall assign the Note and this Security Instrument, without representation or recourse, to an institutional Beneficiary designated by Grantor. Notwithstanding the foregoing, on any repayment or refinancing of the Loan, Beneficiary shall not be obligated to deliver an assignment of this Security Instrument, and shall be obligated only to deliver a release, satisfaction or discharge, if Beneficiary continues to hold any other deed of trust encumbering the Mortgaged Property (unless Beneficiary is simultaneously assigning to a replacement Beneficiary all such deeds of trust otherwise held by Beneficiary).

**Section 6.09 Waiver of Stay, Moratorium and Similar Rights.** Grantor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any appraisement, valuation, stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Security Instrument or the indebtedness secured hereby, or any agreement between Grantor and Beneficiary or any rights or remedies of Beneficiary.

**Section 6.10 Obligations of Grantor, Joint and Several.** If more than one person or entity has executed this Security Instrument as "Grantor," the obligations of all such persons or entities hereunder shall be joint and several.

**Section 6.11 Governing Law.** THIS SECURITY INSTRUMENT SHALL BE DEEMED TO BE A CONTRACT ENTERED INTO PURSUANT TO THE LEGAL REQUIREMENTS OF THE STATE OF NEW YORK AND SHALL IN ALL RESPECTS BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LEGAL REQUIREMENTS OF THE STATE OF NEW YORK; PROVIDED; HOWEVER, THAT WITH RESPECT TO THE CREATION, VALIDITY, ATTACHMENT, PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIEN OF THIS SECURITY INSTRUMENT, THE ASSIGNMENT OF RENTS, AND THE DETERMINATION OF DEFICIENCY JUDGMENTS, THE LEGAL REQUIREMENTS OF THE STATE WHERE THE PROPERTY IS LOCATED SHALL APPLY. TO THE FULLEST EXTENT PERMITTED BY LEGAL REQUIREMENTS, GRANTOR HEREBY UNCONDITIONALLY WAIVES ANY CLAIM TO ASSERT THAT THE LEGAL REQUIREMENTS OF ANY OTHER JURISDICTION GOVERNS THIS SECURITY INSTRUMENT. NOTWITHSTANDING THE FOREGOING, ACTIONS INVOLVING THE FORECLOSURE OF THIS SECURITY INSTRUMENT, EXERCISE OF POWER OF SALE OR ANY ACTIONS DIRECTLY AFFECTING THE LAND SHALL BE BROUGHT UNDER AND GOVERNED BY THE LEGAL REQUIREMENTS OF THE STATE OF ALABAMA.

WHENEVER POSSIBLE, EACH PROVISION OF THIS SECURITY INSTRUMENT SHALL BE INTERPRETED IN SUCH MANNER AS TO BE EFFECTIVE AND VALID UNDER APPLICABLE LEGAL REQUIREMENTS, BUT IF ANY PROVISION OF THIS SECURITY INSTRUMENT SHALL BE UNENFORCEABLE OR PROHIBITED BY OR INVALID UNDER APPLICABLE LEGAL REQUIREMENTS, SUCH PROVISION SHALL BE INEFFECTIVE TO THE EXTENT OF SUCH UNENFORCEABILITY, PROHIBITION OR INVALIDITY, WITHOUT INVALIDATING THE REMAINING PROVISIONS OF THIS SECURITY INSTRUMENT.

GRANTOR AND BENEFICIARY FURTHER ACKNOWLEDGE, AGREE AND STIPULATE THAT THIS SECURITY INSTRUMENT WAS MADE BY GRANTOR IN THE STATE OF NEW YORK, THAT THE PROCEEDS OF THE OBLIGATIONS SECURED HEREBY WERE RECEIVED BY GRANTOR IN THE STATE OF NEW YORK AND THAT THE STATE OF NEW YORK HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES INVOLVED IN THIS TRANSACTION AND TO THE UNDERLYING TRANSACTIONS SECURED BY THIS SECURITY INSTRUMENT.

**Section 6.01 Headings.** The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

**Section 6.02 Entire Agreement.** This Security Instrument and the other Loan Documents embody the entire agreement and understanding between Beneficiary and Grantor and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

**Section 6.03 Counterparts.** This Security Instrument may be executed in counterparts, each of which shall be an original and all of which, when taken together, shall constitute but one and the same instrument.

**ARTICLE 7  
INTENTIONALLY OMITTED**

**ARTICLE 8  
STATE SPECIFIC PROVISIONS**

**Section 8.01 Principles of Construction.** In the event of any inconsistencies between the terms and conditions of this Article 8 and the other terms and conditions of this Security Instrument, the terms and conditions of this Article 8 will control and be binding.

**Section 8.02 Date of Agreement.** The date of this Security Instrument is intended as a date for the convenient identification of this Security Instrument and is not intended to indicate that this Security Instrument was executed and delivered on that date.

**Section 8.03 Public Sale.** Upon the occurrence and during the continuance of any Event of Default, Beneficiary may sell the Mortgaged Property (or any part thereof designated by Beneficiary) at public outcry to the highest bidder for cash at the main or front courthouse door in the county where the Land or any 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 by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in the county or counties in which the Mortgaged 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, Beneficiary or any person conducting the sale for Beneficiary is authorized to execute to the purchaser at said sale a deed to the Mortgaged Property so purchased. Beneficiary may bid at said sale and purchase said Mortgaged Property, or any part thereof, if the highest bidder therefor, and apply all or any part of the Obligations as a credit against the purchase price. Grantor hereby waives any requirement that the Mortgaged Property be sold in separate tracts and agrees that Beneficiary may, at its option, sell the Mortgaged Property en masse regardless of the number of parcels hereby conveyed. The power of sale granted herein is a continuing power and shall not be fully exercised until all of the Mortgaged Property not previously sold shall have been sold or all of the Obligations secured hereby have been satisfied in full.

**Section 8.04 Assessments Against Property.** Grantor will not, without the prior written approval of Beneficiary, which may be withheld for any reason, consent to or allow the creation of any so-called special districts, special improvement districts, benefit assessment districts or similar districts, or any other body or entity of any type, or allow to occur any other event, that would or might result in the imposition of any additional taxes, assessments or other monetary obligations or burdens on the Mortgaged Property, and this provision serves as RECORD NOTICE to any such district or districts or any governmental entity under whose authority such district or districts exist or are being formed that, should Grantor or any other person or entity include all or any portion of the Mortgaged Property in such district or districts, whether formed or in the process of formation, without first obtaining Beneficiary's express written consent, the rights of Beneficiary in the Mortgaged Property pursuant to this Security Instrument or following any foreclosure of this Security Instrument, and the rights of any person or entity to whom Beneficiary might transfer the Mortgaged Property following a foreclosure of this Security Instrument, will be senior and superior to any taxes, charges, fees, assessments or other impositions of any kind or nature whatsoever, or liens (whether statutory, contractual or otherwise) levied or imposed, or to be levied or imposed, upon the Mortgaged Property or any portion thereof as a result of inclusion of the Mortgaged Property in such district or districts.

*[signatures appear on the following page]*

IN WITNESS WHEREOF, Grantor has duly consented to and delivered this Security Instrument as of the date first written above.

**GRANTOR:**

**TWC BIRMINGHAM LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_

Alan Kanders  
Authorized Signatory

STATE OF New York

COUNTY OF New York

I, Dennis McCole, a notary public in and for said county in said state, hereby certify that Alan Kanders, whose name as an Authorized Signatory of TWC Birmingham LLC, a Delaware limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 23<sup>rd</sup> day of September, 2022.

Dennis McCole  
Notary Public, State of New York  
Reg. No. 01MC6420757  
Qualified in Suffolk County  
Commission Expires 8/16/2025

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

[NOTARIAL SEAL]

My Commission Expires: 8/16/2025

**EXHIBIT A**

**Legal Description**

**PARCEL I:**

Lot 24B, according to the Survey of Final Plat of Inverness Center Site 24B, as recorded in Map Book 21, Page 61, in the Probate Office of Shelby County, Alabama.

**PARCEL II:**

Easement for the benefit of Parcel I for ingress and egress as created, described and contained in that certain Easement Agreement recorded in Instrument 1996-23103, in said Probate Office.

**PARCEL III:**

Easement for the benefit of Parcel I for ingress and egress as created, described and contained in that certain Mutual Easement Agreement recorded in Instrument 1996-23105, in said Probate Office.

**For Identification Purposes Only:**

Property Address: 4686 Highway 280 East, Birmingham, Alabama 35242

APN: 02-7-36-0-001-029.01

**SCHEDULE 1**

**GRANTORS**

1. TWC CAMP LEJEUNE LLC, a Delaware single-purpose limited liability company (“**Camp Lejeune Grantor**”)
2. TWC CRANBERRY LLC, a Delaware single-purpose limited liability company (“**Cranberry Grantor**”)
3. TWC INDEPENDENCE LLC, a Delaware single-purpose limited liability company (“**Independence Grantor**”)
4. TWC MASON LLC, a Delaware single-purpose limited liability company (“**Mason Grantor**”)

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**STATE OF ALABAMA  
BEFORE THE ALABAMA DEPARTMENT OF REVENUE**

IN RE:	)	
	)	A proceeding authorized by
Guggenheim Real Estate, LLC,	)	
a Delaware limited liability company, as	)	§40-22-2(8), <u>Code of Alabama 1975</u>
lender	)	
	)	
	)	
Petitioner.	)	

**MORTGAGE TAX ORDER**

**COMES THE PETITIONER**, Guggenheim Real Estate, LLC, a Delaware limited liability company, in its capacity as lender, and asks the Alabama Department of Revenue to fix and determine the amount of mortgage recording privilege tax due, pursuant to § 40-22-2(8), Code of Alabama 1975, for the privilege of recording a certain Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents (the "Mortgage") from TWC Birmingham LLC, a Delaware limited liability company ("Mortgagor"), to Petitioner, which secures obligations of Mortgagor and affiliates thereof to Petitioner ("Obligations"). In addition to the real property, fixtures and related collateral described in the Mortgage located within the State of Alabama, the Obligations are secured by mortgages, deeds of trust and/or other security instruments on additional real property, fixtures, inventory, accounts receivable and personal property located outside the State of Alabama.

Upon consideration of said Petition and evidence offered in support thereof, the Alabama Department of Revenue finds and determines as follows:

1. That the total amount of the principal indebtedness of the Obligations secured by said Mortgage is \$44,630,000.00, consisting of a loan from the Petitioner, as a lender, and the other lenders to Mortgagor and/or affiliates thereof.
2. That the total value of all property granted as security for the Obligations, located both within and without the State of Alabama is \$40,700,000.00.
3. That the value of the property encumbered by the Mortgage and located within the State of Alabama is \$8,600,000.00.
4. That the total maximum amount of principal indebtedness of the Obligations to be secured by the Mortgage which is allocable to the State of Alabama and upon which tax is due is \$9,430,319.000.00 (rounded up to \$9,430,400.00), being based on 21.13% (i.e., 0.2113) of the total value of all real property securing such Obligations.
5. That the amount of mortgage recording privilege tax due to be paid upon recordation of the Mortgage, calculated at the rate of \$.15 per each \$100.00 of such Obligations, or fraction thereof, is \$14,145.60.

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**IT IS ORDERED, THEREFORE,** as follows:

1. That the amount of the indebtedness under the Mortgage allocable to Alabama and upon which mortgage recording privilege tax will be due under § 40-22-2, Code of Alabama 1975, as amended, is \$9,430,400.00.
2. That the Judge of Probate of Shelby County, shall collect mortgage recording privilege tax in the amount of \$14,145.60, plus any recording and filing fees which may be due upon recordation.

**DONE** this 29<sup>th</sup> day of September, 2022.

**STATE OF ALABAMA DEPARTMENT  
OF REVENUE**

By: *May Parker Mitchell*  
Secretary

By: *Derrick Coleman*  
Deputy Commissioner of Revenue

*[Signature]*  
Legal Division



Filed and Recorded  
Official Public Records  
Judge of Probate, Shelby County Alabama, County  
Clerk  
Shelby County, AL  
10/05/2022 03:40:41 PM  
\$14227.60 JOANN  
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*Allen S. Bayl*