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ASSIGN 1/8

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THIS ASSIGNMENT IS BEING RECORDED AS ADDITIONAL SECURITY FOR THE INDEBTEDNESS DESCRIBED IN THE MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING AND ASSIGNMENT OF LEASES AND RENTS OF EVEN DATE HERewith BETWEEN BORROWER AND LENDER, WHICH MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING AND ASSIGNMENT OF LEASES AND RENTS IS BEING FILED FOR RECORD CONCURRENTLY WITH THE RECORDING OF THIS ASSIGNMENT.

**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)**

ASSIGNMENT OF RENTS AND LEASES

This **ASSIGNMENT OF RENTS AND LEASES** (this "**Agreement**") is dated as of September 30, 2022, by **TWC BIRMINGHAM LLC**, a Delaware limited liability company, having an address c/o Three Wall Capital, LLC, 40 West 57th Street, 29th Floor, New York, New York 10019 ("**Borrower**"), to **GUGGENHEIM REAL ESTATE, LLC**, a Delaware limited liability company, whose address is c/o Guggenheim Partners Investment Management, LLC, 100 Wilshire Boulevard, Suite 500, Santa Monica, California 90401, Attention: Head of Real Estate (the "**Lender**"). Capitalized terms not defined herein shall have the meanings given to such terms in that certain Term Loan Agreement dated as of the date hereof between Lender and Borrower (as the same may be supplemented, amended, restated, renewed, replaced, substituted, modified or extended from time to time, the "**Loan Agreement**").

RECITALS:

WHEREAS, Lender has agreed to make a loan (the "**Loan**") to Borrower and each of the other entities listed on **Schedule 1** attached hereto (collectively, the "**Borrower**") in the principal amount evidenced by and set forth in that certain Promissory Note dated as of the date hereof, made by Borrower payable to Lender or its registered assign (such promissory note, together with all supplements, amendments, restatements, renewals, replacements, substitutions, modifications and/or extensions from time to time, the "**Note**"), which Note is secured by, among other things, that certain Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated as of the date hereof, executed by Borrower for the benefit of Lender and securing the payment of the Note in the principal amount of \$44,630,000.00 and intended to be recorded simultaneously herewith in the real estate records for Shelby County, Alabama (as the same may be supplemented, amended, restated, renewed, replaced, substituted, modified or extended from time to time, the "**Mortgage**"), encumbering the Property (as defined in **Section 1** hereof); and

WHEREAS, in connection with the Loan, Lender requires that Borrower enter into this Agreement.

AGREEMENT:

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender agree as follows:

1. **Absolute Assignment.** Borrower unconditionally and absolutely assigns to Lender all of Borrower's right, title and interest in and to: (a) all leases, subleases, occupancy agreements, licenses, usufructs, rental contracts and other agreements now or hereafter existing relating to the use or occupancy of the project located on the real property described in **Exhibit A** hereto (the "**Property**"), together with all guarantees, modifications, extensions and renewals thereof (collectively, the "**Leases**"); and (b) all rents, issues, profits, income and proceeds due or to become due from tenants of the Property, including rentals and all other payments of any kind under the Leases, together with all deposits (including security deposits) of tenants thereunder (collectively, the "**Rents**"). This Agreement is an absolute assignment to Lender and not an assignment as security for the performance of the obligations under the Loan Documents, or any other indebtedness.

2. **Rights of Lender.** Subject to the provisions of **Section 6** below, while an Event of Default exists, Lender shall have the right, power and authority (but not the obligation) to: (a) notify any Person that the Leases have been assigned to Lender and that all Rents are to be paid directly to Lender, whether or not Lender has commenced or completed foreclosure or taken possession of the Property; (b) settle, compromise, release, extend the time of payment of, and make allowances, adjustments and discounts of any Rents or other obligations under the Leases; (c) enforce payment of Rents and other rights under the Leases, prosecute any action or proceeding, and defend against any claim, with respect to Rents and Leases; (d) enter upon, take possession of and operate the Property; (e) lease all or any part of the Property; and/or (f) perform any and all obligations of Borrower under the Leases and exercise any and all rights of Borrower therein contained to the full extent of Borrower's rights and obligations thereunder, with or without the bringing of any action or the appointment of a receiver. At Lender's request, Borrower shall deliver a copy of this Agreement to each tenant under a Lease and to each manager and managing agent or operator of the Property. Borrower hereby irrevocably directs any tenant, manager, managing agent, or operator of the Property, without any requirement for notice to or consent by Borrower, to comply with all demands of Lender under this Agreement and to turn over to Lender on demand all Rents which it receives.

3. **No Obligation.** Notwithstanding Lender's rights hereunder, Lender shall not be obligated to perform, and Lender does not undertake to perform, any obligation, duty or liability with respect to the

Leases, Rents or Property on account of this Agreement. Prior to taking possession of the Property by foreclosure or deed in lieu thereof, Lender shall have no responsibility on account of this Agreement for the control, care, maintenance or repair of the Property, for any waste committed on the Property, for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property.

4. Right to Apply Rents. While an Event of Default exists, Lender shall have the right, but not the obligation, to use and apply any Rents received hereunder in such order and such manner as Lender may determine, subject to the terms of the Loan Agreement.

5. No Waiver. The exercise or non-exercise by Lender of the rights granted in this Agreement or the collection and application of Rents by Lender or its agent shall not be a waiver of any default by Borrower under this Agreement or any other Loan Document. No action or failure to act by Lender with respect to any obligations of Borrower under the Loan Documents, or any security or guaranty given for the payment or performance thereof, shall in any manner affect, impair or prejudice any of Lender's rights and privileges under this Agreement, or discharge, release or modify any of Borrower's duties or obligations hereunder.

6. Revocable License. Notwithstanding that this Agreement is an absolute assignment of the Rents and the Leases and not merely the collateral assignment of, or the grant of a lien or security interest in the Rents and the Leases, Lender grants to Borrower a revocable license to collect and receive the Rents and to retain, use and enjoy such Rents and to administer and enforce the Leases. Such license may be revoked by Lender while an Event of Default exists.

7. Term. This Agreement shall continue in full force and effect until the Obligations are satisfied in full.

8. Liability of Lender. Lender shall not in any way be liable to Borrower for any action or inaction of Lender, its employees or agents under this Agreement, except for Lender's or its employees' or agents' acts of gross negligence or willful misconduct.

9. Foreclosure. In the event of foreclosure of the lien of the Mortgage by sale or otherwise, Lender is hereby authorized to sell Borrower's interest in the Leases and Rents or to assign the same without consideration to the purchaser at said sale or to any other claimant to the title to the Property by virtue of a foreclosure of the lien of the Mortgage; and there shall be no liability to account to Borrower for any rents or profits accruing after the foreclosure of the lien of the Mortgage.

10. Modification. This Agreement may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of such change is sought.

11. Successors and Assigns. This Agreement shall inure to the benefit of Lender and its successors and assigns and shall be binding on Borrower and its successors and assigns.

12. Governing Law, etc.

(a) THIS AGREEMENT 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 LIENS CREATED BY THIS AGREEMENT, THE LAWS

OF THE STATE WHERE THE PROPERTY IS LOCATED SHALL APPLY. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY WAIVES ANY CLAIM TO ASSERT THAT THE LAWS OF ANY OTHER JURISDICTION GOVERN THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, ANY ACTIONS DIRECTLY AFFECTING THE LAND SHALL BE BROUGHT UNDER AND GOVERNED BY THE LAWS OF THE STATE OF ALABAMA.

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

(c) BORROWER AND LENDER FURTHER ACKNOWLEDGE, AGREE AND STIPULATE THAT THIS AGREEMENT WAS MADE BY BORROWER IN THE STATE OF NEW YORK, THAT THE PROCEEDS OF THE INDEBTEDNESS SECURED HEREBY WERE RECEIVED BY BORROWER 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 AGREEMENT.

13. Conflict. If any conflict or inconsistency exists between the absolute assignment of the Rents and the Leases in this Agreement and any such assignment as security in the Mortgage, the terms of this Agreement shall control.

14. Counterparts; Electronic Signatures. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document; provided, however, in making proof of this Agreement, it shall be unnecessary to produce or account for more than one counterpart to which signatures (acknowledged as applicable) from other counterparts may be attached. Delivery of an executed counterpart of a signature page of this Agreement or any other Loan Document by facsimile or electronic image (including, without limitation, "pdf," "tif" or "jpg" format) will be effective as a delivery of an original of a manually executed counterpart of this Agreement or such other Loan Document with the same force and effect as if such facsimile or electronic image signature page was an original thereof. Each party intends to be bound by any such facsimile and electronic image signatures, is aware that the other party will rely on such signatures, and shall not raise, and waives, any defense to, the validity, binding nature of, or enforceability of this Agreement or such other Loan Document based on the form of signature. An original executed counterpart shall be delivered by, or on behalf of, Borrower to Lender following delivery of the facsimile or electronic image, but the failure to deliver such original executed counterpart shall not affect the validity, binding nature, or enforceability of this Agreement or such other Loan Document. BORROWER AND LENDER AGREE THAT ELECTRONIC SIGNATURES OF THE PARTIES, WHETHER DIGITAL OR ENCRYPTED, IF AND AS INCLUDED IN THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS ARE INTENDED TO AUTHENTICATE THIS WRITING AND TO HAVE THE SAME FORCE AND EFFECT AS MANUAL SIGNATURES. "ELECTRONIC SIGNATURE" MEANS ANY ELECTRONIC SOUND, SYMBOL OR PROCESS ATTACHED TO OR LOGICALLY ASSOCIATED WITH A RECORD AND EXECUTED AND ADOPTED BY A PARTY WITH THE INTENT TO SIGN SUCH RECORD, INCLUDING FACSIMILE OR E-MAIL ELECTRONIC SIGNATURES.

15. Miscellaneous. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, this Agreement does not create or secure any new or further indebtedness or

obligation other than the aggregate principal indebtedness or obligation secured by or which under any contingency may be secured by the Mortgage recorded in the land records of the State of Alabama prior to the recording of this Agreement.

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IN WITNESS WHEREOF, this Agreement is duly executed and delivered as of the date first written above.

BORROWER:

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 23rd 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.

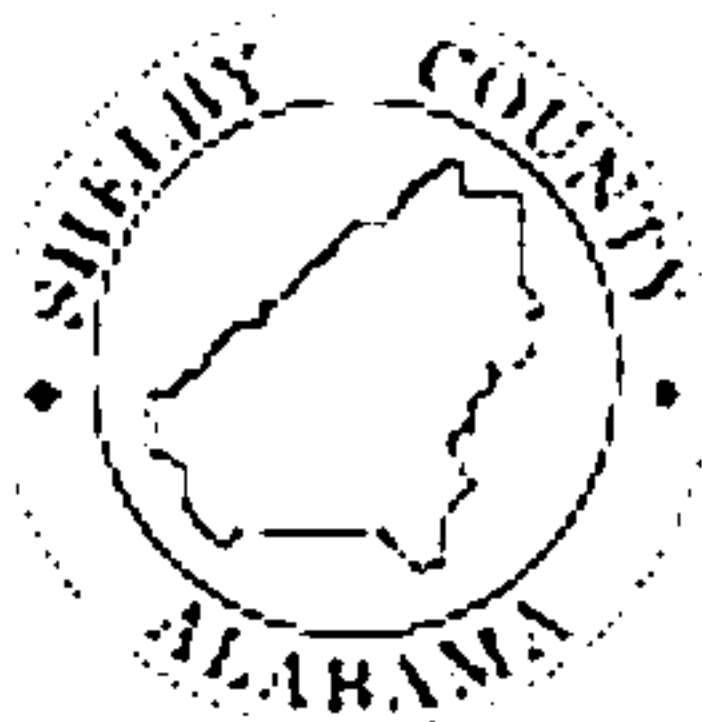
For Identification Purposes Only:

Property Address: 4686 Highway 280 East, Birmingham, Alabama 35242
APN: 02-7-36-0-001-029.01

SCHEDULE 1

BORROWER

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



Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
10/05/2022 03:40:42 PM
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