



20081231000481930 1/27 \$89.00
Shelby Cnty Judge of Probate,AL
12/31/2008 02:58:34PM FILED/CERT

SUBORDINATION, ASSIGNMENT AND SECURITY AGREEMENT
(Revision Date: September 26, 2008)

Prepared by:

Michael Van Voorhis, Esquire
Troutman Sanders LLP
Post Office Box 1122
Richmond, Virginia 23218-1122

After recording return to:

FHLMC Loan No. 504117734
The Meadows of Brook Highland Apartments

SUBORDINATION, ASSIGNMENT AND SECURITY AGREEMENT

THIS SUBORDINATION, ASSIGNMENT AND SECURITY AGREEMENT (this "**Assignment**") is made and entered into as of December 30, 2008, by and among (i) **BROOK HIGHLAND PLACE DST**, a Delaware Statutory Trust ("**Borrower**"), (ii) **CBRE MELODY & COMPANY**, a Texas corporation ("**Lender**"), and (iii) **BROOK HIGHLAND PLACE PML, LLC**, a Delaware limited liability company ("**Tenant**").

Recitals

- A. Borrower is the owner of a 400-unit multifamily residential property known as The Meadows of Brook Highland Apartments located in Birmingham (Shelby County), Alabama (the "**Mortgaged Property**"). A legal description of the land comprising a part of the Mortgaged Property is attached hereto as Exhibit A.
- B. Tenant is the master tenant and operator of the Mortgaged Property pursuant to that certain Master Lease dated as of the date hereof, between Borrower and Tenant (the "**Master Lease**").
- C. Lender is about to make a loan to Borrower in the amount of \$16,875,000.00 (the "**Loan**"). The Loan will be evidenced by a Multifamily Note and will be secured by a Multifamily Mortgage, Assignment of Rents and Security Agreement (the "**Instrument**") of even date herewith executed by the Borrower in favor of Lender which encumbers the Mortgaged Property.
- D. Lender requires and Tenant is willing to subordinate its right, title and interest to and under the Master Lease to the Instrument and to assign all Leases, Rents, Equipment, Inventory, Contracts and Accounts to Lender as additional security for the Loan.
- E. Tenant is willing to attorn to Lender upon the occurrence and during the continuance of an Event of Default under the Loan Documents, to perform its obligations under the Master Lease and this Assignment for Lender, its successors and assigns in interest, and to permit Lender to terminate the Master Lease in accordance with the terms hereof without liability.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Borrower, Lender and Tenant agree as follows:

1. **DEFINITIONS.** Capitalized terms used in this Assignment and not otherwise defined shall have the meanings assigned to them in the Instrument. All terms used herein which are defined in the Uniform Commercial Code, as in effect from time to time in the jurisdiction in which the Mortgaged Property is located, shall have the same meanings when used herein. The following terms, when used in this Assignment, shall have the following meanings:

(a) **"Accounts"** means all money, funds, investment property, accounts, accounts receivable, general intangibles, deposit accounts, chattel paper, documents, instruments, judgments, claims, settlements of claims, causes of action, refunds, rebates, reimbursements, reserves, deposits, subsidies, proceeds, products, rents and profits, now or hereafter arising, received or receivable, from or on account of Tenant's operation of the Mortgaged Property.

(b) **"Contracts"** means all contracts and other agreements for the provision of goods or services at or otherwise in connection with the operation, use or management of the Mortgaged Property, including any property management agreement entered into by Tenant in connection with the management of the Mortgaged Property and cash deposited to secure performance by parties of their obligations.

(c) **"Equipment"** means all machinery, equipment, computer equipment (hardware and software), tools, furniture, furnishings, kitchen or restaurant supplies and facilities, office equipment, dining room supplies and facilities, medical supplies and facilities, appliances, supplies, books, records, fixtures, leasehold improvements, all tangible and intangible property, and goods now owned and hereafter acquired, used in connection with the operation of the Mortgaged Property, together with all present and future parts, additions, accessories, replacements, attachments, accessions, replacement parts and substitutions therefore, and the proceeds thereof (cash and non-cash including insurance proceeds).

(d) **"Event of Default"** means the occurrence of any event listed in Section 22 of the Instrument or a default by Borrower or Tenant of any representation, warranty or covenant under this Assignment or the Master Lease.

(e) **"Impositions"** and **"Imposition Deposits"** shall have the meaning as defined in the Instrument.

(f) **"Improvements"** means the buildings, structures, improvements and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions, which may now or hereafter constitute the Mortgaged Property.

(g) **"Indebtedness"** means the principal of, interest on, and all other amounts due at any time under, the Note (as hereinafter defined), the Instrument or any other Loan Documents (as hereinafter defined), including prepayment premiums, late charges, default interest.

(h) **"Inventory"** means all inventory of every type and description, now owned and hereafter acquired, including, without limitation, raw materials, work in process, finished goods, goods returned or repossessed or stopped in transit, goods used for demonstration, promotion, marketing or similar purposes, property in, on or with which any of the foregoing may be stored or maintained, all materials and supplies usable or used or consumed at the Mortgaged Property, and all documents and documents of title relating to any of the

foregoing, together with all present and future parts, additions, accessories, attachments, accessions, replacements, replacement parts and substitutions therefor or thereto in any form whatsoever.

(i) **"Land"** means the land described in Exhibit A.

(j) **"Leases"** means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property or any portion of the Mortgaged Property (including proprietary leases or occupancy agreements if Tenant is a cooperative housing corporation), and all modifications, extensions or renewals thereof. The term "Leases" shall also specifically include, without limitation, the Master Lease.

(k) **"Loan"** shall have the meaning as defined in Recital C above.

(l) **"Loan Documents"** means the Note, the Instrument, this Assignment, all guaranties and any other documents now or in the future executed by Borrower, Tenant or any other person or entity in connection with the Loan, as such documents may be amended from time to time.

(m) Intentionally Omitted.

(n) **"Mortgaged Property"** shall have the meaning as defined in Recital A above.

(o) Intentionally Omitted.

(p) **"Note"** means that certain Multifamily Note in the original principal amount of \$16,875,000.00 executed by Borrower in favor of Lender, and more fully described in the Instrument.

(q) **"Master Lease"** shall have the meaning as defined in Recital B above.

(r) **"Rents"** means all rents (whether from residential or non-residential space), revenues and other income of the Land or the Improvements, including subsidy payments received from any sources (including but not limited to payments under any Housing Assistance Payments Contract), parking fees, laundry and vending machine income and fees and charges for food, healthcare and other services provided at the Mortgaged Property, whether now due, past due, or to become due, and deposits forfeited by tenants. Each of the foregoing shall be considered "Rents" for the purposes of the actions and rights set forth in Section 3 of this Assignment.

(s) **"Taxes"** shall have the meaning as defined in the Instrument.

2. **UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.**

(a) This Assignment is also a security agreement under the Uniform Commercial Code for any of the Contracts, Accounts, Equipment, Inventory, Leases and Rents which, under applicable law, may be subject to a security interest under the Uniform Commercial Code, whether acquired now or in the future and all products and cash and non-cash proceeds thereof (collectively, "UCC Collateral"), and Tenant hereby assigns and grants to Lender a security interest in the UCC Collateral, to the extent Tenant has an interest in the UCC Collateral. Tenant hereby authorizes Lender to file financing statements, continuation statements and financing statement amendments in such form as Lender may require to perfect or continue the perfection of this security interest and Tenant agrees, if Lender so requests, to execute and deliver to Lender such financing statements, continuation statements and amendments. Borrower shall pay all filing costs and all costs and expenses of any record searches for financing statements that Lender may require. Without the prior written consent of Lender, Tenant shall not create or permit to exist any other lien or security interest in any of the UCC Collateral, other than a security interest in favor of Borrower, and by its execution of this Assignment Borrower acknowledges that such security interests constitute Mortgaged Property under the Instrument.

(b) If an Event of Default has occurred and is continuing, Lender shall have the remedies of a secured party under the Uniform Commercial Code, in addition to all remedies provided by this Assignment or existing under applicable law. In exercising any remedies, Lender may exercise its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability of Lender's other remedies.

(c) Upon an Event of Default, Lender or its designee may (in Lender's sole discretion) terminate Tenant's authority to collect Accounts and notify the residents and account debtors that the Accounts have been assigned to Lender or of Lender's security interest therein and, either in its own name or that of Tenant, demand, collect (including, without limitation, through any lockbox arrangement prescribed by Lender), receive, receipt for, sue for or give acquittance for any or all amounts due or to become due in respect of the Accounts, and may also, in its discretion, file any claim, institute any proceeding or take any other action that Lender may deem necessary or appropriate to protect and realize upon the security interest of Lender in the Accounts. All of Lender's collection expenses shall be charged to the Borrower's account and added to the Indebtedness. If Lender is collecting the Accounts as above provided, Lender shall have the right to receive, endorse, assign and deliver in Lender's name or Tenant's name any and all checks, drafts and other instruments for the payment of money relating to the Accounts, and Tenant hereby waives notice of presentment, protest and non-payment of any instrument so endorsed. If Lender is collecting the Accounts directly as above provided, Tenant hereby constitutes Lender or Lender's designee as Tenant's attorney-in-fact with power with respect to the Accounts to: (1) endorse Tenant's name upon all notes, acceptances, checks, drafts, money orders or other evidences of payment that may come into Lender's possession; (2) notify the Post Office to change the address for delivery of mail addressed to Tenant for the Mortgaged Property to such address as Lender may designate; and (3) receive, open, and dispose of all such mail addressed to Tenant.

(d) Upon an Event of Default, Lender may, without demand and without advertisement or notice, at any time or times, sell and deliver any or all Equipment or Inventory held by or for it at public or private sale, for cash, upon credit or otherwise, at such prices and upon such terms as Lender, in its sole discretion, deems advisable. Subject to the provisions of applicable law, Lender may postpone or cause the postponement of the sale of all or any portion of the Equipment or Inventory by announcement at the time and place of such sale, and such sale may, without further notice, be made at the time and place to which the sale has been postponed or Lender may further postpone such sale by announcement made at such time and place. Without in any way limiting the foregoing, Lender shall, following any Event of Default, have the right, in addition to all other rights provided herein or by law, to enter without legal process upon the Mortgaged Property (provided that such entry be done lawfully) for the purpose of taking possession of the Equipment or Inventory, and the right to maintain such possession on the Mortgaged Property or to remove the Equipment or Inventory or any part thereof to such other places as Lender may desire. Whether or not Lender exercises its right to take possession of the Equipment or Inventory, Tenant shall, upon Lender's demand, promptly assemble the Equipment or Inventory and make it available to Lender at the Mortgaged Property.

3. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.

(a) As consideration for the material financial benefit to be derived by Tenant from Lender's approval of the Master Lease and providing the Loan, to the extent permitted by applicable law, Tenant absolutely and unconditionally assigns and transfers to Lender all of Tenant's right title and interest in and to any Rents. To the extent permitted by applicable law, it is the intention of Tenant to establish a present, absolute and irrevocable transfer and assignment to Lender of all of Tenant's right, title and interest in and to any Rents and to authorize and empower Lender to collect and receive all Rents without the necessity of further action on the part of Tenant. Promptly upon request by Lender, Tenant agrees to execute and deliver such further assignments as Lender may from time to time reasonably require. To the extent permitted by applicable law, Tenant and Lender intend this assignment of Rents to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. However, if this present, absolute and unconditional assignment of Rents is not enforceable by its terms under the laws of the Property Jurisdiction (as that term is defined in Section 30(a) of the Instrument), then it is the intention of Tenant that in this circumstance this Assignment creates and perfects a lien on Rents in favor of Lender, which lien shall be effective as of the date of this Assignment.

(b) After the occurrence of an Event of Default, Tenant authorizes Lender to collect, sue for and compromise Rents and directs each resident and tenant of the Mortgaged Property to pay all Rents to, or as directed by, Lender. However, until the occurrence of an Event of Default, Lender hereby grants to Tenant a revocable license to collect and receive all Rents, to hold all Rents in trust for the benefit of Lender and subject to the terms of the Master Lease, to apply all Rents to pay the installments of interest and principal then due and payable under the Note and the other amounts then due and payable under the other Loan Documents,

including (subject to the terms of §14(c) of this Agreement) management fees and costs under any property management agreement entered into by Tenant for the management of the Mortgaged Property, Imposition Deposits, and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities, Taxes and insurance premiums (to the extent not included in Imposition Deposits), resident and tenant improvements and other capital expenditures. So long as no Event of Default has occurred and is continuing, and subject to the terms of the Master Lease, the Rents remaining after application pursuant to the preceding sentence may be retained by Tenant, free and clear of, and released from, Lender's rights with respect to Rents under this Assignment. From and after the occurrence of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, or by a receiver, Tenant's license to collect Rents shall automatically terminate and Lender shall without notice be entitled to all Rents as they become due and payable, including Rents then due and unpaid. Tenant shall pay to Lender, within ten (10) days of written demand therefor, all Rents to which Lender is entitled. At any time on or after the date of Lender's demand for Rents, Lender may give, and Tenant hereby irrevocably authorizes Lender to give, notice to all residents and tenants of the Mortgaged Property instructing them to pay all Rents to Lender. No resident or tenant shall be obligated to inquire further as to the occurrence or continuance of an Event of Default, and no resident or tenant shall be obligated to pay to Tenant any amounts which are actually paid to Lender in response to such a notice. Any such notice by Lender shall be delivered to each resident and tenant personally, by mail or by delivering such demand to each rental unit. Tenant shall not interfere with Lender's collection of such Rents and Tenant shall cooperate with Lender's collection of such Rents.

(c) Tenant represents and warrants to Lender that Tenant has not executed any prior assignment of Rents with respect to the Mortgaged Property that Tenant has not performed, and Tenant covenants and agrees that it will not perform any acts and have not executed, and shall not execute, any instrument which would prevent Lender from exercising its rights under this Section 3, and that at the time of execution of this Assignment there has been no anticipation or prepayment of any Rents for more than two months prior to the due dates of such Rents. Tenant shall not collect or accept payment of any Rents more than two months prior to the due dates of such Rents (excluding security deposits or rental deposit fees).

(d) If an Event of Default has occurred and is continuing, Lender may, regardless of the adequacy of Lender's security or the solvency of Tenant and even in the absence of waste, to the extent permitted by applicable law, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts that Lender in its discretion determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents, the making of repairs to the Mortgaged Property and the execution or termination of Contracts and Leases providing for the management, operation or maintenance of the Mortgaged Property, for the purposes of enforcing the assignment of Rents pursuant to Section 3(a), protecting the Mortgaged Property or the security of this Assignment, or for such other purposes as Lender in its discretion may deem necessary or desirable. Alternatively, if an Event of

Default has occurred and is continuing, regardless of the adequacy of Lender's security, without regard to Tenant's solvency and without the necessity of giving prior notice (oral or written) to Tenant, Lender may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in the preceding sentence. If Lender elects to seek the appointment of a receiver for the Mortgaged Property at any time after an Event of Default has occurred and is continuing, Tenant, by its execution of this Assignment, expressly consents to the appointment of such receiver, including the appointment of a receiver ex parte if permitted by applicable law. Lender or the receiver, as the case may be, shall be entitled to receive a reasonable fee for managing the Mortgaged Property. Immediately upon appointment of a receiver or immediately upon Lender's entering upon and taking possession and control of the Mortgaged Property, Tenant shall, to the extent permitted by applicable law, surrender possession of the Mortgaged Property to Lender or the receiver, as the case may be, and shall deliver to Lender or the receiver, as the case may be, all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Mortgaged Property and all security deposits and prepaid Rents. In the event Lender takes possession and control of the Mortgaged Property as aforesaid, Lender may exclude Tenant and its representatives from the Mortgaged Property. Tenant acknowledges and agrees that the exercise by Lender of any of the rights conferred under this Section 3 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and Improvements.

(e) If Lender enters the Mortgaged Property, Lender shall be liable to account only to Borrower and Tenant only for those Rents actually received. Lender shall not be liable to Tenant, Borrower, anyone claiming under or through Tenant or Borrower, or anyone having an interest in the Mortgaged Property, by reason of any act or omission of Lender under this Section 3, but excluding any acts or omissions by Lender that constitute gross negligence or willful misconduct as determined by a court of competent jurisdiction pursuant to a final non-appellable court order, and Tenant and Borrower hereby release and discharge Lender from any such liability to the fullest extent permitted by law.

(f) If the Rents are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Lender for such purposes shall become an additional part of the Indebtedness, as provided in Section 12 of the Instrument.

(g) Any entering upon and taking of control of the Mortgaged Property by Lender or the receiver, as the case may be, and any application of Rents as provided in this Assignment shall not cure or waive any Event of Default or invalidate any other right or remedy of Lender under applicable law or provided for in this Assignment or in the Instrument.

4. ASSIGNMENT OF LEASES; LEASES AFFECTING THE MORTGAGED PROPERTY.

(a) As consideration for the material financial benefit to be derived by Tenant from Lender's approval of the Master Lease and providing the Loan, to the extent permitted by applicable law, Tenant absolutely and unconditionally assigns and transfers to Lender all of Tenant's right, title and interest in, to and under the Leases, including Tenant's right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease. To the extent permitted by applicable law, it is the intention of Tenant to establish a present, absolute and irrevocable transfer and assignment to Lender of all of Tenant's respective right, title and interest in, to and under the Leases. To the extent permitted by applicable law, Tenant and Lender intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the Property Jurisdiction, then it is the intention of Tenant that in this circumstance this Assignment create and perfect a lien on the Leases in favor of Lender, which lien shall be effective as of the date of this Assignment.

(b) Until Lender gives written Notice to Tenant of Lender's exercise of its rights under this Section 4 after the occurrence of an Event of Default, Tenant shall have all rights, power and authority granted to Tenant under any Lease (except as otherwise limited by this Section or any other provision of this Assignment), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease, with the exception of the Master Lease. Upon the occurrence of an Event of Default and at the option of Lender, the permission given to Tenant pursuant to the preceding sentence to exercise all rights, power and authority under Leases shall terminate. Tenant shall comply with and observe their respective obligations under all Leases, including any obligations of Tenant pertaining to the maintenance and disposition of resident or tenant security deposits.

(c) Tenant acknowledge and agree that the exercise by Lender, either directly or by a receiver, of any of the rights conferred under this Section 4 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and the Improvements. The acceptance by Lender of the assignment of the Leases pursuant to Section 4(a) shall not at any time or in any event obligate Lender to take any action under this Assignment or to expend any money or to incur any expenses. Lender shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Mortgaged Property but excluding any acts or omissions by Lender that constitute gross negligence or willful misconduct as determined by a court of competent jurisdiction pursuant to a final non-appealable court order. Prior to Lender's actual entry into and taking possession of the Mortgaged Property, Lender shall not (i) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease); (ii) be obligated to appear in or defend any action or proceeding relating to the Lease or the Mortgaged Property; or (iii) be responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property. The execution of this Assignment by Tenant shall constitute conclusive evidence that all responsibility for the

operation, control, care, management and repair of the Mortgaged Property is and shall be that of Tenant prior to such actual entry and taking of possession.

(d) Upon delivery of written notice by Lender to Tenant of Lender's exercise of Lender's rights under this Section 4 at any time after the occurrence of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, Lender immediately shall have all rights, powers and authority granted to Tenant under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.

(e) Tenant, promptly upon Lender's request, shall deliver to Lender an executed copy of each residential Lease then in effect. All Leases for residential dwelling units shall be on forms (with no material revisions thereto) approved by Lender, shall be for initial terms of at least six months (except as expressly provided in the Security Instrument) and not more than two years, and shall not include options to purchase.

(f) Tenant shall not lease, or authorize to be leased, any portion of the Mortgaged Property for non-residential use except with the prior written consent and approval of Lender with the exception of the Master Lease which has previously been approved by Lender and any existing lease of laundry facilities (which laundry lease shall be a sublease under the Master Lease). Tenant shall not modify, or authorize the modification of, the terms of, extend or terminate, any Lease for non-residential use (including any Lease in existence on the date of this Instrument) without the prior written consent of Lender. Tenant, without request by Lender, shall deliver an executed copy of each non-residential Lease to Lender promptly after such Lease is signed. All non-residential Leases and renewals or extensions of existing Leases, shall specifically provide that (1) such Leases are subordinate to the lien of this Instrument (unless waived in writing by Lender); (2) the resident or tenant shall attorn to Lender and any purchaser at a foreclosure sale, such attornment to be self-executing and effective upon acquisition of title to the Mortgaged Property by any purchaser at a foreclosure sale or by Lender in any manner; (3) the resident or tenant agrees to execute such further evidences of attornment as Lender or any purchaser at a foreclosure sale may from time to time reasonably request; (4) the Lease shall not be terminated by foreclosure or any other transfer of the Mortgaged Property; (5) after a foreclosure sale of the Mortgaged Property, Lender or any other purchaser at such foreclosure sale may, at Lender's or such purchaser's option, accept or terminate such Lease; and (6) the resident or tenant shall, upon receipt after the occurrence of an Event of Default of a written request from Lender, pay all Rents payable under the Lease to Lender.

(g) Tenant shall not receive or accept, or authorize the allowance or acceptance of, Rent under any Lease (whether residential or non-residential) for more than two months in advance (excluding security deposits).

5. ASSIGNMENT OF CONTRACTS; CONTRACTS AFFECTING THE MORTGAGED PROPERTY.

(a) As consideration for the material financial benefit to be derived by Tenant from Lender's approval of the Master Lease and providing the Loan, to the extent permitted by applicable law, Tenant absolutely and unconditionally assigns and transfers to Lender all of Tenant's right, title and interest in, to and under, but none of the obligations under, the Contracts, including Tenant's right, power and authority to modify the terms of, extend or terminate any such Contract. To the extent permitted by applicable law, it is the intention of Tenant to establish a present, absolute and irrevocable transfer and assignment to Lender of all of Tenant's right, title and interest in, to and under the Contracts. To the extent permitted by applicable law, Tenant and Lender intend this assignment of the Contracts to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. However, if this present, absolute and unconditional assignment of the Contracts is not enforceable by its terms under the laws of the Property Jurisdiction, then it is the intention of Tenant that in this circumstance this Assignment create and perfect a lien on the Contracts in favor of Lender, which lien shall be effective as of the date of this Assignment. The acceptance by Lender of this assignment of the Contracts shall not at any time or in any event obligate Lender to take any action under this Assignment or to expend any money or to incur any expenses.

(b) Until Lender gives written Notice to Tenant of Lender's exercise of its rights under this Section 5 after the occurrence of an Event of Default, Tenant shall have all rights, power and authority granted to Tenant under any Contract (except as otherwise limited by this Section or any other provision of this Assignment), including the right, power and authority to modify the terms of any Contract or extend or terminate any Contract, with the exception of the Master Lease. Upon the occurrence of an Event of Default and at the option of Lender, the permission given to Tenant pursuant to the preceding sentence to exercise all rights, power and authority under Contracts shall terminate.

(c) Upon Lender's delivery of written notice to Tenant of an Event of Default, Lender immediately shall have all rights, powers and authority granted to Tenant under any Contract, including the right, power and authority to modify the terms of, extend or terminate any such Contract.

6. ASSIGNMENT; BORROWER AND TENANT REPRESENTATIONS, WARRANTIES AND AGREEMENTS.

(a) Tenant hereby transfers, assigns and sets over to Lender, its successors and assigns, all its right, title and interest in and to, but none of the obligations under, the any property management agreement Tenant may enter into in regard to the management of the Mortgaged Property. The foregoing assignment is being made by Tenant to Lender as collateral security for the full payment and performance by Borrower of all of its obligations under the Loan Documents. However, until the occurrence of an Event of Default (as such term is defined

in the Loan Documents), Tenant may exercise all rights as Tenant of the Mortgaged Property under such property management agreement, except as otherwise provided in this Assignment. The foregoing assignment shall remain in effect as long as the Loan, or any part thereof, remains unpaid, but shall automatically terminate upon the release of the Security Instrument as a lien on the Mortgaged Property. Tenant will cause such property manager to enter into an assignment of such property manager's rights and interest in any property management agreement entered into in connection with the management of the Mortgaged Property in a form acceptable to Lender.

(b) Borrower and Tenant represent and warrant to Lender that (i) after the Loan is made, Borrower and/or Tenant will have sufficient working capital, including cash flow from the Mortgaged Property or other assets, to adequately own and/or maintain the Mortgaged Property and pay all outstanding debts associated with the Mortgaged Property as they become due, (ii) the Master Lease is unmodified and is in full force and effect, (iii) the Master Lease is valid and binding agreements enforceable against the parties in accordance with their terms, and (iv) no party is in default in performing any of their obligations under the Master Lease. Borrower and Tenant hereby agree that any default by Borrower or Tenant under this Assignment or the Master Lease which continues beyond any applicable cure period shall at Lender's option, constitute an Event of Default under the Instrument.

7. BORROWER AND TENANT COVENANTS.

(a) Borrower hereby covenants with Lender that during the term of this Assignment: (i) Borrower shall not transfer the responsibility for the operation of the Mortgaged Property from Tenant to any other person or entity without the prior written consent of Lender (except with respect to any Permitted Transfers set forth in the Instrument); (ii) Borrower shall not terminate or amend any of the terms or provisions of the Master Lease nor shall Borrower assign its rights under the Master Lease without the prior written consent of Lender; (iii) within 5 days of Borrower's receipt, Borrower shall give Lender written notice of any written notice or information that Borrower receives which indicates that either Borrower or Tenant is in default under the terms of the Master Lease, Tenant is terminating the Master Lease or that Tenant is otherwise discontinuing its operation of the Mortgaged Property; and (iv) Borrower agrees that after Borrower receives written notice (or otherwise has actual knowledge) of an Event of Default under the Instrument, it will not make any payment of fees under or pursuant to the Master Lease without Lender's prior written consent.

(b) Tenant hereby covenants with Lender that during the term of this Assignment: (i) Tenant shall not permit a Transfer, whether directly or indirectly, of a Controlling Interest (each as defined in the Instrument) in Tenant without Lender's prior written consent (except with respect to any Permitted Transfers set forth in the Instrument); (ii) Tenant shall not transfer the responsibility for the management of the Mortgaged Property from any property manager retained to manage the Mortgaged Property to any other person or entity without the prior written consent of Lender; (iii) Tenant shall not terminate or materially modify or amend any of the terms or provisions of any property management agreement entered into by

Tenant for the management of the Mortgaged Property nor shall Tenant assign its rights under the property management agreement entered into by Tenant for the management of the Mortgaged Property without the prior written consent of Lender; (iv) within 5 days of Tenant's receipt, Tenant shall give Lender written notice of any notice or information that Tenant receives which indicates that either Tenant or the property manager retained to manage the Mortgage Property is in default under the terms of a property management agreement entered into by and between the Tenant and such property manager, that such property manager is terminating the property management agreement or that such property manager is otherwise discontinuing its management of the Mortgaged Property; and (v) Tenant agrees that after Tenant receives written notice (or otherwise has actual knowledge) of an Event of Default under the Instrument, it will not make any payment of fees under or pursuant to the property management without Lender's prior written consent.

(c) Intentionally Omitted.

(d) Borrower and Tenant covenant with Lender that during the term of this Assignment, neither Borrower nor Tenant will take any action that constitutes or with the giving of notice and/or passage of time would constitute, an Event of Default under the Loan Documents; and that the Mortgaged Property will at all times be operated and maintained in accordance with the terms of the Loan Documents.

8. **EVENT OF DEFAULT.** Upon receipt by Tenant of written notice from Lender that an Event of Default has occurred and is continuing, Lender shall have the right to exercise all rights as owner of the Mortgaged Property under the Master Lease and Tenant shall pay to Lender directly all Rents and other sums due under the Master Lease. Lender shall be entitled to mandate the use of a lockbox bank account or other depository account, to be maintained under the control and supervision of Lender, for all income of the Mortgaged Property, including but not limited to Rents, service charges, and insurance payments. In order to induce Lender to lend funds hereunder, Borrower and Tenant hereby agree, that, upon the occurrence of an Event of Default and at the option of Lender, Tenant shall continue to provide all necessary services required under any applicable licensing or regulatory requirements and shall fully cooperate with Lender and any receiver as may be appointed by a court, in performing these services until such time as Lender has arranged for a replacement tenant or manager, and in arranging an orderly transition to a replacement tenant, manager or provider of the necessary services.

9. **MASTER LEASE TERMINATION.** After the occurrence of an Event of Default, Lender shall have the right any time thereafter to terminate the Master Lease, without cause and without liability, by giving written notice to Tenant of its election to do so. Lender's notice shall specify the date of termination, which shall not be less than 30 days after the date of such notice, except such lesser notice as Lender deems to be appropriate in the event of an emergency.

10. **TURNOVER OF BOOKS AND RECORDS.** On the effective date of termination of the Master Lease as set forth in section 9 above, Tenant shall turn over to Lender

all books and records relating to the Mortgaged Property and the residents and tenants (copies of which may be retained by Tenant, at Tenant's expense), together with such authorizations and letters of direction addressed to residents, tenants, suppliers, employees, banks and other parties as Lender may reasonably require. Tenant shall cooperate with Lender in the transfer of operating and management responsibilities to Lender, any receiver, or their designees. A final accounting of unpaid fees (if any) due to Tenant under the Master Lease shall be made within 90 days after the effective date of termination, but Lender shall not have any liability or obligation to Tenant for unpaid fees or other amounts payable under the Master Lease which accrue before Lender acquires title to the Mortgaged Property, or before Lender becomes a mortgagee in possession.

11. **NOTICE.** Tenant's address for notice is P.O. Box 219, 548 Highway 155, St. Germain, WI 54558. Borrower's address for notice is P.O. Box 219, 548 Highway 155, St. Germain, WI 54558. Lender's address for notice is GEMSA Loan Services LP, 1500 City West Boulevard, Suite 200, Houston, Texas 77042. All notices to be given by Lender to Tenant shall be given in the same manner as notices to Borrower pursuant to the notice provisions contained in the Instrument.

12. **NO ASSUMPTION OF OBLIGATIONS.** The Borrower and Tenant, by executing this Assignment, agree that Lender does not assume any obligations or duties of the Borrower or Tenant concerning any Contract, nor any obligations or duties of the Tenant concerning any Contract, until and unless Lender shall exercise its rights hereunder.

13. **POWER OF ATTORNEY.** Borrower and Tenant hereby irrevocably constitute and appoint Lender as Borrower's and Tenant's attorney-in-fact to, following an Event of Default, demand, receive and enforce their rights with respect to the provisions set forth in this Assignment, to give appropriate receipts, releases and satisfactions for and on Borrower's and Tenant's behalf and to do any and all acts in Borrower's and Tenant's names or in the name of Lender with the same force and effect as Borrower or Tenant could do if this Assignment had not been made. The foregoing appointment shall be deemed to be coupled with an interest and irrevocable.

14. **TENANT REPRESENTATIONS AND OBLIGATIONS.** Tenant warrants and agrees to the following:

(a) Tenant will use commercially reasonable efforts to cooperate with Lender, including attendance at any meetings reasonably requested by Lender (after reasonable prior notice) furnishing financial statements of Tenant and operating statements for the Mortgaged Property, and allowing Lender to undertake inspections of the Mortgaged Property with not less than two (2) business days' prior written notice unless, in Lender's sole discretion, circumstances dictate otherwise. In addition, Tenant acknowledges that it has received from Borrower and reviewed a fully executed copy of the Instrument and covenants therein and agree to comply with all provisions and covenants therein applicable to the use and operation of the Mortgaged Property and as to Tenant's obligations under the Master Lease (the "Operating Covenants"),

including without limitation, arranging for the escrow of Taxes and insurance with Lender (if not arranged by Borrower) and, if necessary, providing insurance coverage in accordance with Lender's requirements. In the event Tenant fails to so use and operate the Mortgaged Property, Lender shall have the right to enforce the Operating Covenants directly against Tenant upon Borrower's failure to do so, in accordance with the provisions of the Instrument and this Assignment. Tenant's failure to comply with these obligations shall constitute a default under the Master Lease, a default under this Assignment, and an Event of Default under the Loan Documents. Tenant agrees to comply with all of their respective obligations under the Master Lease pertaining to its payment and performance of any repairs and capital improvements at the Mortgaged Property;

(b) Intentionally Omitted

(c) the Master Lease is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Instrument and the other Loan Documents, and to all renewals, modifications, consolidations, replacements and extensions thereof, and to all advances heretofore made or which may hereafter be made pursuant to the Instrument (including all sums advanced for the purposes of (x) protecting or further securing the lien of the Instrument, curing defaults by Borrower under the Loan Documents or for any other purposes expressly permitted by the Instrument, or (y) constructing, renovating, repairing, furnishing, fixturing or equipping the Mortgaged Property);

(d) any fees payable to Tenant by Borrower pursuant to the Master Lease are and shall be subordinated in right of payment to the prior payment in full of monthly debt service and funding of escrows and reserves as required under the Loan Documents, and the payment of all operating expenses and capital expenditures incurred in connection with the operation and management of the Mortgaged Property.

(e) if, by reason of its exercise of any other right or remedy under the Master Lease, Tenant acquires by right of subrogation or otherwise a lien on the Mortgaged Property which (but for this subsection) would be senior to the lien of the Instrument, then, in either event, such lien shall be subject and subordinate to the lien of the Instrument;

(f) until Tenant or Borrower receives written notice (or otherwise acquires actual knowledge) of an Event of Default, Tenant shall be entitled to retain for its own account all payments made under or pursuant to the Operating Lease, subject to the terms of this Assignment, subject to the terms of this Assignment;

(g) after Tenant or Borrower receives written notice (or otherwise acquires actual knowledge) of an Event of Default, Tenant will not accept or retain any payment of fees under or pursuant to the Master Lease, without Lender's prior written consent;

(h) Intentionally Omitted;

(i) if, after Tenant or Borrower receives written notice (or otherwise acquires actual knowledge) of an Event of Default, Tenant receives any payment of fees under the Master Lease other than from Lender, Tenant receives any other payment or distribution of any kind from Borrower or from any other person or entity other than from Lender in connection with the Master Lease which Tenant is not permitted by this Assignment to retain for its own account, such payment or other distribution will be received and held in trust for Lender and unless Lender otherwise notifies Tenant, will be promptly remitted, in cash or readily available funds, to Lender, properly endorsed to Lender, to be applied to the principal of, interest on and other amounts due under the Loan Documents in such order and in such manner as Lender shall determine in its sole and absolute discretion. Tenant hereby irrevocably designates, makes, constitutes and appoints Lender (and all persons or entities designated by Lender) as Tenant's true and lawful attorney in fact with power to endorse the name of Tenant upon any checks representing payments referred to in this subsection;

(j) during the term of this Assignment, Tenant will not commence, or join with any other creditor in commencing any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings with respect to Borrower, without Lender's prior written consent, and Tenant has not filed or is subject to any filing for bankruptcy or reorganization under any applicable bankruptcy or insolvency laws;

(k) Tenant will deliver to Lender at the address indicated above and at the same time as such notice is given to Borrower, any notice of default under the Master Lease;

(l) Intentionally Omitted;

(m) Tenant has not assigned and is now the sole owner of the interest or leasehold estate created by the Master Lease, and shall not hereafter transfer the Master Lease except as permitted by the terms thereof and with Lender's prior written approval;

(n) Intentionally Omitted;

(o) Tenant will not seek to terminate the Master Lease by reason of any default of Borrower without prior written notice thereof to Lender and the lapse thereafter of such time as under the Master Lease was offered to Borrower in which to remedy the default, and the lapse of 30 days after the expiration of such time as Borrower was permitted to cure such default; provided, however, that with respect to any default of Borrower under the Master Lease which cannot be remedied within such time, if Lender commences to cure such default within such time and thereafter diligently proceeds with such efforts and pursues the same to completion, Lender shall have such time as is reasonably necessary to complete curing such default. Notwithstanding the foregoing, in the event either Lender or Borrower do not cure or commence curing such default within the time provided to Borrower under the Master Lease and the nature of the default threatens Tenant's ability to conduct its daily business or threatens to materially or adversely damage its property located on the Mortgaged Property, Tenant shall be permitted to exercise its rights under the Master Lease;

(p) Intentionally Omitted;

(q) Tenant will not pay any Rent, fees or other sums due or to become due under the Master Lease more than 30 days in advance of the date on which the same are due or to become due under the Master Lease;

(r) Tenant will certify promptly in writing to Lender in connection with any proposed assignment of the Instrument, whether or not any default on the part of Borrower then exists under the Master Lease, and will execute such estoppel certificates and subordination agreements as Lender shall reasonably require; and

15. TENANT CERTIFICATIONS. Without limiting any other provision of this Assignment, Tenant certifies as follows:

(a) Tenant has unconditionally accepted delivery of the Mortgaged Property pursuant to the terms of the Master Lease and is currently operating the Mortgaged Property as a Class B Multifamily Residential Property and shall continue to operate the Mortgaged Property as a Class B Multifamily Residential Property and shall continue to operate the Mortgage Property in accordance with the covenants set forth in Loan Documents;

(b) Except as expressly set forth in the Master Lease, the Master Lease does not provide for free Rent, partial Rent, Rent concessions of any kind, for the advance payment of Rent other than as set forth in Section 14(q) above, Rent abatement or offsetting of Rent, and no Rent has been paid for more than 30 days in advance;

(c) Tenant has fully inspected the Mortgaged Property and found the same to be as required by the Master Lease in good order and repair, and all conditions and duties of an inducement nature under the Master Lease to be performed by the Borrower have been satisfied, including but not limited to payment to Tenant of any Borrower contributions for Improvements, completion by Borrower of the construction of any Improvements to be constructed by the Borrower, and payment to Tenant of any consulting fees;

(d) the primary term of the Master Lease commences on the date hereof, and continues until the date eight years thereafter, as set forth in the Master Lease;

(e) payment of monthly rent commences on commencement of the Master Lease, and is paid throughout the term of the Master Lease;

(f) as of the date of this Assignment, to the best of Tenant's knowledge, neither the Borrower nor Tenant is in default under any of the terms, conditions, provisions or agreements of the Master Lease and Tenant has no offsets, claims or defenses against the Borrower with respect to the Master Lease;

(g) Tenant has paid a security or other deposit to Borrower, pursuant to the terms of the Master Lease;

(h) Tenant does not, has not and will not use the Mortgaged Property for the storage, treatment, manufacturing, generation, disposal or release into the environment of any petroleum product or substance which is classified as a hazardous substance, pollutant or contaminant under any Hazardous Materials Laws except for the safe and lawful use and storage of quantities of pre-packaged supplies, cleaning materials and petroleum products customarily used in the operation and maintenance of comparable properties as permitted by the Loan Documents;

(i) Tenant shall not look to Lender, any mortgagee in possession, or successor in title to the Mortgaged Property for accountability for any security deposit or other deposit held by Borrower unless and until such security or other deposit is transferred to Lender;

(j) There is no legal action pending or to the best of Tenant's knowledge threatened which would adversely affect the operations at the Mortgaged Property. Tenant is not currently operating under a consent order or decree, or any other agreement or decree mandated by the courts or a governmental entity that restricts or otherwise affects the operation of the Mortgaged Property;

(k) To the best of Tenant's knowledge, there currently exist no grounds for the revocation, suspension or limitation of the Certificate of Occupancy for the Mortgaged Property.

16. INTENTIONALLY OMITTED.

17. LICENSING REQUIREMENTS. Tenant is in all respects legally authorized to operate the Mortgaged Property in accordance with the covenants set forth in the Loan Documents under the applicable laws of the Property Jurisdiction.

18. CONSIDERATION. As consideration for the material financial benefit to be derived by Tenant and Borrower as a result of Lender's approval of the Master Lease and making the Loan to the Borrower, Tenant and Borrower both acknowledge receipt of good and valuable consideration for Tenant's and Borrower's entry into this Assignment. Borrower and Tenant acknowledge that Tenant is owned by parties who directly or indirectly have an ownership interest in Borrower, are under common management and control and that the Tenant will benefit from the Loan. Accordingly, Borrower and Tenant both acknowledge receipt of good and valuable consideration for Borrower's and Tenant's entry into this Assignment.

19. COLLECTIONS. Tenant agrees that all monies collected on behalf of Borrower shall be deposited in one or more bank accounts in the name of Tenant or Borrower and Tenant hereby pledges a security interest in the bank accounts to Lender, so that such bank accounts are security for the Loan and shall be subject to the terms of the Instrument and other Loan Documents. All such monies, regardless of by whom collected or where held, shall remain Mortgaged Property (Rents, insurance proceeds, condemnation awards, etc., as applicable) within the meaning of the Loan Documents, including this Assignment subject to the lien,

operation and effect of the Loan Documents, including this Assignment., until such time as, pursuant to the Loan Documents, such monies may be retained by Borrower free and clear of the liens, rights and interests of Lender.

20. MODIFICATIONS TO LOAN DOCUMENTS. Any amendments heretofore or hereafter made to any of the Loan Documents, other than this Assignment, shall not require the consent of Tenant.

21. LENDER REQUESTS. Within 10 days of written request of Lender and Tenant will promptly make available to Lender at Borrower's offices or at the office of the Tenant or at the Mortgaged Property, copies of all Leases, Contracts, licenses, books, records, monthly reports, statements of account, budgets, third party payment documentation including but not limited to reimbursement agreements, surveys, statements of deficiencies and plans of correction, and cost reports related to any payments or the right to receive payments from federal, state or local programs, boards, bureaus or agencies, and other items which Tenant is required to maintain or otherwise maintains under the Master Lease or, to the extent applicable, which Tenant requires the property manager of the Mortgaged Property to maintain or which Tenant maintains for its own purposes with respect to the Mortgaged Property. Upon an Event of Default under the Instrument, Tenant will furnish promptly to Lender evidence of deposits and withdrawals from any account held or controlled by Tenant or, to the extent applicable, by the property manager of the Mortgaged Property, relating to the Mortgaged Property. Tenant will also comply with all requests with respect to the Mortgaged Property made by Lender to Borrower under the Loan Documents.

22. TENANT ASSIGNMENT. As additional collateral security for the Loan and the observance and performance by Borrower of the terms, covenants and conditions of the Loan Documents, Tenant, to the extent permissible under applicable law and regulations, and subject to the terms of this Assignment hereby transfers, sets over and assigns to Lender all of Tenant's right, title and interest in and to all licenses and any other agreements or permits of any nature whatsoever now or hereafter obtained or entered into by Tenant with respect to the occupancy, use, operation, maintenance and administration of the Mortgaged Property as a Class A Multifamily Residential Property, as applicable.

23. COUNTERPARTS. This Assignment may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall constitute one and the same instrument.

24. GOVERNING LAW.

(a) This Assignment shall be governed by and construed in accordance with the laws of the Property Jurisdiction, and applicable federal law.

(b) Borrower and Tenant agree that any controversy arising under or in relation to this Assignment may be litigated in the Property Jurisdiction. The state and federal

courts and authorities with jurisdiction in the Property Jurisdiction shall have jurisdiction over all controversies that shall arise under or in relation to this Assignment. Borrower and Tenant irrevocably consent to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing in this Assignment is intended to limit any right that Lender may have to bring any suit, action or proceeding relating to matters arising under this Assignment in any court of any other jurisdiction.

25. SUCCESSORS AND ASSIGNS. This Assignment shall be binding upon Borrower, Tenant and Lender and their respective successors, transferees and assigns, and shall inure to the benefit of and may be enforced by Lender and its successors, transferees and assigns. Borrower and Tenant shall not assign any of their respective rights and obligations under this Assignment without the prior written consent of Lender.

26. ENTIRE AGREEMENT; AMENDMENTS AND WAIVERS. This Assignment and the other Loan Documents incorporated or referred to herein contain the complete and entire understanding of the parties as to the subject matter of this Assignment. No amendment to this Assignment will be valid unless it is made in writing and executed by the parties to this Assignment. No specific waiver or forbearance for any breach of any of the terms of this Assignment shall be considered as a general waiver of that or any other term of this Assignment.

27. RELATIONSHIP OF PARTIES. Nothing contained in this Assignment shall constitute Lender as a joint venturer, partner or agent of Borrower or Tenant, or render Lender liable for any debts, obligations, acts, omissions or representations of Borrower or Tenant except as provided herein.

28. ENFORCEABILITY. The determination of invalidity, illegality, or unenforceability of any provision of this Assignment, pursuant to judicial decree, shall not affect the validity or enforceability of any other provision of this Assignment, each of which shall remain in full force and effect.

29. ASSIGNMENT TO FREDDIE MAC. If Lender assigns its rights under this Assignment to Freddie Mac, all references in this Assignment to Lender shall be deemed to be references to Freddie Mac. Upon assignment to Freddie Mac, Freddie Mac shall be permitted to further assign its rights and obligations under this Assignment.

ATTACHED EXHIBIT. The Exhibit noted below, if marked with an "X" in the space provided, is attached to this Note:

☒

Exhibit A

Legal Description of Land

IN WITNESS WHEREOF, Borrower, Lender and Tenant have signed and delivered this Assignment or have caused this Assignment to be signed and delivered by their respective duly authorized representatives on the date of the acknowledgment of Borrower's signature below, as a sealed instrument, to be effective as of the day and year first above written.

Signature Pages Follow

BORROWER:

BROOK HIGHLAND PLACE DST, a Delaware
statutory trust

By: Brook Highland Place Trust Manager LLC, a
Delaware limited liability company, its Manager

By: Eliason Asset Management Group, Inc., a
Wisconsin corporation, its Sole Member

By:  (SEAL)
Jay R. Grooters
President

STATE OF Wisconsin
COUNTY OF Vilas

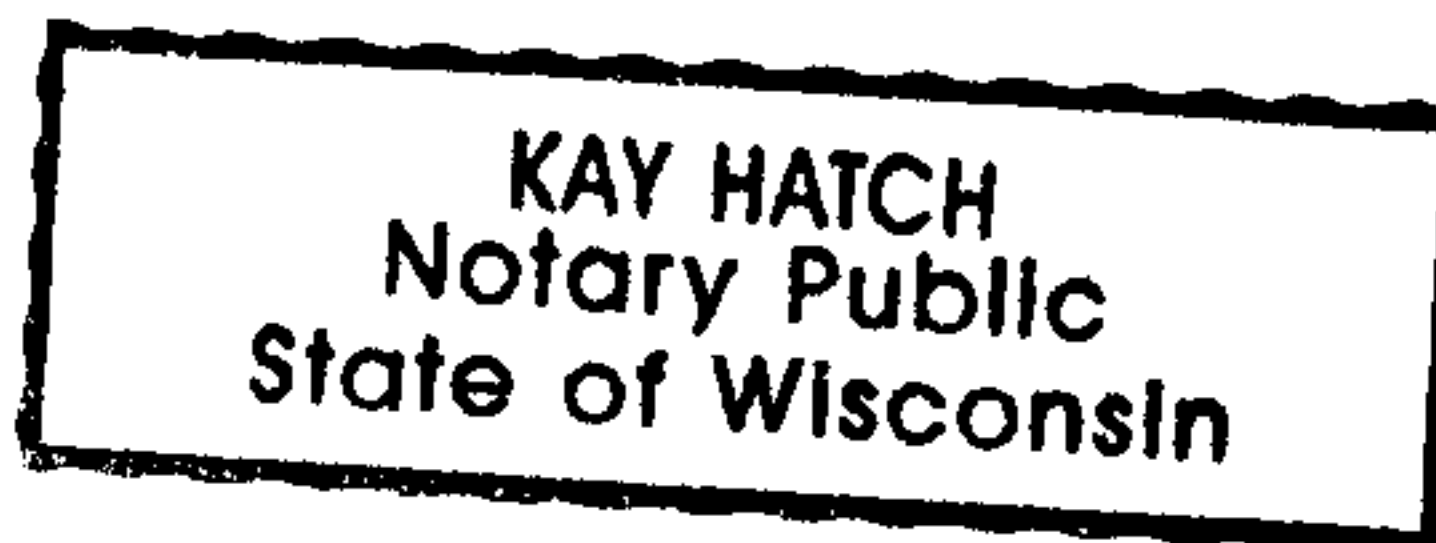
Date: 12/22/2008

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Jay R. Grooters, whose name as President of Eliason Asset Management Group, Inc, a Wisconsin corporation, as Sole Member of Brook Highland Place Trust Manager LLC, a Delaware limited liability company, in its capacity as Manager of BROOK HIGHLAND PLACE DST, a Delaware statutory trust, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation, acting in its capacity as sole member of said limited liability company, acting in its capacity as Manager of said Delaware statutory trust, as aforesaid.

My Commission Expires: 6/17/2012

Given under my hand and official seal this the 22nd day of December, 2008.


Notary Public
[AFFIX SEAL]



My commission expires: June 17, 2012

LENDER:

CBRE MELODY & COMPANY, a Texas
corporation

By: Bill R. Frazer (SEAL)
Name:
Title: **BILL R. FRAZER**
EXEC. VICE PRESIDENT & CFO

STATE OF Texas
COUNTY OF Harris

Date: 12/24/08

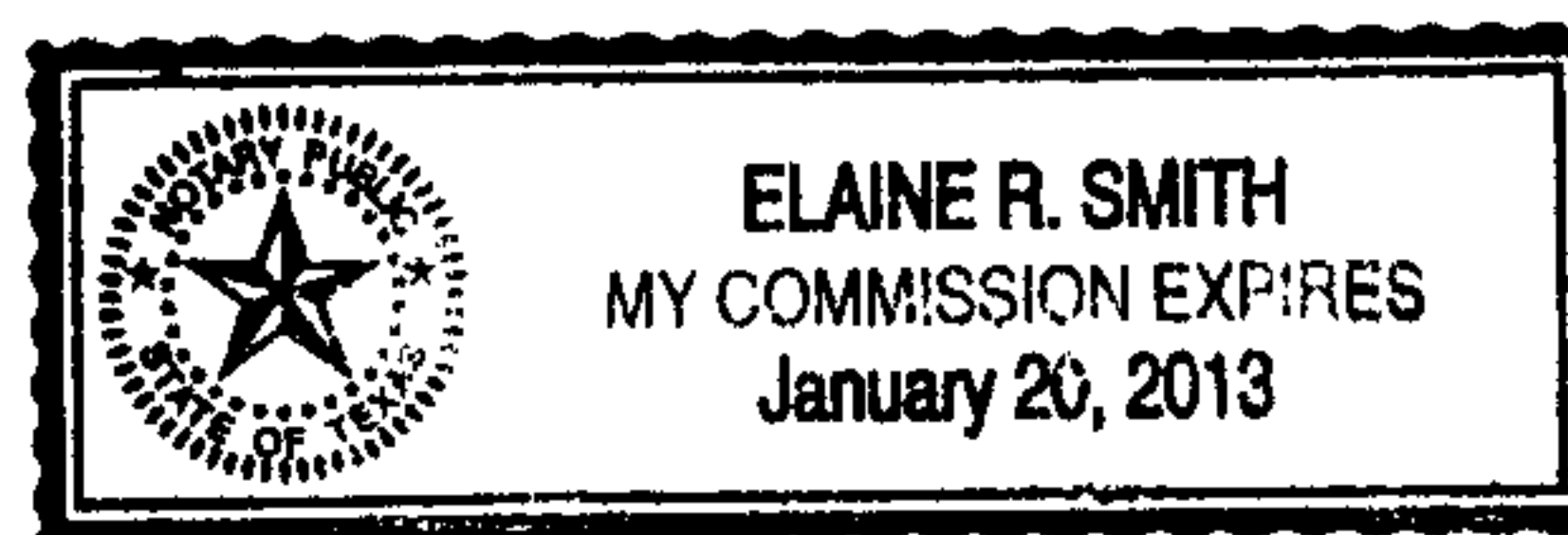
I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Bill R. Frazer, whose name as Exec. VP & CFO of CBRE MELODY & COMPANY, a Texas corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

My Commission Expires: 1/20/13
Given under my hand and official seal this the 24th day of December, 2008.

Elaine R. Smith

Notary Public
[AFFIX SEAL]

My commission expires: 1/20/13





20081231000481930 24/27 \$89.00
Shelby Cnty Judge of Probate, AL
12/31/2008 02:58:34PM FILED/CERT

TENANT:

BROOK HIGHLAND PLACE PML, LLC,
a Delaware limited liability company

By: Eliason Master Lease Corporation, a
Wisconsin corporation, its Sole Member

By:  (SEAL)
Jay R. Grooters
President

STATE OF Wisconsin
COUNTY OF Vilas

Date: 12/22/08

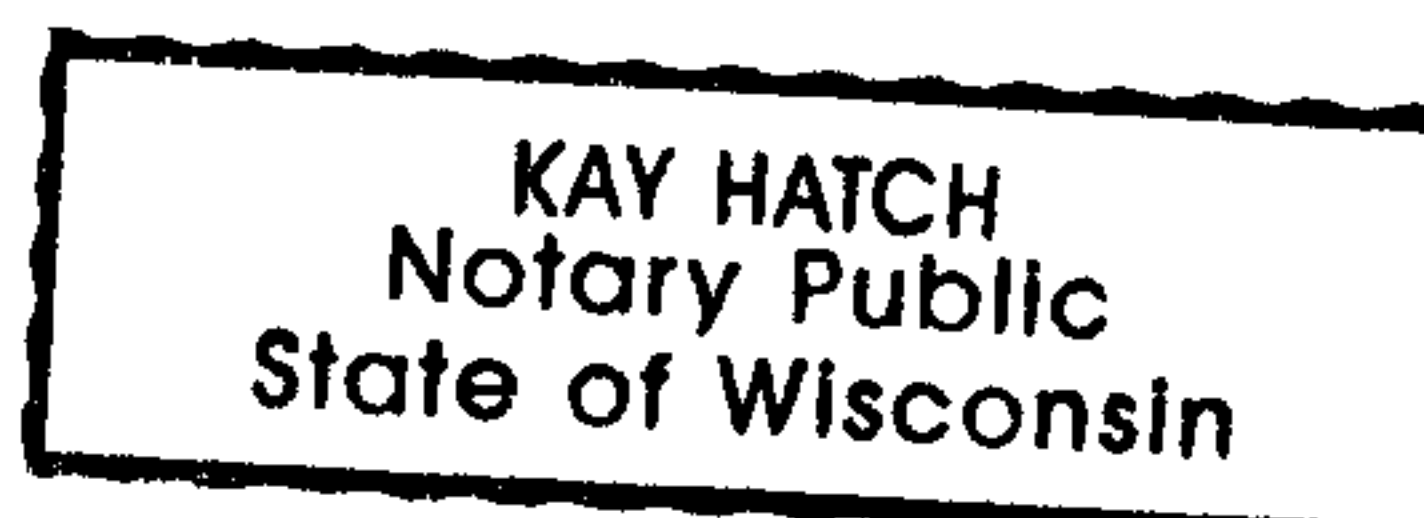
I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Jay R. Grooters, whose name as President of Eliason Master Lease Corporation, a Wisconsin corporation, as Sole Member of BROOK HIGHLAND PLACE PML, LLC, a Delaware limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation, acting in its capacity as sole member of said limited liability company, acting in its capacity as Manager of said Delaware statutory trust, as aforesaid.

My Commission Expires: 6/17/2012

Given under my hand and official seal this the 22nd day of December, 2008.



Notary Public
[AFFIX SEAL]



My commission expires: June 17, 2012

EXHIBIT A

Legal Description

20081231000481930 25/27 \$89.00
Shelby Cnty Judge of Probate:AL
12/31/2008 02:58:34PM FILED/CERT

MEADOWS IN THE PARK

PARCEL I:

Part of the North $\frac{1}{2}$ of Section 31, Township 18 South, Range 1 West; Shelby County, Alabama, being more particularly described as follows:

From the Northwest corner of Lot 12, Jessica Ingram Property, as recorded in the Office of the Judge of Probate, Shelby County, Alabama, in Map Book 3, page 54, run in a Southerly direction along the West lot line of said Lot 12 for a distance of 30.26 feet to an existing old iron rebar being the point of beginning; thence turn an angle to the left of $89^{\circ}23'50''$ and run in an Easterly direction for a distance of 1236.08 feet to an existing old iron rebar and being on the West right of way line of Shelby County Road No. 495; thence turn an angle to the right of $85^{\circ}56'17''$ and run in a Southerly direction along the West right of way line of said Shelby County Road No. 495 for a distance of 626.46 feet to an existing old iron rebar; thence turn an angle to the right of $94^{\circ}15'23''$ and run in a Westerly direction for a distance of 1373.90 feet, more or less, to an existing old iron pin being on the East right of way line of Brook Highland Drive; and also being on a curve, said curve being concave in a Westerly direction and having a central angle of $17^{\circ}50'56''$ and a radius of 621.12 feet; thence turn an angle to the right ($99^{\circ}36'27''$ to the chord of said curve) and run in a Northerly direction along the East right of way line of said Brook Highland Drive and along the arc of said curve for a distance of 193.49 feet to the point of ending of said curve; thence continue in a Northerly direction along the East right of way line of said Brook Highland Drive and along a line tangent to the end of said curve for a distance of 324.02 feet to the point of beginning of a new curve, said newest curve being concave in a Westerly direction and having a central angle of $3^{\circ}9'36''$ and a radius of 1169.80 feet; thence turn an angle to the left and run along the arc of said curve and along the East right of way line of said Brook Highland Drive for a distance of 64.52 feet to an existing iron pin; thence turn an angle to the right ($54^{\circ}07'17''$ from the chord of the last mentioned curve) and run in a Northeasterly direction for a distance of 70.27 feet, more or less, to an existing iron pin being the point of beginning; being situated in Shelby County, Alabama.

TOGETHER WITH the rights of ingress, egress and other rights set forth in that certain Non-Exclusive Access Easement Agreement recorded in Real Record 155, page 540, in the Probate Office of Shelby County, Alabama, over and across the following land:

A parcel of land located in the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, said parcel being 16 feet in width and lying adjacent to the East right of way line of Brook Highland Drive as shown on the map of the "The Meadows Residential Sector One", as recorded in Map Book 9, page 142, in the Probate Office of Shelby County, Alabama, and being more particularly described as follows:

From the Northwest corner of Lot 12, Jessica Ingram property, as recorded in Map Book 3, page 54, in the Office of the Judge of Probate of Shelby County, Alabama, run in a Southerly direction along the West lot line of said Lot 12 for a distance of 30.26 feet; thence turn an angle to the right of $54^{\circ}03'52''$ and run in a Southwesterly direction for a distance of 70.27 feet to the point of beginning of the property herein described; from the point of beginning thus obtained continue along the last described course for a distance of 19.42 feet to a point on the East right of way line of Brook Highland Drive as shown on the map of "The Meadow Residential Sector One", as recorded in Map Book 9, page 142, in the Probate Office of Shelby County, Alabama, said point being on a curve to the right, said curve being concave to the West and having a radius of 1,153.80 feet, a central angle of $2^{\circ}37'02''$ and a chord of 52.70 feet, which forms an interior angle to the right of $126^{\circ}06'26''$ with the last described course; run thence in a Southerly direction along the arc of said curve for a distance of 52.70 feet to the end of said curve; run thence in a Southerly direction tangent to said curve for a distance of 324.02 feet to the beginning of a curve to the right, said curve being concave to

the Northwest and having a radius of 605.12 feet, a central angle of 18°21'26" and a chord of 193.05 feet; run thence in a Southwesterly direction along the arc of said curve for a distance of 193.88 feet to a point; thence turn an interior angle to the right of 80°08'18" from the chord of the last described curve and departing said right of way line run in an Easterly direction for a distance of 16.90 feet to a point on a curve to the left, said curve being concave to the Northwest and having a radius of 621.12 feet, a central angle of 17°50'56" and a chord of 192.71 feet which forms an interior angle to the right of 99°36'27" with the last described course; run thence in a Northeasterly direction along the arc of said curve for a distance of 193.49 feet to the end of said curve; run thence in a Northerly direction, tangent to said curve, for a distance of 324.02 feet to the beginning of a curve to the left, said curve being concave to the West and having a radius of 1,169.80 feet, a central angle of 3°09'36" and a chord of 64.51 feet; run thence in a Northerly direction along the arc of said curve for a distance of 64.52 feet to the point of beginning.

All being situated in Shelby County, Alabama.

PARCEL II:

MEADOWS ON THE LAKE

LOT I:

Description of a parcel of land situated in the Southeast ¼ of the Northwest ¼ of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, and being more particularly described as follows:

From the Southwest corner of said ¼ ¼ section, run thence in a Northerly direction along the West line of said ¼ ¼ section for a distance of 882.30 feet; thence turn an angle to the right of 91°17'06" and run in an Easterly direction for a distance of 198.02 feet to the point of beginning of the parcel herein described; thence continue in an Easterly direction along the same course as before for a distance of 1001.66 feet; thence turn an angle to the right of 90° and run in a Southerly direction for a distance of 307.97 feet to the beginning of a curve to the right, said curve to the right having a radius of 545.12 feet, and a central angle of 62°38'49" and being concave to the Northwest; thence run along the arc of said curve in a Southerly to Southwesterly direction for a distance of 596.03 feet to the end of said curve; thence run in a Southwesterly direction tangent to said curve for a distance of 166.48 feet thence turn an angle to the right of 26°18'34" and run in a Westerly direction for a distance of 347.77 feet; thence turn an angle to the right of 63°41'26" and in a Northwesterly direction for a distance of 136.63 feet to the beginning of a curve to the right, said curve to the right having a radius of 1682.21 feet and a central angle of 17°35'45" and being concave to the Northeast; thence run in a Northwesterly direction along the arc of said curve for a distance of 516.62 feet to end of said curve and the beginning of a second curve to the right, said second curve to the right having a radius of 537.13 feet and a central angle of 20° and being concave to the East; thence run in a Northwesterly and Northerly direction along the arc of said curve for a distance of 187.49 feet to the end of said curve; thence run in a Northerly direction tangent to said curve for a distance of 80.52 feet to the point of beginning; being situated in Shelby County, Alabama.

LOT II:

Description of a parcel of land situated in the West ½ of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama; and being more particularly described as follows:

From the Northwest corner of the Northeast ¼ of the Southwest ¼ of said section run thence in an Easterly direction along the North line of said ¼ ¼ section for a distance of 389.72 feet to the point of beginning of the parcel herein described; thence continue in an Easterly direction along the North line of said ¼ ¼ section for a distance of 347.77 feet; thence turn an angle to the right of 153°41'26" and run in a Southwesterly direction for a distance of 286.75 feet to the beginning of a curve to the right, said curve to the right having a radius of 25 feet, a central angle of 90° and being concave Northward; thence run in a Westerly to Northwesterly direction along the arc of said curve for a distance of 39.27 feet to the end of said curve; thence run in a Northwesterly direction tangent to said curve for a distance of 129.14 feet to the point of beginning; being situated in Shelby County, Alabama.

THE ABOVE DESCRIBED PROPERTY is also known as Lot 1, THE MEADOWS RESIDENTIAL SECTOR ONE, as recorded in the Office of the Judge of Probate of Shelby County, Alabama, in Map Book 9, page 142.

Lot III:

Together with all beneficial rights granted to Daniel Meadows Partnership pursuant to that certain storm sewer easement recorded in Real Record 43, page 608, over and across the following property, described as follows:

The following is a description of a 20-foot wide storm sewer easement being 10 feet on either side of centerline, said centerline being more particularly described as follows:

Part of the Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

From the Northwest corner of said Southeast $\frac{1}{4}$ of Northwest $\frac{1}{4}$ run in a Southerly direction along the West line of said $\frac{1}{4}$ $\frac{1}{4}$ section for a distance of 453.75 feet; thence turn an angle to the left of $88^{\circ}42'54''$ and run in an Easterly direction for a distance of 436 feet, more or less, to the point of beginning of said centerline; thence turn an angle to the left of $142^{\circ}30'$ and run in a Northwesterly direction for a distance of 62 feet, more or less, to the point of beginning.

All being situated in Shelby County, Alabama.