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Above Space for Recorder's Use

**FIRST AMENDMENT TO
TENANTS IN COMMON AGREEMENT**

This First Amendment to Tenants in Common Agreement ("Amendment") is made and effective as of September 28, 2017, by and between Brook Highland LLC, a Delaware limited liability company ("TIC I"), Brook Highland BL LLC, a Delaware limited liability company ("TIC II"), and Brook Highland HL LLC, a Delaware limited liability company ("TIC III") (each sometimes referred to as a "Tenant in Common" or collectively as the "Tenants in Common"), with reference to the facts set forth below.

RECITALS:

A. TIC I owns an undivided ninety-one and one tenths percent (91.1%) interest as tenant-in-common in certain real property commonly known as Brook Highland Place located at 1 Meadow Drive, Birmingham, Alabama 35242, as more particularly described in Exhibit "A" attached hereto and incorporated herein (the "Property").

B. TIC II owns an undivided four and forty-five one hundredths percent (4.45%) interest as tenant-in-common in the Property.

C. TIC III owns an undivided four and forty-five one hundredths percent (4.45%) interest as tenant-in-common in the Property.

D. The parties desire to amend that certain Tenants in Common Agreement, dated April 15, 2016, by and between the Tenants in Common ("Agreement").

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as set forth below and the Agreement is amended as follows:

(a) Section 2 is amended to read as follows:

MANAGEMENT.

2.1 Management Agreement. The Tenants in Common hereby unanimously consent to this Agreement and the Management Agreement ("Management Agreement") with Dasmen Residential Mgmt, LLC a Delaware limited liability company, or its designated affiliate

("Property Manager"). Pursuant to and as set forth in the Management Agreement, the Property Manager shall be the sole and exclusive manager of the Property to act on behalf of the Tenants in Common with respect to the management, operation, maintenance and leasing of the Property, subject to the right on the part of the Tenants in Common to approve all leases in the manner provided in the Management Agreement, and further subject to the right of the Tenants in Common to terminate the Management Agreement as set forth in the Management Agreement. The Tenants in Common hereby grant the Property Manager the right to provide the lender of the Property with information related to the management of the Property, including financial and tenant information and hereby appoints the Property Manager as the contact person for notice purposes pursuant to the loan documents. Notwithstanding the foregoing, the Property Manager shall have no authority to amend or modify any loan documents.

2.2 Loan Requirements. Notwithstanding anything to the contrary contained in this Agreement or the Management Agreement and so long as any loan secured by the Property remains outstanding:

- a. Subject to the limitations set forth in the Management Agreement, the Property Manager has the authority to managing the day-to-day operation of the Property and leasing the Property and has control of the operating budget, operating account(s), and other accounts with respect to the Property;
- b. the Tenants in Common agree to stand still with respect to the enforcement of any of their rights and remedies under the Management Agreement and will not take any enforcement action with respect to the Management Agreement; and
- c. the Property Manager will at all times be a Qualifying Manager. A Qualifying Manager is defined as a property manager acceptable to such lender which meets all of following requirements:
 - i. Is a reputable management company having at least five years' experience in the management of multifamily properties and in the metropolitan area or other appropriate geographic area in which the Property is located;
 - ii. Has, for at least five years prior to its engagement as property manager, managed at least five multifamily properties;
 - iii. At the time of its engagement as property manager, has units of the same property type as the Property equal to the lesser of (A) 10,000 units and (B) five times the number of units the Property has; and
 - iv. Is not the subject of a bankruptcy or similar insolvency proceeding.

2.3 All of the terms, covenants and conditions of the Management Agreement are hereby incorporated as if set forth in full herein. Neither (a) the removal, withdrawal, termination or resignation of the Property Manager, (b) any assignment for the benefit of creditors by or the

adjudication of bankruptcy or incompetency of the Property Manager, nor (c) the termination of the Management Agreement, shall cause the termination of this Agreement and this Agreement shall remain in full force and effect notwithstanding any such events. The term of any Management Agreement shall not exceed one (1) year.

(b) Section 9.14 is amended to read as follows:

9.14 Third Party Beneficiary. Prudential Multifamily Mortgage LLC, a Delaware limited liability company, its successors and/or assigns, as their interests may appear, and Fannie Mae, and their successors and/or assigns ("Lender") is a third party beneficiary of this Agreement and may enforce the provisions of this Agreement against any Tenant in Common.

[Signatures and Acknowledgements to Follow]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

BROOK HIGHLAND LLC

By: DMR BHP LLC, its Manager

By: 

Print Name: Israel Katz

Its: Manager

Address:

400 Rella Blvd.

Suite 212

Suffern, NY 10901

STATE OF NEW YORK)
) SS:
COUNTY OF ROCKLAND)

BEFORE ME, a Notary Public in and for said County and State, personally appeared ISRAEL KATZ as Manger of DMR BHP LLC, the Manager of **BROOK HIGHLAND LLC**, a Delaware limited liability company who acknowledged that s/he did sign the foregoing instrument for and on behalf of the company, and that the same is the free act and deed of the company and the free act and deed of him/her personally and as such officer.

IN TESTIMONY, I set my hand and official seal, this 27th day of September, 2017.



Notary Public

ESTHER KAGAN
NOTARY PUBLIC-STATE OF NEW YORK
NO. 01KA6318726
QUALIFIED IN ROCKLAND COUNTY
MY COMMISSION EXPIRES 02-02-2019

BROOK HIGHLAND BL LLC

By: _____

Print Name: Israel Katz

Its: Manager

Address:

400 Rella Boulevard

Suite 212

Suffern, NY 10901

STATE OF NEW YORK)

) SS:

COUNTY OF ROCKLAND)

BEFORE ME, a Notary Public in and for said County and State, personally appeared ISRAEL KATZ as Manager of **BROOK HIGHLAND BL LLC**, a Delaware limited liability company who acknowledged that s/he did sign the foregoing instrument for and on behalf of the company, and that the same is the free act and deed of the company and the free act and deed of him/her personally and as such officer.

IN TESTIMONY, I set my hand and official seal, this 27th day of September, 2017.

ESTHER KAGAN
NOTARY PUBLIC-STATE OF NEW YORK
NO. 01KA6318726
QUALIFIED IN ROCKLAND COUNTY
MY COMMISSION EXPIRES 02-02-2019

Notary Public

BROOK HIGHLAND HL LLC

By: 

Print Name: Israel Katz

Its: Manager

Address:

400 Rella Boulevard

Suite 212

Suffern, NY 10901

STATE OF NEW YORK)

) SS:

COUNTY OF ROCKLAND)

BEFORE ME, a Notary Public in and for said County and State, personally appeared ISRAEL KATZ as Manager of **BROOK HIGHLAND HL LLC**, a Delaware limited liability company who acknowledged that s/he did sign the foregoing instrument for and on behalf of the company, and that the same is the free act and deed of the company and the free act and deed of him/her personally and as such officer.

IN TESTIMONY, I set my hand and official seal, this 27th day of September, 2017.



Notary Public

THIS INSTRUMENT WAS PREPARED BY

Nisson Tepper, Esq.

Law Office of J. Joshua Herbst, P.C.

971 Route 45, Suite 116

Pomona, NY 10970

(845) 205-9303

ESTHER KAGAN
NOTARY PUBLIC - STATE OF NEW YORK
NO. 01KA6318726
QUALIFIED IN ROCKLAND COUNTY
MY COMMISSION EXPIRES 02-02-2019

EXHIBIT A
Legal Description

PARCEL I:

Part of the North 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.

PARCEL II:

Lot 1, The Meadows Residential Sector One, as recorded in Map Book 9, Page 142, in the Office of the Judge of Probate of Shelby County, Alabama.

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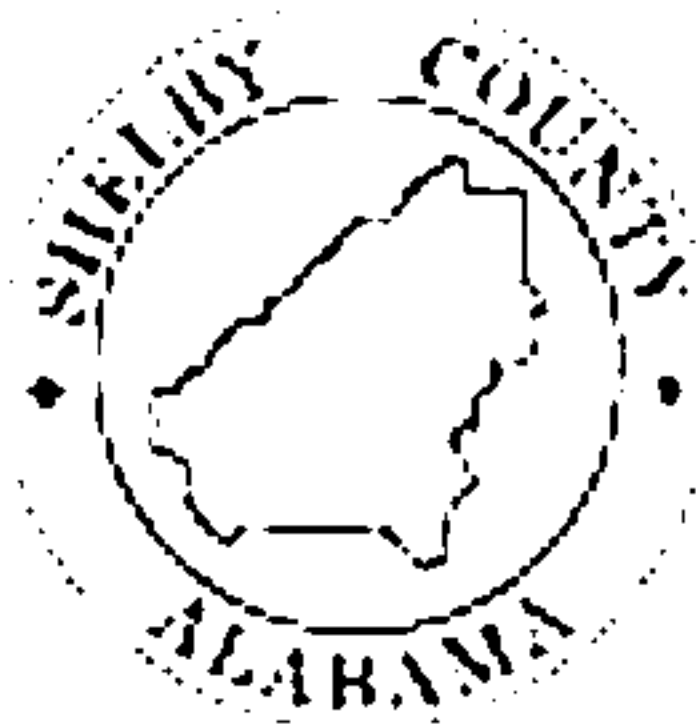
EXHIBIT A
Legal Description,
(continued)

PARCEL III:

Rights obtained that constitute an interest in real estate, under that certain Non-Exclusive Access Easement Agreement by and between AmSouth Bank N.A., as Ancillary Trustee for NCNB National Bank of North Carolina, as Trustee for the Public Employees Retirement System of Ohio and Daniel Meadows II, L.P. dated October 1, 1987, filed October 15, 1987 and recorded in Real Book 155, Page 540.

PARCEL IV:

Rights obtained that constitute an interest in real estate, under that certain Storm Sewer Easement by Shelby Development Corporation in favor of Daniel Meadows, Ltd. dated September 9, 1985, filed October 4, 1985 and recorded in Real Book 43, Page 608.



Filed and Recorded
Official Public Records
Judge James W. Fuhrmeister, Probate Judge,
County Clerk
Shelby County, AL
10/03/2017 08:45:37 AM
\$36.00 CHERRY
20171003000359140

A handwritten signature in black ink, appearing to be "J. W. Fuhrmeister", is written over the printed name of the Probate Judge.