

This instrument was prepared by:

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STATE OF ALABAMA     )

COUNTY OF SHELBY     )



20220708000270690 1/7 \$40.00  
Shelby Cnty Judge of Probate, AL  
07/08/2022 12:11:22 PM FILED/CERT

**FIRST AMENDMENT TO MEMORANDUM OF NET GROUND LEASE (PAD B)**

THIS FIRST AMENDMENT TO MEMORANDUM OF NET GROUND LEASE (PAD B) (this “*First Amendment to Memorandum*”) is made and effective as of July 7, 2022 by and between the G&I IX BROOK HIGHLAND, LLC, a Delaware limited liability company (“*Lessor*”), and BROOK HIGHLAND LIMITED PARTNERSHIP, a Georgia limited partnership (“*Lessee*”) (each, individually as a “*Party*” and collectively as the “*Parties*”).

**WITNESSETH:**

WHEREAS, Developers Diversified of Alabama, Inc. (“*Original Lessor*”) and Lessee entered into a certain Net Ground Lease (Pad B) dated September 26, 1995 (the “*Original Lease*”), as amended by that First Amendment to Net Ground Lease (Pad B) dated as of even date herewith (the “*First Amendment to Lease*” and, together with the Memorandum (as defined herein) and this First Amendment to Memorandum and the Original Lease, the “*Lease*”);

WHEREAS, the Original Lease was evidenced by that certain Memorandum of Net Ground Lease (Pad B) by and between Original Lessor and Lessee dated September 26, 1995 and recorded September 27, 1995 in the Shelby County Probate Judge’s Office as Instrument No. 1995-27244 (the “*Memorandum*”).

WHEREAS, pursuant to the Lease, Lessor (as successor-in-interest to Original Lessor) leases the Property (as defined in the Memorandum) to Lessee.

WHEREAS, Lessor and Lessee have determined that the legal description of the Property attached as Exhibit A to the Memorandum was in error;

WHEREAS, Lessor and Lessee desire to modify the Memorandum to correct the legal description of the Property as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Memorandum is hereby modified as follows:

1. The foregoing recitals are incorporated herein by reference. Capitalized terms herein without specific definition shall have the meaning ascribed to such terms in the Memorandum.

2. Exhibit A of the Memorandum is hereby deleted in its entirety and replaced with Exhibit A of this First Amendment to Memorandum attached hereto and incorporated herein by reference. All references in the Lease to the “Property” or “Pad B” shall be deemed, retroactive to the original date of the Original Lease and Memorandum, to mean the real property described on the Exhibit A attached to this First Amendment to Memorandum.

3. The Parties acknowledge and agree that the error in the Original Lease and Memorandum was a scrivener’s error and the changes made in the First Amendment to Lease and this First Amendment to Memorandum shall be retroactive to the original date of the Original Lease and Memorandum and have priority over any encumbrances that have been recorded against Pad B from and after the date hereof, and Lessor agrees to take any actions that may be required to effect and secure such priority. The Property shall only be subject to the Permitted Encumbrances in the Original Lease, set forth for convenience (but not to establish new restrictions or encumbrances) on the attached Exhibit B, to the extent the same are still in effect.

4. This First Amendment to Memorandum may be executed in one or more counterparts, including by electronic signatures (*e.g.*, .PDF), each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute one and the same instrument.

5. This First Amendment to Memorandum may not be amended, altered or amended, except by instrument in writing executed by all of the Parties hereto.

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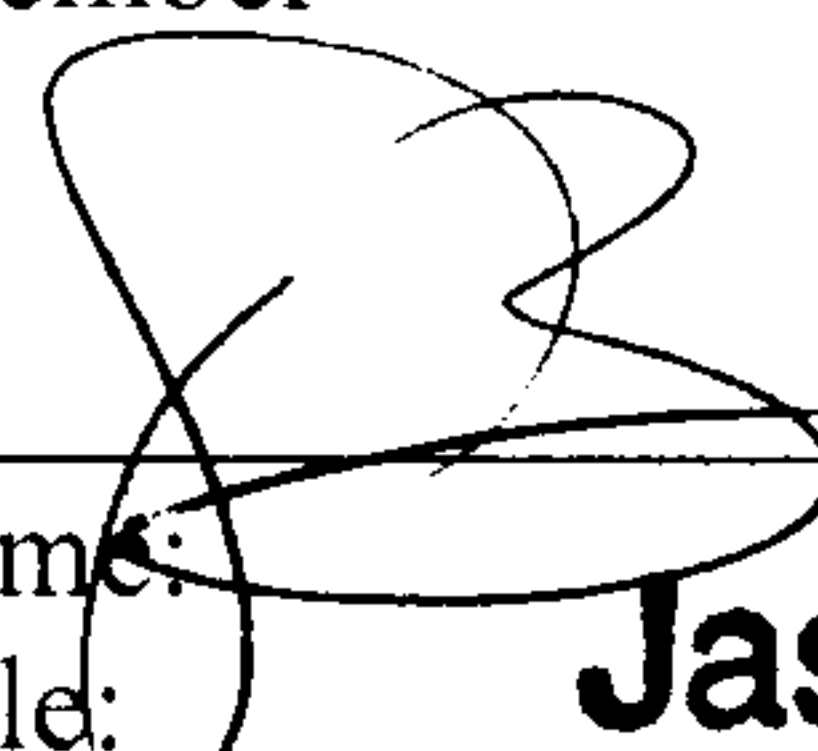
IN WITNESS WHEREOF, intending to be legally bound hereby, each of the Parties hereto has caused this First Amendment to be duly executed by an authorized officer or person as of the date first above written.

**LESSOR:**

**G&I IX BROOK HIGHLAND, LLC,**  
a Delaware limited liability company

By: G&I IX Empire JV DLC LLC,  
a Delaware limited liability  
company, its sole member

By: G&I IX Investment Empire LLC,  
a Delaware limited liability  
company, its managing  
member

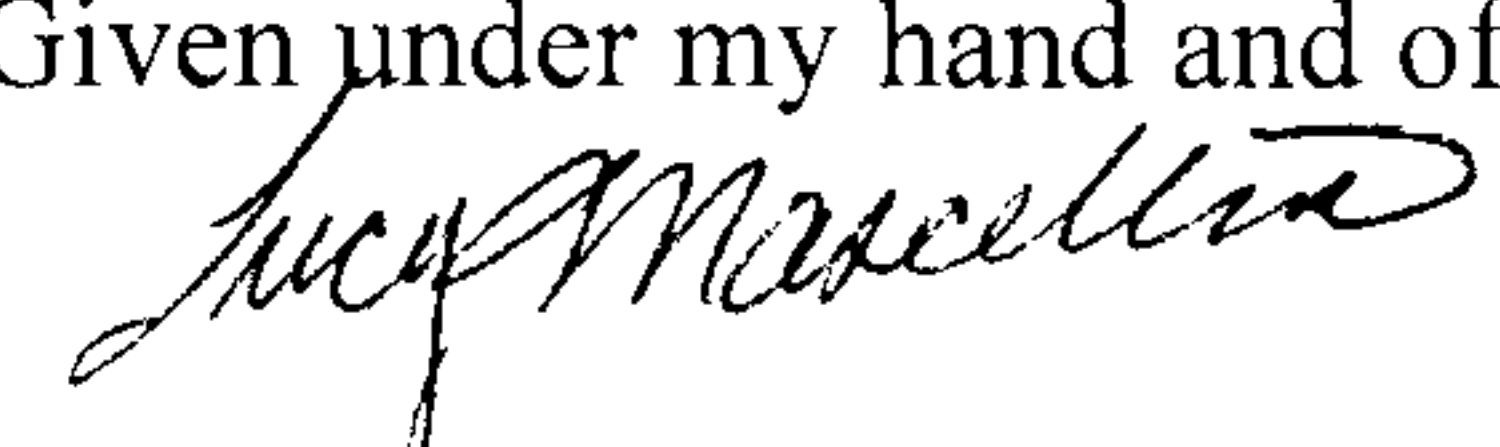
By:   
Name: **Jason Borreo**  
Title: **Vice President**

STATE OF NEW YORK )

:

NEW YORK COUNTY )

I, the undersigned, a notary public in and for said county in said state, hereby certify that Jason Borreo whose name as Vice President of G&I IX Investment Empire LLC, as the managing member of G&I IX Empire JV DLC LLC, as the sole member of G&I IX Brook Highland, 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, s/he, as such \_\_\_\_\_ and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this 6 day of July, 2022.  


Lucy Marie Mascellino  
Notary Public, State of New York  
Reg. No. 01MA6431804  
Qualified in Richmond County  
Commission Expires 04/18/2026

**(Lessor's Signature Page to First Amendment to Memorandum of Net Ground Lease)**



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**LESSEE:**

**BROOK HIGHLAND LIMITED PARTNERSHIP,**  
a Georgia limited partnership

By: BW 280 Limited Partnership, a Georgia limited  
partnership, its sole general partner

By: Alex Baker, Inc., an Alabama corporation,  
its sole general partner

By: Amy E. McMullen  
Name: Amy E. McMullen  
Its: President

STATE OF Alabama )  
COUNTY OF Jefferson )

I, the undersigned, a Notary Public in and for said State and County, hereby certify that Amy E. McMullen whose name as President of Alex Baker, Inc., an Alabama corporation and the sole general partner in BW 280 Limited Partnership, a Georgia limited partnership, and the sole general partner of Brook Highland Limited Partnership, a Georgia limited partnership, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing 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 general partner of said limited partnership acting in its capacity as the general partner of Brook Highland Limited Partnership on the day and the same bears date.


Given under my hand and official seal this 1<sup>st</sup> day of July 2022.

Pavetta Dekees Webster  
Notary Public

My Commission Expires: 12/21/25

[Notary Seal]

**(Lessee's Signature Page to First Amendment to Memorandum of Net Ground Lease)**

  
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**EXHIBIT A**

Commence at the Northwest corner of the Southeast Quarter of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, being South 89°31'51" West, 848.96 feet from the Northeast corner of Lot 1, Brook Highland Plaza Resurvey (MB 18, PG 99); thence South 10°36'38" East, 623.95 feet to the Point of Beginning; thence South 01°38'25" East, 90.00 feet; thence South 88°21'35" West, 90.00 feet; thence North 01°38'25" West, 90.00 feet, thence North 88°21'35" East, 90.00 feet to the Point of Beginning.



## **EXHIBIT B**

### **Permitted Encumbrances**



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1. General and special taxes or assessments for 1995 and subsequent years not yet due and payable.
  2. Easement(s) to D&D Water Renovation Systems, Inc. as shown by instrument recorded in Real 107, page 968, and Map Book 16, page 102, in the Probate Office of Shelby County, Alabama ("Probate Office").
  3. Rights of Alabama State Land Company and its successors and assigns in and to the mineral rights within and underlying the insured premises, as more particularly set out in Deed Book 28, page 581, in the Probate Office.
  4. Brook Highland Common Property Declaration of Covenants, Conditions and Restrictions recorded in Real 307, page 950, in the Probate Office.
  5. Restrictions, covenants and conditions as set out in Agreement between AmSouth Bank, N.A. as Ancillary Trustee for NCNB National Bank of North Carolina, as Trustee for the Public Employee Retirement System of Ohio and Woman's Missionary Auxiliary to Southern Baptist Convention dated August 31, 1990, and recorded in the Probate Office in Real Book 309, page 317, and as amended by Amendment dated April 26, 1993, recorded as Instrument #1993-32510 in the Probate Office.
  6. Transmission Line Permit to Alabama Power Company recorded in Deed 112, page 134, as amended by the containment certification letter from Alabama Power Company dated October 14, 1993.
  7. Declaration of Easements and Restrictive Covenants (Brook Highland Development - 1.35 acre Out Parcel) by AmSouth Bank N.A. as Ancillary Trustee for NCNB National Bank of North Carolina as Trustee for The Public Employees Retirement System of Ohio, dated August 29, 1990, and recorded in Real 307, page 985, in the Probate Office.
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8. Declaration of Protective Covenants which relate to the Watershed Property and the maintenance thereof, as set out by instrument recorded in Real 194, page 54, in the Probate Office.
  9. Permit to South Central Bell Telephone company recorded in Deed 349, page 865, in the Probate Office.
  10. Restrictions and conditions as set out in Statutory Warranty Deed, recorded in Real 308, page 1; Real 220, page 339, and as Instrument #1992-14567 in the Probate Office.
  11. Sign Easement Agreement dated October 13, 1993, by Brook Highland Limited Partnership in favor of AmSouth Bank N.A. as Ancillary Trustee for NationsBank of North Carolina, N.A., as Trustee for the Public Employees System of Ohio (AmSouth/NationsBank) recorded as Instrument #1993-32519 in the Probate Office.
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12. Sewer Easement Agreement dated October 12, 1993, by Brook Highland Limited Partnership and AmSouth/NationsBank, recorded as Instrument #1993-32518 in the Probate Office.
  13. Declaration of Sign Easement dated October 13, 1993, by Brook Highland Limited Partnership, recorded as Instrument #1993-32516, in the Probate Office.
  14. Easement in instrument from Brook Highland Limited Partnership to The Water Works and Sewer Board of the City of Birmingham dated October 14, 1993, recorded as Instrument #1993-32517, in the Probate Office.
  15. Restrictions set out in the Deed from AmSouth Bank N.A., as Ancillary Trustee to Brook Highland Limited Partnership, a Georgia limited partnership, dated October 12, 1993, recorded as Instrument #1993-32511, in the Probate Office.
  16. Required Approvals by Architectural Review Committee recorded as Instrument #1993-32513, in the Probate Office.
  17. Required Approvals by Architectural Review Committee recorded as Instrument #1993-32514, in the Probate Office.
  18. Short Form Lease by and between Brook Highland Limited Partnership and Winn-Dixie Montgomery, Inc. dated September 20, 1993, as Instrument #1993-32898, in the Probate Office.
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19. Short Form Lease by and Between Brook Highland Limited Partnership and Wal-Mart Stores, Inc., dated May 11, 1994, as Instrument #1994-20695, in the Probate Office.
  20. Easement Agreement between AmSouth Bank/NationsBank and Brook Highland Limited Partnership dated October 12, 1993, as Instrument #1993-32515, in the Probate Office.
  21. Lease Agreement by and between Brook Highland Limited partnership, a Georgia limited partnership, and Wings of Inverness, Inc. and recorded as Instrument #1994-36744, in the Probate Office.
  22. Memorandum of Lease by and between Brook Highland Limited Partnership, a Georgia limited partnership, and Big B, Inc., an Alabama corporation, dated December 6, 1994, and recorded as Instrument #1994-37215, in the Probate Office.
  23. Easement Agreement dated December 30, 1994, by and between Brook Highland Limited Partnership and Developers Diversified of Alabama, Inc.
  24. Matters shown and set out on the map and plat of the Brook Highland Plaza Resurvey, a Resurvey of Lots 1 and 2, Brook Highland Plaza as recorded in Map Book 18, page 99, in the Probate Office.
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