

**TENANTS IN COMMON AGREEMENT**

THIS TENANTS IN COMMON AGREEMENT (this "Agreement") is made as of this \_\_\_\_ day of \_\_\_\_\_, 2015, by and among AMERICAN BAPTIST CHURCHES IN THE U.S.A. ("ABCUSA"), THE AMERICAN BAPTIST HOME MISSION SOCIETY ("ABHMS"), THE MINISTERS AND MISSIONARIES BENEFIT BOARD OF THE AMERICAN BAPTIST CHURCHES IN THE U.S.A. ("MMBB"), and AMERICAN BAPTIST FOREIGN MISSION SOCIETY ("ABFM") (each, an "Owner" and collectively, the "Owners").

**RECITALS**

A. The Owners collectively own a 100% interest in certain real property with the improvements thereon located at 588-590 North Gulph Road, King of Prussia, PA 19406 as more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Property"), as tenants in common with each other.

B. Each Owner holds an undivided percentage interest in the Property (each, a "Percentage Interest") as set forth on Exhibit "B" attached hereto and made a part hereof.

C. The Owners have formed 588 Associates, G.P., LLC, a Pennsylvania limited liability company (the "Company"), pursuant to that certain Operating Agreement of 588 Associates, G.P., LLC, amended and restated as of [\_\_\_\_\_, 2015] (the "Operating Agreement") for the purpose of operating and administering the Property on behalf of the Owners.

D. The Owners comprise all of the Members of the Company and each Owner holds a Membership Interest in the Company in proportion to such Owner's Percentage Interest in the Property.

E. The Owners intend to jointly own and, acting through the Company, operate the Property primarily for use by the Owners and their affiliates as headquarters and central administrative offices that are essential to the provision of the charitable services provided by such entities. Any unused space may be operated as commercial office space, subject to the terms and conditions set forth herein. In connection with their joint ownership and operation of the Property, the Owners desire to set forth their agreement and understanding as to their respective rights, privileges and obligations in the ownership, maintenance, repair, transfer and encumbrance of the Property.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties hereinafter set forth, and for other good and valuable consideration received, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

1. Definitions; Recitals. Capitalized terms used herein but not defined herein shall have the meaning given such terms in the Operating Agreement. The recitals are incorporated herein by reference.

2. Nature of Relationship; Occupancy and Use of the Property.

(a) The Owners shall each hold their respective interests in the Property as tenants in common. The Owners do not intend by this Agreement to create a partnership or a joint venture and each hereby covenants and agrees that each Owner shall report on such Owner's respective federal and state tax or informational returns, if any, such Owner's respective share of items of income, gain or loss, deduction and credits that result from owning the Property in a manner consistent with the treatment of the co-tenancy as a co-ownership of real property and not as a partnership.

(b) The Owners intend to lease the Property at all times and no Owner shall have the right to occupy or use the Property or any portion thereof at any time during the term of this Agreement, except pursuant to a written lease, license or other occupancy agreement by and between such Owner and all of the Owners.

(c) No Owner shall interfere with the right of use, enjoyment and occupancy of the Property by any existing or future tenant of the Property, or conduct any activity on the Property which may constitute a nuisance or otherwise interfere with the quiet enjoyment of the Property by or any existing or future tenant of the Property.

(d) No Owner shall, without the prior written consent of all of the other Owners, lease, license or otherwise permit the Property or any part thereof to be occupied or otherwise used by any third party, either orally or in writing.

(e) No Owner shall, without the prior written consent of all of the other Owners, amend, modify or terminate any lease, license or other occupancy agreement affecting the Property or any part thereof, either orally or in writing.

(f) No Owner shall, without the prior written consent of all of the other Owners, amend, modify or terminate any contract, license, permit, warranty or guarantee affecting the Property or any part thereof, either orally or in writing.

(g) No Owner shall, without the prior written consent of all of the other Owners, pledge, mortgage or otherwise encumber its undivided interest in the Property, or grant or enter into any easements, restrictions or other agreements encumbering or affecting title to the Property.

(h) All decisions with respect to the sale, leasing, encumbrance, maintenance, upkeep, repair, replacement, improvement or operation of the Property, including, without limitation, the approval of any property management agreement or any extension, renewal or modification thereof, shall be made by action of the Company pursuant to the terms of the Operating Agreement.

3. Property Management. The Owners acknowledge and agree that the Property will be managed by G&E Real Estate Management Services, Inc. d/b/a Newmark Grubb Knight Frank (the “Property Manager”), pursuant to that certain Property Management Agreement dated August 19, 2014 by and between 588 Associates, L.P. and the Property Manager, as assigned by 588 Associates, L.P. to the Company, acting on behalf of the Owners, pursuant to that certain Assignment and Assumption dated [\_\_\_\_\_], a copy of which is attached hereto as Exhibit “C” and made a part hereof (collectively, the “Property Management Agreement”). Pursuant to the Property Management Agreement, the Property Manager shall be the sole and exclusive management agent for the Property and act as agent of the Company and the Owners with respect to the management, operation, maintenance and leasing of the Property during the term of the Property Management Agreement. Upon the expiration or earlier termination of the Property Management Agreement, the Company, acting on behalf of the Owners, shall have the authority to enter into a new property management agreement with respect to the management, operation, maintenance and leasing of the Property pursuant to the terms of this Agreement, and upon the execution of a new property management agreement by the Company, the term “Property Management Agreement” as used herein shall refer to such new property management agreement and the term “Property Manager” as used herein shall refer to the new property manager named therein.

4. Income; Liabilities.

(a) Except as otherwise provided herein, all benefits and obligations of the ownership of the Property, including, without limitation, income, revenue, Common Expenses (defined below), proceeds from sale or refinance, insurance proceeds and condemnation awards shall be shared by the Owners in proportion to their Percentage Interests in the Property. Notwithstanding the foregoing, expenses or other costs that are not applied to the Owners pro rata based on their Percentage Interests in the Property shall be separately charged to each Owner.

(b) For purposes of this Agreement, the term “Common Expenses” shall mean all costs, charges, expenses and taxes incurred or to be incurred in connection with the ownership, maintenance and repair of the Property including, without limitation:

(i) All real estate and personal property taxes and assessments levied by any taxing authority on or with respect to the Property;

(ii) All insurance premiums payable with respect to property insurance, general liability insurance, windstorm insurance, flood insurance, fire and casualty insurance with extended coverage and other forms of insurance which the Owners may procure from time to time with respect to the Property or the operation thereof;

(iii) All assessments and charges by any municipal or other authority for public water and/or public sewerage service, including any special assessments which may be made against the Property for any public or quasi-public improvements, and all applicable trash removal charges;

(iv) All costs and expenses incurred in connection with the normal operation, maintenance and upkeep of the Property (including but not limited to those maintenance

and repair items to be performed by the Property Manager pursuant to the Property Management Agreement), the costs and expenses associated with any service or supply contracts related to the Property, the costs and expenses of any utility service provided to the Property that is not separately metered and charged to a tenant of the Property, the maintenance and repair of any and all heating, air conditioning, electrical, plumbing, natural gas or other systems serving the Property, and the repair or replacement of any ordinary or necessary appliances including lighting fixtures, furnaces, water heaters, and other appliances used in connection with the commercial use of the Property and the acquisition, repair or replacement of any furnishings which are purchased and/or maintained jointly by the Owners;

(v) All costs and expenses associated with debt service and reserve payments under any loan secured by the Property;

(vi) All other costs and expenses set forth on the Approved Budget (as defined in the Property Management Agreement); and

(vii) All costs and expenses under the Property Management Agreement, including, without limitation, any and all fees payable to the Property Manager.

(c) To the extent the total income generated from the operation of the Property exceeds Common Expenses for a given fiscal year quarter, such excess shall be distributed to the Owners in proportion to their respective Percentage Interests in the Property, except for such amounts required to maintain the minimum working capital amount set forth in the Approved Budget.

(d) In the event Common Expenses exceed the total income generated from operation of the Property for a given fiscal year quarter, each Owner, as a Member of the Company, shall make an additional capital contribution in accordance with Section 7 of the Operating Agreement in an amount equal to such Owner's pro rata share (based on such Owner's Percentage Interest in the Property) of such deficiency. Any Owner's failure to fund part or all of such capital contribution shall be governed by Section 7.3 of the Operating Agreement.

(e) Regardless from which bank account tax deductible Common Expenses are paid (e.g., mortgage interest and real estate taxes), as long as each Owner has contributed to the payment of such expenses, then each Owner shall have the right to deduct, to the extent permitted by law, an amount equal to its Percentage Interest multiplied by the total amount of any mortgage interest and/or real estate taxes paid by or on behalf of the Owners in connection with the Property during the Fiscal Year.

(f) All costs and expenses associated with capital repairs, replacements or improvements (as defined by Generally Accepted Accounting Principles) shall be set forth on, and disbursed in accordance with, the Approved Budget. Prior to the Company or Property Manager incurring any capital expenditures other than those set forth on the Approved Budget, such capital expenditure shall be approved by the unanimous consent of the Board of the Company; provided, however, such consent shall not be required prior to an Owner or the Property Manager incurring an expense with respect to any capital or other improvement in the case of an emergency or to resolve

any threat to the structural integrity of the Property. Each Owner, as a Member of the Company, shall make an additional capital contribution in accordance with the terms of Section 7 of the Operating Agreement in an amount equal to such Owner's pro rata share (based on such Owner's Percentage Interest in the Property) of any approved capital expenditure. Any Owner's failure to fund part or all of such capital contribution shall be governed by Section 7.3 of the Operating Agreement.

(g) Notwithstanding any provisions of Sections 5(b) and (f) above, any damage, destruction or loss to the Property, or any jointly owned personal property located on or in the Property, resulting from the gross negligence, recklessness or willful misconduct of an Owner shall be paid for solely by that Owner, to the extent not covered by insurance (with the offending Owner responsible for payment of any deductible).

5. Sale of Property; Right of First Refusal.

(a) No Owner shall sell, assign, pledge, hypothecate, transfer, exchange, give or otherwise transfer all or any portion of its interest in the Property, except as provided in this Section 5, without the prior written consent and joinder of the other Owners.

(b) No Owner shall sell, assign, exchange, give or otherwise transfer all or any portion of its interest in the Property to any person or entity, unless such Owner also sells, assigns, exchanges, gives or otherwise transfers contemporaneously therewith all or part of its Membership Interest in the Company to the same person or entity, in proportion to such Owner's interest in the Property that is being sold or transferred. In addition, no Owner, as Member of the Company, shall sell, assign, exchange, give or otherwise transfer all or any portion of its Membership Interest in the Company to any person or entity, unless such Owner also sells, assigns, exchanges, gives or otherwise transfers contemporaneously therewith all or part of its interest in the Property to the same person or entity, in proportion to such Owner's Membership Interest that is being sold or transferred.

(c) If any Owner ("Selling Owner") desires to sell its interest in the Property, the other Owners shall have the right, but not the obligation, to purchase, and the Selling Owner shall sell, at a purchase price equal to the Fair Market Value (as defined herein), the Selling Owner's interest in the Property. Such offer to the other Owners shall be made by written notice in the same manner as a Member is required to offer its Membership Interest to the Company pursuant to Section 10.5(b) of the Operating Agreement; provided, however, this Section 5(c) shall not apply in the event all of the Owners desire to sell all of their respective interests in the Property. For purposes of this Section 5(c), "Fair Market Value" means the amount that an informed and willing purchaser under no compulsion to buy would pay to acquire the relevant percentage interest in the Property in an arm's length transaction and which an informed and willing seller under no compulsion to sell would accept for such interest in an arm's length transaction. The determination of Fair Market Value shall be made if and when required or appropriate, in the good faith determination of the Board of the Company. If an Owner disputes the Fair Market Value as determined by the Board, and the Board and such Owner are unable to resolve such dispute, the disputing Owner and the Board shall select a real estate appraiser who is MAI (Member of the Appraisal Institute) with at least 10 years experience in appraising office buildings in Pennsylvania, mutually agreed upon by the Board and such Owner, to determine the Fair Market Value. If the determination by the appraiser of the Fair

Market Value is 5% or greater than the determination by the Board, the Company shall pay the expenses of such real estate appraiser, with Fair Market Value as determined by the real estate appraiser as final and binding upon the disputing Owner and the Company. If the determination by the appraiser of the Fair Market Value is less than 5% greater than the determination by the Board, the disputing Owner shall pay the expenses of such real estate appraiser, with the Fair Market Value as determined by the Board as final and binding upon the disputing Owner and the Company.

(d) No Selling Owner shall sell its interest in the Property upon receiving a bona fide offer (the “Offer”) in writing from an unaffiliated third party without first offering such interest to the other Owners in the same manner as a Member is required to offer its Membership Interests to the Company pursuant to Section 10.10(a) and 10.11 of the Operating Agreement.

(e) In the event one or more Owners (each, a “Non-Selling Owner” and collectively, the “Non-Selling Owners”) exercises its or their option, pursuant to Section 5(b) or 5(c) above, to purchase the Selling Owner’s interest in the Property, or a portion thereof, the terms of such sale and purchase shall be as follows:

(i) The settlement shall take place within ninety (90) days after a Non-Selling Owner exercises its option, or in the case of multiple Non-Selling Owners, ninety (90) days after the last Non-Selling Owner exercises its option;

(ii) At settlement, the Selling Owner shall execute and deliver to the Non-Selling Owner (or Non-Selling Owners) a special warranty deed conveying good, marketable and insurable fee simple title to the Selling Owner’s interest in the Property to the Non-Selling Owner (or Non-Selling Owners), free and clear of all liens and encumbrances;

(iii) The Selling Owner and the Non-Selling Owner (or Non-Selling Owners) shall each bear the customary proportion of all realty transfer taxes (including documentary stamp taxes) imposed by any state or local government upon the recording of the deed in Section 5(d)(ii) above; and

(iv) Real estate taxes, water and sewer charges, if any, and other regular or periodic municipal assessments, as well as all Common Expenses for the period within which settlement occurs, shall be prorated between the Non-Selling Owner (or Non-Selling Owners) and the Selling Owner as of the date of settlement.

(f) The proceeds from any disposition pursuant to this Section 5 shall be applied pursuant to Section 6 hereof.

## 6. Sale and Disposition of the Property.

(a) The proceeds of a sale or disposition of the entire Property to an outside party shall be applied as follows and in the following order of priority, as applicable:

(i) first, to the payment of the expenses of the sale or other disposition;

- (ii) second, to the payment of all outstanding Common Expenses; and
- (iii) finally, the balance thereof shall be paid to the Owners in proportion to their interest in the Property.

(b) The proceeds of a sale or disposition of an Owner's interest in the Property to an outside party shall be applied as follows and in the following order of priority, as applicable:

- (i) first, to the payment of the expenses of the sale or other disposition;
- (ii) second, to the payment of the selling Owner's pro rata share of all Common Expenses for the period within such sale or disposition occurs; and
- (iii) finally, the balance thereof to the selling Owner.

8. Dissolution or Termination of Owner. The dissolution, termination or Change of Control of an Owner (the "Terminated Owner") shall be treated in the same manner as the dissolution, termination or Change of Control of a Member pursuant to Section 10.4 of the Operating Agreement, except that the Terminated Owner's interest in the Property shall be offered to the other Owners rather than the Company.

9. Waiver of Partition. To the fullest extent permitted by law, the parties hereby waive the right to cause the partition of the Property, either by means of physical subdivision of the Property or by means of the sale of the Property and division of the proceeds thereof. The parties understand and agree that the procedures set forth herein for the sale of an Owner's interest in the Property are reasonable, and have been adopted by the parties as a reasonable alternative to such right of partition and as a reasonable means of assuring that any Owner shall have the opportunity to purchase the interest of the other Owners upon a proposed sale by such other Owner of its interest in the Property.

10. Severability. In the event that any provision of this Agreement is hereafter determined, by the unappealable or unappealed decision of any court or other judicial or quasi-judicial authority, to be invalid or unenforceable, then such invalid or unenforceable provision shall be deemed stricken from this Agreement and the balance of this Agreement shall be enforced and enforceable in accordance with its terms. However, the parties agree that the restrictions on transferability of their interests in the Property set forth herein, and the other terms and conditions hereof, are reasonable, and the parties agree that to the fullest extent permitted by law, such provisions shall be enforced in accordance with their terms or, if necessary, shall be re-formed to the least extent which may be necessary to render such provisions enforceable.

11. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to its conflict of law principles.

12. Covenants Running With The Land; Binding on Heirs, Successors and Assigns; Memorandum of Agreement. This Agreement and the Property Management Agreement shall be

binding upon and shall inure to the benefit of the respective parties hereto and their heirs, successors and assigns. The covenants and agreements of the parties set forth herein and in the Property Management Agreement shall be covenants and agreements running with the land pursuant to a memorandum hereof, which shall be recorded by the Owners and the cost of which recording shall be shared equally by the Owners.

13. Termination. This Agreement shall terminate as to any future owner or owners of the Property or any part thereof upon the following events: (a) the Owners' joint execution, delivery and recording of a deed from all Owners to any third party; (b) the execution, delivery and recording of a deed vesting fee simple title to the entire Property in one of the Owners; or (c) the execution, delivery and recording of an agreement whereby all of the Owners agree to terminate this Agreement, provided that such termination of this Agreement shall not affect or impair any rights or remedies of the Owners or their successors or assigns arising prior to any such conveyance resulting in termination hereof.

14. Amendment and Modification. This Agreement may be amended or modified only by a written instrument executed by all parties hereto or otherwise bound hereby.

15. Notice. Notices relating to this Agreement shall be in writing (facsimile, e-mail or overnight courier shall be sufficient for delivery) and shall be deemed to have been given, if by overnight courier then on the date of actual receipt, or if by facsimile or e-mail then on the date on which the notice was sent.

16. Time of the Essence. Time is of the essence for each of the parties to perform its obligations under this Agreement.

17. Interpretation. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that this Agreement may have been physically prepared by one of the parties, or such party's counsel, it being agreed that all parties and their respective counsel have mutually participated in the negotiation and preparation of this Agreement.

18. Counterparts. This Agreement may be executed in counterparts, all of which taken together shall constitute one original.

[Signatures to Follow]

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

WITNESS:

\_\_\_\_\_  
Print Name:

\_\_\_\_\_  
AMERICAN BAPTIST CHURCHES IN  
THE U.S.A.

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name:

\_\_\_\_\_  
THE AMERICAN BAPTIST HOME  
MISSION SOCIETY

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name:

\_\_\_\_\_  
THE MINISTERS AND MISSIONARIES  
BENEFIT BOARD OF THE AMERICAN  
BAPTIST CHURCHES IN THE U.S.A.

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name:

\_\_\_\_\_  
AMERICAN BAPTIST FOREIGN  
MISSION SOCIETY

\_\_\_\_\_  
Print Name

**EXHIBIT "A"**  
**LEGAL DESCRIPTION OF PROPERTY**

ALL THAT CERTAIN tract or parcel of ground situate in Upper Merion Township, Montgomery County, Pennsylvania described as follows to wit:

BEGINNING at a point on the easterly right of way line of L. R. 201 and being more particularly described in accordance with the Final Subdivision Plan Submittal prepared for American Baptist Churches/Prudential Development dated May 16, 1984, as revised July 17, 1984 and recorded in the Montgomery County Recorder of Deeds Office in Plan Book A-46, page 258, said point of beginning bears south 30°-51'-32" east 199.06 feet from a point of tangent on the easterly right of way line of L. R. 201; thence from said point of beginning north 50°-27'-19" east 158.75 feet to the beginning of a curve, curving to the right having a radius of 129.61 feet; thence southeasterly the arc distance of 233.68 feet along said curve to a point of a reverse curve, curving to the left, having a radius of 405.00 feet (through which a radial line bears north 63°-45'-33" east); thence southeasterly the arc distance of 987.10 feet along said curve to a point of tangent; thence north 14°-06'-47" east 53.02 feet to the beginning of a curve, curving to the right, having a radius of 70.00 feet; thence northeasterly along said curve the arc distance of 48.93 feet to a point of tangent; thence north 54°-09'-58" east 121.63 feet to the beginning of a non-tangent curve, curving to the left, having a radius of 535.00 feet to which point of beginning a radial line bears south 83°-10'-42" west; thence northwesterly along said curve the arc distance of 1,149.49 feet to the beginning of a non-tangent curve, curving to the right, having a radius of 267.15 feet to which point of beginning a radial line bears north 30°-18'-46" east; thence northwesterly along said curve the arc distance of 235.44 feet to a point of tangent; thence north 9°-11'-36" west 83.49 feet to the southerly right of way line of First Avenue; thence continuing north 9°-11'-36" west 30.28 feet to the centerline of First Avenue; thence south 88°-36'-19" west 52.92 feet to a point; thence north 1°-21'-47" west 30.00 feet to a point; thence south 88°-38'-13" west 565.03 feet to the beginning of a curve, curving to the left, having a radius of 268.73 feet; thence along said curve the arc distance of 139.56 feet to a point of tangent; thence south 58°-52'-53" west 23.50 feet to a point of curve, curving to the right, having a radius of 40.00 feet and the arc distance of 62.83 feet, said curve having a chord bearing of north 76°-07'-07" west and a chord length of 56.55 feet to the intersection of a radial line; thence along said radial line south 58°-52'-53" west 16.50 feet to a point; thence south 31°-07'-07" east 217.39 feet to a point, an angle in same; thence south 31°-15'-17" east 393.06 feet to a point, an angle in same; thence south 31°-42'-47" east 392.14 feet to a point, an angle in same; thence

south  $31^{\circ}-04'-27''$  east 128.90 feet to a point; thence crossing L. R. 201 north  $50^{\circ}-27'-19''$  east 74.34 feet to the easterly right of way line of L. R. 201 and the first mentioned point and place of beginning.

EXCEPTING THEREOUT AND THEREFROM ALL THAT CERTAIN PIECE OR PARCEL OF GROUND SITUATE IN UPPER MERION TOWNSHIP, MONTGOMERY COUNTY, PENNSYLVANIA, PREVIOUSLY CONVEYED TO HARDIE SCOTT AND JEAN BROWNE SCOTT DARBY.

BEGINNING at a point formed by the intersection of the relocated centerline of First Avenue (60 feet wide) with a line in the bed of relocated L. R. 201; thence extending from said point of beginning south  $75^{\circ}-02'-37''$  west along the relocated centerline of First Avenue 75.38 feet to a point on the northeasterly right of way line of L. R. 1046; thence extending northwestwardly along the easterly right of way line of L. R. 1046 on the arc of a circle, curving to the right, having a radius of 2,170.01 feet the arc distance of 120.70 feet to a point; thence extending north  $88^{\circ}-38'-13''$  east crossing the bed of relocated L. R. 201 the distance of 574.55 feet to a concrete stone on the northerly relocated line of First Avenue (60 feet wide); thence extending south  $01^{\circ}-21'-47''$  east through the bed of relocated First Avenue 30.00 feet to a point in the relocated First Avenue aforesaid; thence extending along the bed of First Avenue (60 feet wide) the two following courses and distances: (1) westwardly and southwestwardly on the arc of a circle, curving to the left, having a radius of 1,432.69 feet the arc distance of 286.51 feet to a point of tangent and (2) south  $75^{\circ}-02'-37''$  west 199.02 feet to the first mentioned point of intersection and place of beginning.

TAX PARCEL ID/PARCEL NOS. 58-00-04303-10-3 AND 58-00-04297-00-1.

**EXHIBIT "B"**  
**PERCENTAGE INTERESTS**

<b>OWNER</b>	<b>PERCENTAGE INTEREST</b>
AMERICAN BAPTIST CHURCHES IN THE U.S.A.	35%
THE AMERICAN BAPTIST HOME MISSION SOCIETY	35%
THE MINISTERS AND MISSIONARIES BENEFIT BOARD OF THE AMERICAN BAPTIST CHURCHES IN THE U.S.A.	25%
AMERICAN BAPTIST FOREIGN MISSION SOCIETY	5%

**EXHIBIT "C"**  
**PROPERTY MANAGEMENT AGREEMENT**

[TO BE ATTACHED]