

## EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("Agreement") is made and entered into this 30<sup>th</sup> day of December, 1994, by and between BROOK HIGHLAND LIMITED PARTNERSHIP ("Partnership"), a Georgia limited partnership, and DEVELOPERS DIVERSIFIED OF ALABAMA, INC. ("Developers"), an Alabama corporation.

## WITNESSETH:

WHEREAS, the Partnership is the owner of that certain real property located in Shelby County and being more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof ("Outparcels");

WHEREAS, Developers is the owner of certain tracts of real property located adjacent to the Outparcels and being more particularly described on Exhibit "B-1" ("Phase I") and Exhibit "B-2" ("Phase II") attached hereto and by this reference made a part hereof (Phase I and Phase II are collectively referred to herein as "Shopping Center Property");

WHEREAS, the Partnership and Developers intend to grant to each other certain cross-easements for the benefit of the Outparcels and the Shopping Center Property.

NOW, THEREFORE, for and in consideration of the Premises, Ten Dollars (\$10.00) in hand paid by the parties one to the other, the covenants contained herein, and other valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Partnership and Developers do hereby agree as follows:

1. Parking and Ingress and Egress Easements.

(a) Developers hereby grants, conveys and assigns for the benefit of the Outparcels, a perpetual and non-exclusive easement and right-of-way, on, over and across the parking areas, roadways and driveways located on the Shopping Center Property (as such parking areas and driveways may be relocated from time to time by Developers in Developers' discretion) for ingress and egress, to and from the Outparcels over and across the Shopping Center Property (and the curb cuts accessing all public roads adjoining the Shopping Center Property) and parking for the benefit of the owner of the Outparcels, its successors and assigns, in common with Developers and its successors and assigns. Developers shall be entitled, from time to time, to redesign and relocate the parking areas and driveways but not the dedicated roadways on the Shopping Center Property. The foregoing parking rights are non-exclusive in nature.

(b) Developers hereby grants, declares and establishes for the benefit of Phase I a perpetual, non-exclusive easement and right of way, on, over and across the parking areas and driveways located on Phase II (as such parking areas and driveways may be relocated from time to time by the owner of Phase II in such owner's discretion) for ingress and egress to and from Phase I over and across Phase II (and the curb cuts accessing all public roads adjoining Phase I) and parking for the benefit of the owner of Phase I and its successors and assigns in

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common with the owner of Phase I and its successors and assigns. The owner of Phase II shall be entitled, from time to time, to redesign and relocate the parking areas and driveways on Phase II. The foregoing parking rights are non-exclusive in nature.

(c) Developers hereby grants, declares and establishes for the benefit of Phase II a perpetual, non-exclusive easement and right of way, on, over and across the parking areas and driveways located on Phase I (as such parking areas and driveways may be relocated from time to time by the owner of Phase I in such owner's discretion) for ingress and egress to and from Phase I over and across Phase I (and the curb cuts accessing all public roads adjoining Phase I) and parking for the benefit of the owner of Phase II and its successors and assigns in common with the owner of Phase II and its successors and assigns. The owner of Phase I shall be entitled, from time to time, to redesign and relocate the parking areas and driveways on Phase I. The foregoing parking rights are non-exclusive in nature.

## 2. Grant of Utility and Drainage Easements.

(a) The Partnership hereby grants, conveys and assigns for the benefit of the Shopping Center Property a perpetual, non-exclusive easement to tap in, hook up or connect to and use underground sewer, water, gas and electric utility lines and facilities and storm water drainage lines, culverts and related facilities now or hereafter located on the Outparcels for utility service and storm water drainage of the Shopping Center Property. The rights of the owner of the Shopping Center Property are subject to such owner's acquisition, at its expense, of all necessary governmental permits and payment of all applicable fees or expenses necessary to hook up to or connect to such lines and facilities and compliance with all utility and development agreements relating to the Outparcels. The owner of the Shopping Center Property agrees that in exercising the easements and rights granted by this subparagraph it will not overload the capacity and ability of such facilities to properly and adequately serve the Outparcels for their intended purposes.

(b) Developers hereby grants, conveys and assigns for the benefit of the Outparcels a perpetual, non-exclusive easement to tap in, hook up or connect to and use underground sewer, water, gas and electric utility lines and facilities and storm water drainage lines, culverts and related facilities now or hereafter located on the Shopping Center Property for utility service and storm water drainage of the Outparcels. Developers also hereby grants, conveys and assigns for the benefit of the Outparcels a perpetual and nonexclusive easement and right-of-way to drain into and use any and all detention/retention ponds now or hereafter located on the Shopping Center Property. The right of the owner of the Outparcels to utilize these easements is subject to such owner's acquisition, at its expense, of all necessary governmental permits and payment of any applicable fees or expenses necessary to hook up to or connect to such lines and facilities and compliance with all utility and development agreements relation to the Shopping Center Property. The owner of each Outparcel agrees that in exercising the easements and rights granted by this subparagraph, it will not overload the capacity and ability of such facilities to properly and adequately serve the Shopping Center Property for its intended purposes.



(c) Developers hereby grants, declares and establishes for the benefit of Phase I a perpetual non-exclusive easement to tap in, hook up or connect to and use underground sewer, water, gas and electric utility lines and facilities and storm water drainage lines, culverts and related facilities now or hereafter located on Phase II for utility service and storm water drainage of Phase I. The rights of the owner of Phase I under this subparagraph is subject to such owner's acquisition, at its expense, of all necessary governmental permits and payment of any applicable fees or expenses necessary to hook up or connect to such lines and facilities and compliance with all utility and development agreements relation to Phase II. The owner of Phase I agrees that in exercising the easements and rights granted by this paragraph, it will not overload the capacity and ability of such facilities to properly and adequately serve Phase II for its intended purpose.

(d) Developers hereby grants, declares and establishes for the benefit of Phase II a perpetual non-exclusive easement to tap in, hook up or connect to and use underground sewer, water, gas and electric utility lines and facilities and storm water drainage lines, culverts and related facilities now or hereafter located on Phase I for utility service and storm water drainage of Phase II. Developers also hereby grants, conveys and assigns for the benefit of Phase II a perpetual and nonexclusive easement and right-of-way to drain into and use any and all detention/retention ponds now or hereafter located on the Shopping Center Property. The rights of the owner of Phase II under this subparagraph is subject to such owner's acquisition, at its expense, of all necessary governmental permits and payment of any applicable fees or expenses necessary to hook up or connect to such lines and facilities and compliance with all utility and development agreements relation to Phase I. The owner of Phase II agrees that in exercising the easements and rights granted by this paragraph, it will not overload the capacity and ability of such facilities to properly and adequately serve Phase I for its intended purpose.

(e) The utility and storm water drainage easements granted in this paragraph 2 shall be limited to those areas on the Shopping Center Property and the Outparcels on which such lines and facilities have been or are to be installed in substantially accordance with those certain plans more particularly described on Exhibit "C" attached hereto and by this reference made a part hereof. The Partnership and Developers acknowledge that the locations shown on such plans are approximate and that the exact location of the installed lines may vary from the location shown on the plans.

3. Conditions and Obligations With Respect to Easements. The easements granted herein and each party's use thereof are subject to the following terms and conditions:

(a) All utility lines and related facilities located on the Shopping Center Property and the Outparcels shall be constructed and maintained by and in a good and workmanlike manner and shall be free and clear of all liens of contractors and subcontractors, laborers or materialmen and all other similar liens.

(b) The owner of the Shopping Center Property and the owner of the Outparcels shall maintain all parking areas and driveways and utility lines, related facilities and storm water drains located on such party's property in accordance with all laws, ordinances, codes, rules and regulations of all governmental authorities having jurisdiction over such

properties and in a manner that allows for the other parties hereto to utilize such parking areas, driveways, utility lines and facilities and storm drainage lines. In the event the owner of the Shopping Center Property or of any Outparcel shall fail to maintain its property in accordance herewith, (such owner hereinafter referred to as "Defaulting Owner"), then any other owner of any property described in this Agreement shall have the right, but not the obligation, upon thirty (30) days written notice to the Defaulting Owner and such Defaulting Owner's failure to cure within such thirty (30) day period, to perform the necessary maintenance on the Defaulting Owner's property. Defaulting Owner within ten (10) days of receipt of written notice from the party performing such maintenance shall reimburse the party performing the maintenance all costs and expenses incurred by such party in connection with the maintenance.

(c) The owner of each property described herein shall maintain a sufficient number of vehicular parking spaces upon such party's property as may be required by applicable law or ordinance for improvements located upon and any operations or activities occurring upon such property.

4. Dedication of Utility Facilities. The Partnership and Developers each shall have the right at any time to dedicate the utilities and drainage lines facilities and systems and any driveways or roadways to the appropriate public, government or private entities or companies for maintenance. Upon request by the party making such dedication, the other party hereto agrees to execute such documents as shall be required or necessary to dedicate to the public, county or other appropriate governmental entity for maintenance all facilities, improvements and lines over which the non-dedicating party shall have such easements.

5. Successors and Assigns. All easements contained herein shall be non-exclusive, run with and be appurtenant to the lands herein described and except as set forth herein shall run with said lands forever and be binding upon and inure to the benefit of and be enforceable by the successors and assigns of the parties hereto. The covenants and obligations herein are only personal to and enforceable against the parties or successors-in-title, as the case may be, owning title to the respective properties at the time any liability or claim arising out of this Agreement shall have accrued; it being intended that upon conveyance of title by a party, the party conveying title thereupon shall be released of any liability hereunder as to the property conveyed, for any breach of this agreement or any claim arising under this agreement accruing after the date of such conveyance. Developers and the Partnership shall have the right to grant license to tenants of their respective properties to utilize the easements granted hereunder.

6. Easements for the Benefit of Shopping Center and Outparcels Only. The easements created herein are solely for the benefit of the Shopping Center Property and the Outparcels and the owners, mortgagees and successors-in-title thereof, subject to and in accordance with the terms and conditions hereof and no third party beneficiary rights are created or inferred. Except as otherwise expressly provided herein, the Partnership and Developers shall not grant to any third party, other than a mortgagee or successor-in-title or any tenants to a portion of the Shopping Center Property or the Outparcels, any interest in the easements granted or created herein.



7. Miscellaneous.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.

(b) The invalidity of any one of the covenants, agreements, conditions or provisions of this Agreement or any portion thereof shall not affect the remaining covenants, agreements, conditions or provisions of this Agreement or any part thereof, and upon determination of the invalidity of any such covenant, agreement, condition or provision, Developers and the Partnership agree to cause this Agreement to be amended to insert a provision that represents the understanding of the parties set forth in the invalid covenant, agreement, condition or provision.

IN WITNESS WHEREOF, the Partnership and Developers have caused their general partners or incumbent officers to execute this Agreement, the day and year first above written.

DEVELOPERS:

DEVELOPERS DIVERSIFIED OF ALABAMA,  
INC., an Alabama corporation

By: Joan Allgood  
Joan Allgood, Vice President

[CORPORATE SEAL]

Martha B. Ferguson  
Witness

THE PARTNERSHIP:

BROOK HIGHLAND LIMITED PARTNERSHIP,  
a Georgia limited partnership

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

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

By: Alex Baker  
Alex Baker, President

(CORPORATE SEAL)

Joan Allgood  
Witness

[SIGNATURES CONTINUED ON NEXT PAGE]

[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

STATE OF Alabama  
COUNTY OF Shelby

I, the undersigned, a Notary Public in and for said State hereby certify that Joan Allgood, whose name, as Vice President of Developers Diversified of Alabama, Inc., an Alabama 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, she, in such capacity, executed the same voluntarily on the date the same bears.

WITNESS my hand and official seal in the County and State last aforesaid, this 30<sup>th</sup> day of December, 1994.

Martha B. Ferguson  
Notary Public

My Commission Expires:

[Notary Seal]

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Alex D. Baker, whose name as President of Alex Baker, Inc., an Alabama corporation, in its capacity as general partner of BW 280 Limited Partnership, a Georgia limited partnership, in its capacity as 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 instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said partnership, acting in its capacity as general partner as aforesaid.

Given under my hand and official seal this \_\_\_\_\_ day of December, 1994.

\_\_\_\_\_  
Notary Public

My Commission Expires:

[Notary Seal]

Outparcels

EXHIBIT " A "

Land lying and being in Shelby County, Alabama, and being designated as Lots 1B, 1D, 1E, 1F, and 2B, on that certain map entitled Brook Highland Plaza Resurvey, recorded in Map Book 18, at Page 99, in the Probate Office for Shelby County, Alabama.

EXHIBIT "B-1"

Land lying and being in Shelby County, Alabama, and being more particularly described as that certain tract of land containing 65.88 acres, more or less, and being designated as Lots 1, 1A, 2 and 2A on that certain map entitled "Brook Highland Plaza Resurvey" recorded in Map Book 18, Page 99, in the Probate Office for Shelby County, Alabama.

**LESS AND EXCEPT:**

ALL THAT TRACT OR PARCEL OF LAND lying and being in Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

BEGINNING at the northwest corner of the southeast quarter of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama being south  $89^{\circ} 31' 51''$  west a distance of 848.96 feet from the northeast corner of Lot 1, Brook Highland Plaza Resurvey (Map Book 18, Page 99); thence run south  $89^{\circ} 31' 51''$  west a distance of 50.00 feet to a point; thence run south  $00^{\circ} 38' 38''$  east a distance of 300.00 feet to a point; thence run north  $89^{\circ} 37' 51''$  east a distance of 20.00 feet to a point; thence run south  $01^{\circ} 36' 53''$  east a distance of 295.07 feet to a point; thence run south  $89^{\circ} 31' 51''$  west a distance of 225.00 feet to a point; thence run south  $00^{\circ} 38' 38''$  east a distance of 145.41 feet to a point; thence run south  $88^{\circ} 21' 20''$  west a distance of 150.94 feet to a point; thence run along the arc of a curve an arc distance of 325.14 feet (said curve having a radius of 910.27 feet a chord bearing of north  $81^{\circ} 24' 44''$  west a chord distance of 323.42 feet) to a point; thence run north  $71^{\circ} 10' 44''$  west a distance of 90.62 feet to a point; thence run north  $64^{\circ} 18' 36''$  west a distance of 37.79 feet to a point; thence run north  $73^{\circ} 31' 00''$  west a distance of 110.98 feet to a point; thence run north  $56^{\circ} 07' 21''$  west a distance of 73.40 feet to a point located on the to a point located on the easterly right-of-way line of Brook Highland Parkway (right-of-way varies); thence run along and coincident with the easterly right-of-way line of Brook Highland Parkway north  $16^{\circ} 29' 00''$  east a distance of 206.74 feet to a point; thence run along and coincident with the easterly right-of-way line of Brook Highland Parkway north  $73^{\circ} 31' 00''$  west a distance of 12.00 feet to a point; thence run along and coincident with the easterly right-of-way line of Brook Highland Parkway, along the arc of a curve an arc distance of 254.68 feet (said curve having a radius of 310.47 feet, a chord bearing of north  $39^{\circ} 59' 00''$  east, and a chord distance of 247.60 feet) to a point; thence run along and coincident with the easterly right-of-way line of Brook Highland Parkway north  $26^{\circ} 31' 00''$  west a distance of 12.00 feet to a point; thence run along and coincident with the easterly right-of-way line of Brook Highland Parkway north  $63^{\circ} 29' 00''$  a distance of 518.37 feet to point; thence run along and coincident with the easterly right-of-way line of Brook Highland Parkway north  $26^{\circ} 31' 00''$  west a distance of 20.00 feet to a point; thence run along and coincident with the easterly right-of-way line of Brook Highland Parkway, along the arc of a curve an arc distance of 501.28 feet (said curve having a radius of 635.12 feet, a chord bearing of north  $40^{\circ} 52' 21''$  east, a chord distance of 488.37 feet) to a point; thence leaving the right-of-way line of Brook Highland Parkway run



south  $89^{\circ} 50' 48''$  east a distance of 85.21 feet to a point; thence run south  $00^{\circ} 38' 38''$  east a distance of 355.06 feet to a point; said point being the POINT OF BEGINNING.

Said tract being designated as "Proposed Phase II" on that certain survey for A.B. Shopping Centers Properties, prepared by Carr & Associates Engineers, Inc., bearing the seal and certification of Barton F. Carr, Registered Professional Land Surveyor No.16685, dated November 25, 1994, last revised December 21, 1994.

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EXHIBIT "B-2"

ALL THAT TRACT OR PARCEL OF LAND lying and being in Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

BEGINNING at the northwest corner of the southeast quarter of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama being south  $89^{\circ} 31' 51''$  west a distance of 848.96 feet from the northeast corner of Lot 1, Brook Highland Plaza Resurvey (Map Book 18, Page 99); thence run south  $89^{\circ} 31' 51''$  west a distance of 50.00 feet to a point; thence run south  $00^{\circ} 38' 38''$  east a distance of 300.00 feet to a point; thence run north  $89^{\circ} 37' 51''$  east a distance of 20.00 feet to a point; thence run south  $01^{\circ} 36' 53''$  east a distance of 295.07 feet to a point; thence run south  $89^{\circ} 31' 51''$  west a distance of 225.00 feet to a point; thence run south  $00^{\circ} 38' 38''$  east a distance of 145.41 feet to a point; thence run south  $88^{\circ} 21' 20''$  west a distance of 150.94 feet to a point; thence run along the arc of a curve an arc distance of 325.14 feet (said curve having a radius of 910.27 feet a chord bearing of north  $81^{\circ} 24' 44''$  west a chord distance of 323.42 feet) to a point; thence run north  $71^{\circ} 10' 44''$  west a distance of 90.62 feet to a point; thence run north  $64^{\circ} 18' 36''$  west a distance of 37.79 feet to a point; thence run north  $73^{\circ} 31' 00''$  west a distance of 110.98 feet to a point; thence run north  $56^{\circ} 07' 21''$  west a distance of 73.40 feet to a point located on the to a point located on the easterly right-of-way line of Brook Highland Parkway (right-of-way varies); thence run along and coincident with the easterly right-of-way line of Brook Highland Parkway north  $16^{\circ} 29' 00''$  east a distance of 206.74 feet to a point; thence run along and coincident with the easterly right-of-way line of Brook Highland Parkway north  $73^{\circ} 31' 00''$  west a distance of 12.00 feet to a point; thence run along and coincident with the easterly right-of-way line of Brook Highland Parkway, along the arc of a curve an arc distance of 254.68 feet (said curve having a radius of 310.47 feet, a chord bearing of north  $39^{\circ} 59' 00''$  east, and a chord distance of 247.60 feet) to a point; thence run along and coincident with the easterly right-of-way line of Brook Highland Parkway north  $26^{\circ} 31' 00''$  west a distance of 12.00 feet to a point; thence run along and coincident with the easterly right-of-way line of Brook Highland Parkway north  $63^{\circ} 29' 00''$  a distance of 518.37 feet to point; thence run along and coincident with the easterly right-of-way line of Brook Highland Parkway north  $26^{\circ} 31' 00''$  west a distance of 20.00 feet to a point; thence run along and coincident with the easterly right-of-way line of Brook Highland Parkway, along the arc of a curve an arc distance of 501.28 feet (said curve having a radius of 635.12 feet, a chord bearing of north  $40^{\circ} 52' 21''$  east, a chord distance of 488.37 feet) to a point; thence leaving the right-of-way line of Brook Highland Parkway run south  $89^{\circ} 50' 48''$  east a distance of 85.21 feet to a point; thence run south  $00^{\circ} 38' 38''$  east a distance of 355.06 feet to a point; said point being the POINT OF BEGINNING.

Said tract being designated as "Proposed Phase II" on that certain survey for A.B. Shopping Centers Properties, prepared by Carr & Associates Engineers, Inc., bearing the seal and certification of Barton F. Carr, Registered Professional Land Surveyor No.16685, dated November 25, 1994, last revised December 21, 1994.

EXHIBIT "C"

Description of Plans  
for utility and storm drains  
to be attached

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