

Final

THIS INSTRUMENT PREPARED BY:

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Inst # 1994-37772

12/30/1994-37772
04:11 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
022 MEL 2716.00

STATE OF GEORGIA
FULTON COUNTY

**LEASEHOLD MORTGAGE,
SECURITY AGREEMENT AND
ASSIGNMENT OF LEASES AND RENTS**

THIS MORTGAGE AND SECURITY AGREEMENT, made as of the 30th day of December, 1994, is by and between **BROOK HIGHLAND LIMITED PARTNERSHIP**, a Georgia limited partnership (hereinafter called the "Borrower"), as mortgagor, whose address is 1900 International Park Drive, Suite 303, Birmingham, Alabama 35243, Attention: Alex D. Baker (hereinafter called "Borrower"), and **DEVELOPERS DIVERSIFIED OF ALABAMA, INC.**, an Alabama corporation as mortgagee and secured party, whose address is 34555 Chagrin Boulevard, Moreland Hills, Ohio 44022 (hereinafter called "Lender").

WITNESSETH:

WHEREAS, Borrower is justly indebted to the Lender for borrowed money in the principal sum of One Million Seven Hundred Seventy Thousand and No/100 Dollars (\$1,770,000.00) (the "Loan"), as evidenced by one or more promissory notes of even date herewith from the Borrower, payable to Lender with interest thereon (said promissory notes, as the same may hereafter be renewed, extended or modified, being herein collectively called the "Note") (the Note, together with this Mortgage, any amendments, modifications, and replacements hereof or thereof, are collectively referred to herein as the "Loan Documents").

WHEREAS, as a condition precedent to making the Loan, the Lender has required that the Borrower execute this Mortgage as security for the Loan.

**THIS MORTGAGE AND SECURITY AGREEMENT SERVES AS A
FINANCING STATEMENT FILED AS A FIXTURE FILING, PURSUANT TO
SECTION 7-9402(6), CODE OF ALABAMA, 1975, AS AMENDED**

NOW, THEREFORE, for and in consideration of the foregoing recitals, the sum of Ten Dollars, and other valuable considerations, the receipt and sufficiency whereof are hereby acknowledged, and in order to secure the indebtedness and other obligations of the Borrower under the Loan Documents and those certain Master Lease obligations under the Phase I Agreement (hereinafter defined) and the Phase II Agreement (hereinafter defined) (all of such indebtedness and obligations secured hereby being referred to herein as the "Secured Indebtedness"), Borrower has bargained and sold and does hereby grant, bargain, sell, alien, and convey unto the Lender, its successors and assigns, all of the following described land and interests in land, estates, easements, rights, improvements, personal property, fixtures, equipment, furniture, furnishings, appliances and appurtenances, including replacements and additions thereto (which property is hereinafter referred to collectively as the "Premises"):

(a) A leasehold interest established pursuant to that certain Net Ground Lease (Phase II) dated on or about the date hereof by and between Lender, as lessor, and Borrower, as lessee ("Ground Lease"), with respect to all that certain tract or parcel of land located in Shelby County, Alabama, as more particularly described in Exhibit A attached hereto and by this reference made a part hereof (the "Land"); and

(b) All buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, and all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, carpeting and other floor coverings, water heaters, awnings and storm sashes, and cleaning apparatus which are or shall be attached to said buildings, structures or improvements, and all other furnishings, furniture, fixtures, machinery, equipment, appliances, vehicles and personal property of every kind and nature whatsoever now or hereafter owned by Borrower and located in, on or about, or used or intended to be used with or in connection with the construction, use, operation or enjoyment of the Premises, including all extensions, additions, improvements, betterments, renewals and replacements, substitutions, or proceeds from a permitted sale of any of the foregoing, and all building materials and supplies of every kind now or hereafter placed or located on the Land (collectively, the "Improvements"), all of which are hereby declared and shall be deemed to be fixtures and accessions to the Land and a part of the Premises as between the parties hereto and all persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the indebtedness herein described and to be secured by this Mortgage; and

(c) All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter located on the Land or under or above the same or any part or parcel thereof, and all ground leases, estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversions, and remainders whatsoever, in any way belonging, relating or appertaining to the Premises or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by them; and

(d) All subleases or other agreements affecting the use and occupancy of the Land or any part thereof now or hereafter entered into (the "Leases") and absolutely and presently the

right to receive and apply the incomes and rents, issues, cash collateral, revenues, royalties, benefits and profits from the Land from time to time accruing, including without limitation all payment under leases or tenancies, proceeds of insurance, tenant security deposits and escrow funds ("Rents"); reserving only the right to Borrower to collect the same so long as an Event of Default has not occurred hereunder or such collection is not otherwise restricted by this Mortgage; and

(e) To the fullest extent assignable (if assignable by law), any and all licenses and permits obtained by the Borrower relating to the use and operation of the Premises.

TO HAVE AND TO HOLD the Premises and all parts thereof unto the Lender, its successors and assigns forever, subject however to the terms and conditions herein set forth.

PROVIDED, HOWEVER, that, if the Borrower shall pay to the Lender the principal and interest payable in respect to the Note, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Borrower except for Borrower's rights of set-off as provided in paragraph 3.12, and shall keep, perform, and observe all and singular the covenants and promises in each of the Loan Documents expressed to be kept, performed, and observed by and on the part of the Borrower, then this Mortgage, and all the properties, interest, and rights hereby granted, bargained, and sold shall cease, terminate, and be void, but shall otherwise remain in full force and effect.

AND the Borrower covenants and agrees with the Lender as follows:

ARTICLE I

1.01. Performance of Note and Mortgage. The Borrower will perform, observe, and comply with all provisions hereof and of the Note secured hereby and duly and punctually will pay to the Lender the sum of money expressed in the Note with interest thereon, all as provided in the Note, and all other sums required to be paid by the Borrower pursuant to the provisions of this Mortgage, all without any deductions or credit for taxes or other similar charges paid by the Borrower. Borrower shall at all times comply with the terms of the Ground Lease.

1.02. Warranty of Title. The Borrower is lawfully seized of a leasehold estate in the land and real property described herein and has good and absolute title to all existing personal property hereby mortgaged and has good right, full power and lawful authority to sell, convey and mortgage the same in the manner and form aforesaid; that, except as otherwise set forth on Exhibit "B" hereto as a "Permitted Encumbrance," the same is free and clear of all liens, charges, and encumbrances whatsoever, including, as to the personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature, and that Borrower shall and will warrant and forever defend the title thereto unto the Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

1.03 Taxes, Liens and Other Charges.

(a) Borrower shall pay, on or before the delinquency date thereof, all taxes, levies, license fees, permit fees, charges under any utility or development agreement, declarations or

other covenants encumbering the Premises and all other charges (in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen) of every character whatsoever (including all penalties and interest thereon) now or hereafter levied, assessed, confirmed or imposed on, or in respect of, or which may be a lien upon the Premises, or any part thereof, or any estate, right or interest therein, or upon the rents, issues, income or profits thereof, and shall submit to Lender such evidence of the due and punctual payment of all such taxes, assessments and other fees and charges as may be required by law. Borrower shall have the right before they become delinquent to contest or object to the amount or validity of any such tax, assessment, fee or charge by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving, modifying or extending Borrower's covenant to pay any such tax, assessment, fee or charge at the time and in the manner provided herein. Borrower shall give prior written notice to Lender of Borrower's intent to so contest or object.

(b) Except for income tax, gross receipts tax or similar tax imposed on Lender by reason hereof, Borrower shall pay, on or before the due date thereof, all taxes, assessments, charges, expenses, costs and fees which may now or hereafter be levied upon, or assessed or charged against, or incurred in connection with, the Note, this Mortgage or any other instrument now or hereafter evidencing, securing or otherwise relating to the Note or this Mortgage.

(c) Borrower shall pay, on or before the due date thereof, all premiums on policies of insurance covering, affecting or relating to the Premises, as required under the Ground Lease; and all utility and other charges which are incurred by Borrower for the benefit of the Premises, or which may become a charge or lien against the Premises for gas, electricity, water and sewer services and the like furnished to the Premises, and all other public or private assessments or charges of a similar nature affecting the Premises or any portion thereof, whether or not the nonpayment of same may result in a lien thereon.

(d) Borrower shall not suffer any mechanic's, materialmen's, laborer's, statutory or other lien to be created or remain outstanding against the Premises; provided, however, that Borrower may contest any such lien in good faith by appropriate legal proceedings provided the lien is bonded in such manner as not adversely to affect the priority of this Mortgage. Lender has not consented and will not consent to the performance of any work or the furnishing of any materials which might be deemed to create a lien or liens superior to the lien hereof.

1.04 Insurance. Subject to the provisions of paragraph 3.14 below:

(a) Borrower shall maintain insurance in accordance with the terms of the Ground Lease. Lender shall be named as an additional insured and loss payee under all such policies.

(b) Subject to the right of the Borrower to use proceeds of insurance to restore and rebuild the Premises, Lender is hereby authorized and empowered, at its option, to collect and receive all proceeds from the insurance policies required under the Ground Lease, and Borrower does hereby authorize and direct each insurance company to make payment for all such losses accordingly. In the event any insurance company fails to disburse directly and solely to Lender but disburses instead either solely to Borrower or to Borrower and Lender jointly, Borrower agrees immediately to endorse and transfer such proceeds to Lender to the extent of Lender's

interest therein. Upon the failure of Borrower to endorse and transfer such proceeds as aforesaid, Lender may execute such endorsements or transfers for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender as Borrower's agent and attorney-in-fact so to do. After deducting from said insurance proceeds all of its expenses incurred in the collection and administration of such sums, including reasonable attorney's fees, and provided no Event of Default shall have occurred and be continuing, Lender shall release to Borrower any moneys so received by it for the repair or restoration of the property so damaged in accordance with standard disbursement procedures followed in construction loans which provide for periodic draws of construction costs (i.e., lien releases, etc.) without affecting the lien of this Mortgage, and any balance of such moneys then remaining shall be paid to the Borrower.

(c) At least thirty (30) days prior to the expiration date of each policy maintained pursuant to the Ground Lease, a renewal or replacement thereof satisfactory to Lender shall be delivered to Lender. If requested by Lender, Borrower shall deliver to Lender receipts evidencing the payment for all such insurance policies and renewals or replacements. The delivery of any insurance policies hereunder shall constitute an assignment of all unearned premiums as further security hereunder. In the event of the foreclosure of this Mortgage or any other transfer of title to the Premises in extinguishment or partial extinguishment of the Secured Indebtedness, all right, title and interest of Borrower in and to all insurance policies then in force shall pass to the purchaser or Lender, and Lender is hereby irrevocably appointed by Borrower as attorney-in-fact for Borrower to assign any such policy to said purchaser or to Lender without accounting to Borrower for any unearned premiums thereon.

1.05 Condemnation. Subject to the provisions of paragraph 3.14 below:

(a) If no vertical improvements have been constructed on the Premises and all or any portion of the Premises shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, Lender shall be entitled to receive, so much of such proceeds or awards payable as a result of such condemnation as may be required to pay the remaining balance of the Note. Upon receipt of such proceeds or awards, Lender shall satisfy this Mortgage of record.

(b) If construction of vertical improvements has commenced or is completed, and all or a Material Part (as herein defined) of the Premises shall be damaged or taken through condemnation, Lender shall be entitled to receive, so much of such proceeds or awards as may be required to pay the remaining balance of the Note.

(c) If construction of vertical improvements has commenced or is completed and less than a Material Part of the Premises shall be damaged or taken through condemnation, Lender subject to the right of the Borrower to restore and rebuild, provided no Event of Default has occurred and is continuing shall be entitled to collect and receive all proceeds and awards, and if any tenant lease of the Premises shall require any or all of the improvements constructed on the Premises to be rebuilt, Lender shall release all monies received by it (to the extent necessary to rebuild or repair the Premises to its former state) to Borrower for the repair and restoration of the Premises, in accordance with standard disbursement procedures followed in construction loans

which provide for periodic draws to pay construction costs (i.e. lien releases, etc.). If no tenant lease shall require the repair or restoration of the Premises, Lender shall apply all amounts received by Lender against the outstanding principal balance of the Note and any accrued but unpaid interest. Lender shall release the portion of the Premises condemned from the lien of the Mortgage upon receipt of payment from the condemning authority.

(d) For purposes hereof, a "Material Part" of the Premises shall be any part thereof, which, if damaged or taken, will reduce the Net Operating Income, as determined in accordance with the Phase II Agreement, which is then available or is projected to be available upon completion of construction of improvements from the remaining portions of the Premises after such taking, to less than 110% debt service coverage for the total indebtedness secured by the Premises. Borrower, immediately upon obtaining knowledge of any institution, or any proposed, contemplated or threatened institution of any action or proceeding for the taking through condemnation of the Premises or any part thereof, will notify Lender, and Lender is hereby authorized, at its option, to commence, appear in and prosecute, through counsel selected by Lender, in its own or in Borrower's name, any action or proceeding relating to any condemnation. Borrower may compromise or settle any claim for compensation but shall not make any compromise or settlement for an award that is less than the Secured Indebtedness without the prior written consent of Lender.

1.06 Care of Premises.

(a) Borrower will keep the buildings, parking areas, roads and walkways, landscaping, and all other Improvements of any kind now or hereafter erected on the Land or any part thereof in the manner required under the Ground Lease.

(b) If the Premises or any part thereof is damaged by fire or any other cause, Borrower will give immediate written notice thereof to Lender.

(c) Lender or its representative is hereby authorized to enter upon and inspect the Premises during normal business hours.

(d) Borrower will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority, all Permitted Encumbrances and all utility and development agreements affecting the Premises or any part thereof.

1.07 Leases. The Borrower will comply with and observe its obligations as landlord under all leases affecting the Premises or any part thereof. If requested by Lender, Borrower will furnish Lender with executed copies of all leases now or hereafter created with respect to all or any part of the Premises. Borrower absolutely and irrevocably assigns to Lender the Rents, and Borrower grants to Lender the right to enter upon and to take possession of the Premises for the purpose of collecting the same and to let the Premises, or any part thereof, and to apply the Rents after payment of all necessary charges and expenses on account to the Secured Indebtedness, reserving only to Borrower the conditional right, as a licensee, to collect, use and enjoy the Rents until an Event of Default shall occur hereunder. In exercising such conditional right, Borrower shall be entitled to collect and receive such Rent and agrees to use such Rents in payment of

principal and interest becoming due under the Note and in payment of taxes, insurance, dues and other fees becoming due hereunder, but such right of Borrower may be revoked by the Lender upon the occurrence of an Event of Default by Borrower under the terms of the Note or this Mortgage and thereafter Lender may let the Premises or any part thereof and may retain and apply the Rents toward payment of the Secured Indebtedness in such order, priority and proportions as Lender, in its discretion, shall deem property, or toward the operation, maintenance and repair of the Premises, and irrespective of whether Lender shall have commenced a foreclosure of this Mortgage or shall have applied or arranged for the appointment of a receiver. Lender shall not accept prepayments of installments of the Rents for a period of more than one (1) month in advance or further assign the whole or any part of the Rents. Nothing contained in this paragraph shall be construed as imposing on Lender any of the obligations of the lessor under the Leases, any duty to produce rents from the Premises prior to the date Lender shall take possession of the Premises and shall not cause the Lender to be a "mortgagee-in-possession" for any purpose. Borrower further agrees that it shall, upon request, execute, acknowledge and deliver to Lender such further and additional assignments and other instruments as shall be reasonably required for the purpose of assigning the Rents. Lender agrees to execute and deliver promptly to Borrower and its tenants such reasonable subordination and attornment agreements as Borrower may request from time to time.

1.08 Security Agreement. With respect to the apparatus, fittings, fixtures and articles of personal property referred to or described in this Mortgage, or in any way connected with the use and enjoyment of the Premises, this Mortgage is hereby made and declared to be a security agreement encumbering each and every item of personal property included herein as a part of the Premises, in compliance with the provisions of the Uniform Commercial Code as enacted in the state wherein the Land is situated, and Borrower hereby grants to Lender a security interest in said personal property. A financing statement or statements reciting this Mortgage to be a security agreement affecting all of said personal property aforementioned shall be executed by Borrower and Lender and appropriately filed. The remedies for any violation of the covenants, terms and conditions of the security agreement contained in this Mortgage, or otherwise in respect of an Event of Default hereunder, shall be (i) as prescribed herein, or (ii) as prescribed by general law, or (iii) as prescribed by the specific statutory consequences now or hereafter enacted and specified in said Uniform Commercial Code, all at Lender's sole election. Borrower and Lender agree that the filing of such financing statement(s) in the records normally having to do with personal property shall not in any way affect the agreement of Borrower and Lender that everything used in connection with the production of income from the Premises or adapted for use therein or which is described or reflected in this Mortgage, is, and at all times and for all purposes and in all proceedings, both legal or equitable, shall be, regarded as part of the real estate conveyed hereby regardless of whether (a) any such item is physically attached to the improvements, (b) serial numbers are used for the better identification of certain items capable of being thus identified in an exhibit to this Mortgage, or (c) any such item is referred to or reflected in any such financing statement(s) so filed at any time. Similarly, the mention in any such financing statement(s) of the rights in and to (i) the proceeds of any fire and/or hazard insurance policy, or (ii) any award in eminent domain proceedings for taking or for loss of value, or (iii) Borrower's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Premises, whether pursuant to lease or otherwise, shall not in any

way alter any of the rights of Lender as determined by this instrument or affect the priority of Lender's security interest granted hereby or by any other recorded document, it being understood and agreed that such mention in such financing statement(s) is solely for the protection of Lender in the event any court shall at any time hold, with respect to the foregoing items (i), (ii), or (iii), that notice of Lender's priority of interest, to be effective against a particular class of persons, must be filed in the Uniform Commercial Code records.

1.09 Further Assurances; After-Acquired Property. At any time, and from time to time, upon request by Lender, Borrower will make, execute and deliver or cause to be made, executed and delivered, to Lender and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be rerecorded and/or refiled at such time and in such offices and places as shall be deemed desirable by Lender, any and all such other and further deeds of trusts, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the reasonable opinion of Lender, be necessary or desirable in order to effectuate, complete or perfect, or to continue and preserve (a) the obligations of Borrower under the Note and under this Mortgage, and (b) the security interest created by this Mortgage as a first and prior security interest upon and security title in and to all of the Premises, whether now owned or hereafter acquired by Borrower. Upon any failure by Borrower so to do, Lender may make, execute, record, file, re-record and/or re-file any and all such deeds of trust, security agreements, financing statements, continuation statements, instruments, certificates, and documents for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender the agent and attorney-in-fact of Borrower so to do. The lien of this Mortgage will automatically attach, without further act, to all after-acquired property attached to and/or used in the operation of the Premises or any part thereof.

1.10 Licenses and Permits Obtained. Borrower represents and warrants that all necessary permits, licenses and certificates have been obtained to permit Borrower to construct and operate the Premises in the manner contemplated, and Borrower will maintain in effect all such licenses, permits, and certificates, together with any other agreements necessary for the use and operation of the Premises .

1.11 Limit of Validity. If from any circumstances whatsoever, fulfillment of any provision of this Mortgage or of the Note, at the time performance of such provision shall be due, shall involve transcending the limit of validity presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, so that in no event shall any exaction be possible under this Mortgage or under the Note that is in excess of the current limit of such validity, but such obligation shall be fulfilled to the limit of such validity. The provisions of this section shall control every other provision of this Mortgage and of the Note.

1.12 Legal Actions. In the event that Lender is made a party, either voluntarily or involuntarily, in any action or proceeding affecting the Premises, the Note, the Secured Indebtedness or the validity or priority of this Mortgage (but excluding any action or proceeding involving a dispute solely between Lender and a participating lender, if any), Borrower shall immediately, upon demand, reimburse Lender for all costs, expenses and liabilities incurred by

Lender by reason of any such action or proceeding, including reasonable attorney's fees, and any such amounts paid by Lender shall be added to the Secured Indebtedness and shall be secured by this Mortgage.

1.13 Compliance with Zoning and Restrictions. Borrower shall at all times operate the Premises in accordance with all applicable restrictions, Permitted Encumbrances, utility and development agreements and zoning ordinances.

1.14 Encumbrances. Borrower will not enter into any restriction, easements or other similar instruments which restrict or effect the use or development of the Premises, without the prior written consent of Lender, which consent shall not be unreasonably delayed, withheld or conditioned.

ARTICLE II

2.01 Events of Default. The terms "Event of Default" or "Events of Default," wherever used in this Mortgage, shall mean any one or more of the following events:

(a) The failure by Borrower to pay any installment of principal, interest, or other charges required under the Note, the Master Lease Obligations, this Mortgage or any other Loan Document, as and when the same comes due, subject only to the expiration of any applicable notice or cure period set forth therein (a "Monetary Default"); or

(b) The failure of Borrower properly and timely to perform or observe any covenant or condition set forth in the Ground Lease or any Loan Document (other than a Monetary Default) which Borrower, within ten (10) days of Lender's Notice to Borrower of such Default, does not immediately commence to cure and to continue diligently to prosecute such cure;

(c) The commencement by Borrower of any case, proceeding or other action relating to it in bankruptcy or Borrower's seeking reorganization, liquidation, dissolution, winding-up, arrangement, composition or readjustment of its debts, or any other relief, under bankruptcy, insolvency, reorganization, liquidation, dissolution, winding-up, arrangement, composition, readjustment of debt or other similar act of law of any jurisdiction, domestic or foreign, now or hereafter existing; or Borrower's applying for a receiver, custodian or trustee of it or for all or a substantial part of its property; or Borrower's making of an assignment for the benefit of creditors; or Borrower's taking any action indicating its consent to, approval of, acquiescence in, or in furtherance of, any of the foregoing; or the commencement of any case, proceeding or other action against Borrower in bankruptcy or seeking reorganization, liquidation, dissolution, winding-up, arrangement, composition or readjustment of its debts, or any other relief, under any bankruptcy, insolvency, reorganization, liquidation, dissolution, arrangement, composition, readjustment of debt or other similar act or law of any jurisdiction, domestic or foreign, now or hereafter existing, and such condition shall continue for a period of sixty (60) days undismissed, undischarged or unbonded; or the appointment of a receiver, custodian or trustee of a Borrower or for all or a substantial part of its property and such condition shall continue for a period of sixty (60) days undismissed, undischarged or unbonded.

2.02 Acceleration of Maturity. If an Event of Default shall have occurred, then the entire Secured Indebtedness shall, at the option of Lender, immediately become due and payable without notice or demand, time being of the essence of this Mortgage, and no omission on the part of Lender to exercise such option when entitled to do so shall be construed as a waiver of such right.

2.03 Right to Enter and Take Possession.

(a) If an Event of Default shall have occurred and be continuing, Borrower, upon demand of Lender, shall forthwith surrender to Lender the actual possession of the Premises and, if and to the extent permitted by law, Lender itself, or by such officers or agents as it may appoint, may enter and take possession of all or any part of the Premises without the appointment of a receiver or an application therefor, and may exclude Borrower and its agents and employees wholly therefrom, and take possession of the books, papers and accounts of Borrower;

(b) If Borrower shall for any reason fail to surrender or deliver the Premises or any part thereof after such demand by Lender, Lender may obtain a judgment or decree conferring upon Lender the right to immediate possession or requiring Borrower to deliver immediate possession of the Premises to Lender. Borrower will pay to Lender, upon demand, all expenses of obtaining such judgment or decree, including reasonable compensation to Lender, its attorneys and agents, and all such expenses and compensation shall, until paid, become part of the Secured Indebtedness and shall be secured by this Mortgage;

(c) Upon every such entering upon or taking of possession, Lender may hold, store, use, operate, manage and control the Premises and conduct the business thereof, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Premises insured; (iii) manage and operate the Premises and exercise all of the rights and powers of Borrower to the same extent as Borrower could in its own name or otherwise act with respect to the same; and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted to Lender, all as Lender from time to time may determine to be in its best interest. Lender may collect and receive all the rents, issues, profits and revenues from the Premises, including those past due as well as those accruing thereafter, and, after deducting (A) all expenses of taking, holding, managing and operating the Premises (including compensation for the services of all persons employed for such purposes); (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions; (C) the cost of such insurance; (D) such taxes, assessments and other similar charges as Lender may at its option pay; (E) other proper charges upon the Premises or any part thereof; and (F) the reasonable compensation, expenses and disbursements of the attorneys and agents of Lender, Lender shall apply the remainder of the monies and proceeds so received by Lender, first, to the payment of accrued interest; second, to the payment of deposits required in Section 1.05 and to other sums required to be paid hereunder; and third, to the payment of overdue installments of principal. Anything in this Section 2.03 to the contrary notwithstanding, Lender shall not be obligated to discharge or perform the duties of a landlord to any tenant or incur any liability as a result of any exercise by Lender of its rights under this Mortgage, and

Lender shall be liable to account only for the rents, incomes, issues and profits actually received by Lender;

(d) Whenever all such interest, deposits and principal installments and other sums due under any of the terms, covenants, conditions and agreements of this Mortgage shall have been paid and all Events of Default shall have been cured, Lender shall surrender possession of the Premises to Borrower, its successors or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

2.04 Performance by Lender. Upon the occurrence of an Event of Default in the payment, performance or observance of any term, covenant or condition of this Mortgage, Lender may, at its option, pay, perform or observe the same, and all payments made or costs or expenses incurred by Lender in connection therewith, with interest thereon at the Default Rate provided in the Note whichever is less, shall be secured hereby and shall be, without demand, immediately repaid by Borrower to Lender. Lender shall be the sole judge of the necessity for any such actions and of the amounts to be paid. Lender is hereby empowered to enter and to authorize others to enter upon the Premises or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to Borrower or any person in possession holding under Borrower. Notwithstanding anything to the contrary herein, Lender shall have no obligation, explicit or implied to pay, perform, or observe any term, covenant, or condition.

2.05 Receiver. If any Event of Default shall have occurred and be continuing, Lender, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice and without regard to the occupancy or value of any security for the Secured Indebtedness or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Premises and to collect and apply the rents, issues, profits and revenues thereof. The receiver shall have all of the rights and powers permitted under the laws of the state wherein the Land is situated. Borrower will pay unto Lender upon demand all expenses, including receiver's fees, reasonable attorney's fees, costs and agent's compensation, incurred pursuant to the provisions of this Section 2.05, and upon any Borrower's failure to pay the same, any such amounts shall be added to the Secured Indebtedness and shall be secured by this Mortgage.

2.06 Lender's Power of Enforcement and Power of Sale. Subject to the provisions of paragraph 3.11 below:

(a) If an Event of Default shall have occurred and be continuing, the Lender may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (i) to enforce payment of the Secured Indebtedness or the performance of any term thereof or any other right, power or remedy hereunder, (ii) to foreclose this Mortgage and to sell the Premises, as an entirety or in separate lots or parcels, as provided by applicable law, and (iii) to pursue any other remedy available to it, all as the Lender shall deem most effectual for such purposes. The Lender shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as the Lender may determine.

(b) If an Event of Default shall have occurred, Lender may sell the Premises at public outcry to the highest bidder for cash in front of the Court House door in the county where said property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county, and, upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the premises so purchased. Lender may bid at said sale and purchase said premises, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Premises may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Lender may elect.

2.07 Purchase by Lender. Upon any foreclosure sale or sale of all or any portion of the Premises under the power herein granted, Lender may bid for and purchase the Premises and shall be entitled to apply all or any part of the Secured Indebtedness as a credit to the purchase price.

2.08 Application of Proceeds of Sale. In the event of a foreclosure or other sale of all or any portion of the Premises, the proceeds of said sale shall be applied, first, to the expenses of such sale and of all proceedings in connection therewith, including reasonable attorneys' fees (attorneys fees and expenses shall become absolutely due and payable whenever foreclosure is commenced); then to insurance premiums, liens, assessments, taxes and charges including utility charges advanced by Lender hereunder, and interest thereon; then to payment of the Secured Indebtedness and accrued interest thereon, in such order of priority as Lender shall determine, in its sole discretion; and finally the remainder, if any, shall be paid to Borrower, or to the person or entity lawfully entitled thereto.

2.09 Borrower as Tenant Holding Over. In the event of any such foreclosure sale or sale under the powers herein granted, Borrower (if Borrower shall remain in possession) shall be deemed a tenant holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable to tenants holding over.

2.10 Waiver of Appraisement, Valuation, etc. Borrower agrees, to the full extent permitted by law, that in case of a default on the part of Borrower hereunder, neither Borrower nor anyone claiming through or under Borrower will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension, exemption or laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Premises, or the delivery of possession thereof immediately after such sale to the purchaser at such sale, and Borrower, for itself and all who may at any time claim through or under it, hereby waives to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets subject to the security interest of this Mortgage marshaled upon any foreclosure or sale under the power herein granted.

2.11 Waiver of Homestead. Borrower hereby waives and renounces all homestead and exemption rights provided for by the Constitution and the laws of the United States and of

any state, in and to the Premises as against the collection of the Secured Indebtedness, or any part thereof.

2.12 Discontinuance of Proceedings. In case Lender shall have proceeded to enforce any right, power or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Lender, then in every such case, Borrower and Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Lender shall continue as if no such proceedings had occurred.

2.13 Remedies Not Exclusive. Lender shall be entitled to enforce payment and performance of the Secured Indebtedness and to exercise all rights and powers under this Mortgage or under any other of the Loan Documents or other agreement or under any laws now or hereafter in force, notwithstanding that some or all of the Secured Indebtedness may now or hereafter be otherwise secured, whether by mortgages, deeds of trust, deeds to secure debt, pledges, liens, assignments or otherwise. Subject to the provisions of Section 3.11, neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Lender's right to realize upon or enforce any other security now or hereafter held by Lender, it being agreed that Lender shall be entitled to enforce this Mortgage and any other security now or hereafter held by Lender in such order and manner as Lender shall determine. Subject to the provisions of Section 3.11, no right or remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Lender or to which it otherwise may be entitled, may be exercised concurrently or independently, from time to time and as often as may be deemed expedient by Lender. The rights of Lender under this Mortgage shall not be deemed to limit the rights of landlord under the Ground Lease and such interest of Lender shall not be deemed to have merged unless the Ground Lease has been terminated.

2.14 Suits to Protect the Premises. Lender shall have power to institute and maintain such suits and proceedings as it may deem expedient (a) to prevent any impairment of the Premises by any acts which may be unlawful or constitute a default under this Mortgage; (b) to preserve or protect its interest in the Premises and in the rents, issues, profits and revenues arising therefrom; and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would materially impair the security hereunder or be prejudicial to the interest of Lender.

2.15 Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Borrower, its creditors or its property, Lender, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Lender allowed in such proceedings for the entire amount due and payable by Borrower under

this Mortgage at the date of the institution of such proceedings and for any additional amount which may become due and payable by Borrower hereunder after such date.

ARTICLE III

3.01 Successors and Assigns. This Mortgage shall inure to the benefit of and be binding upon Borrower and Lender and their respective heirs, executors, legal representatives, successors, and successors-in-title. Whenever a reference is made in this Mortgage to "Borrower" or "Lender," such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors, and successors-in-title of Borrower or Lender, as the case may be, but shall not imply any permission to make or permit any transfer which is otherwise prohibited.

3.02 Terminology. All personal pronouns used in this Mortgage, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles and Articles are for convenience only and neither limit nor amplify the provisions of this Mortgage, and all references herein to Articles, Sections or subparagraphs shall refer to the corresponding Articles, Sections or subparagraphs of this Mortgage unless specific reference is made to Articles, Sections or subparagraphs of another document or instrument.

3.03 Severability: Complete Agreement. If any provisions of this Mortgage or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Mortgage and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law. Of even date herewith Borrower and Lender have entered into that certain Brook Highland Phase I and Phase I-A Agreement of Purchase and Sale ("Phase I Agreement") and that certain Brook Highland Phase II Agreement of Purchase and Sale ("Phase II Agreement"), which agreements are by this reference incorporated herein. This Mortgage, the Note and the instruments executed in connection herewith, the Phase I Agreement, the Phase II Agreement, the Document Escrow Agreement and all other documents or instruments executed and delivered in connection therewith constitute the full and complete agreement of the parties and supersede all prior negotiations, correspondence, and memoranda relating to the subject matter hereof. This Mortgage may not be amended except by a writing signed by the parties hereto.

3.04 Applicable Law. The laws of the State of Alabama shall govern the validity, interpretation, construction, enforcement and performance of this Mortgage and the Note. If, for any reason or to any extent any word, term, provision, or clause of this Mortgage or any of the other Loan Documents, or its application to any person or situation, shall be found by a court or other adjudicating authority to be invalid or unenforceable, the remaining words, terms, provisions or clauses shall be enforced, and the affected word, term, clause or provision shall be applied, to the fullest extent permitted by law.

3.05 Limitation of Interest. It is the intent of Borrower and Lender in the execution of this Mortgage and all other Loan Documents to contract in strict compliance with the usury laws governing the Loan evidenced by the Note. In furtherance thereof, Lender and Borrower

stipulate and agree that none of the terms and provisions contained in the Loan Documents shall ever be construed to create a contract for the use, forbearance, or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws governing the Loan evidenced by the Note. Borrower or any guarantor, endorser or other party now or hereafter becoming liable for the payment of the Note shall never be liable for unearned interest on the Note and shall never be required to pay interest on the Note at a rate in excess of the maximum interest that may be lawfully charged under the laws governing the Loan evidenced by the Note, and the provisions of this paragraph shall control over all other provisions of the Note and any other instrument executed in connection herewith which may be in apparent conflict herewith. In the event any holder of the Note shall collect monies that are deemed to constitute interest and that would otherwise increase the effective interest rate on the Note to a rate in excess of that permitted to be charged by the laws governing the Loan evidenced by the Note, all such sums deemed to constitute interest in excess of the legal rate shall be applied to the unpaid principal balance of the Note and if in excess of such balance, shall be immediately returned to the Borrower upon such determination.

3.06 Notices. All notices and other communications provided for hereunder shall be in writing and be deemed received (a) on the date delivered, if sent by hand delivery (to the person or department if one is specified below), (b) on the date deposited in U.S. mail, certified or registered, with return receipt requested, or (c) on the date deposited with Federal Express or other national overnight carrier, and in each case properly addressed as set forth in the heading of this Mortgage. Either party may change its address for receipt of notices to another single address within the United States as provided herein. Actual receipt of any notice other than a change of address notice shall not be required if properly sent in accordance with this Section 3.06.

3.07 Replacement of Note. Upon receipt of evidence reasonably satisfactory to Borrower of the loss, theft, destruction or mutilation of the Note, and in the case of any such loss, theft or destruction, upon delivery of an indemnity agreement reasonably satisfactory to Borrower or, in the case of any such mutilation, upon surrender and cancellation of the Note, Borrower at Lender's expense will execute and deliver, in lieu thereof, a replacement note, identical in form and substance to such Note and dated as of the date of such Note, and upon such execution and delivery all references in this Mortgage to the Note shall be deemed to refer to such replacement note.

3.08 Time of the Essence. Time is of the essence with respect to each and every covenant, agreement and obligation of Borrower under this Mortgage, the Note and any and all other instruments now or hereafter evidencing, securing or otherwise relating to the Secured Indebtedness.

3.09 Environmental Indemnity.

(a) For the purposes of this paragraph the following terms shall have the following meanings: (i) the term "Hazardous Material" shall mean any material or substance that, whether by its nature or use, is now or hereafter defined as a hazardous waste, hazardous substance, pollutant or contaminant under any Environmental Requirement, or which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous

and which is now or hereafter regulated under any Environmental Requirement, or which is or contains petroleum, gasoline, diesel fuel or another petroleum hydrocarbon product, (ii) the term "Environmental Requirements" shall collectively mean all present and future laws, statutes, ordinances, rules, regulations, orders, codes, licenses, permits, decrees, judgments, directives or the equivalent of or by any Governmental Authority and relating to or addressing the protection of the environment or human health, and (iii) the term "Governmental Authority" shall mean the Federal government, or any state or other political subdivision thereof, or any agency, court or body of the Federal government, any state or other political subdivision thereof, or any agency, court or body of the Federal government, any state or other political subdivision thereof, exercising executive, legislative, judicial, regulatory or administrative functions.

(b) The Borrower shall comply, and all of Borrower's leases with tenants or other occupants will require that all tenants or other occupants of Premises comply, with all Environmental Requirements which relate to the Premises and with which the Borrower is required to comply, and will not generate, store, handle, process, dispose of or otherwise use, and will not permit any tenant or other occupant of Premises to generate, store, handle, process, dispose of or otherwise use, Hazardous Materials at, in, on, under or about Premises in a manner which violates any Environmental Requirement which relates to the Premises. Borrower shall notify Lender promptly in the event of any spill or other release of any Hazardous Material at, in, on, under or about the Premises which is required to be reported to a Governmental Authority under any Environmental Requirement and of which Borrower has actual knowledge and Borrower will promptly forward to the Lender copies of any notices received by the Borrower relating to alleged violations of any Environmental Requirement and will promptly pay when due any fine or assessment against Borrower or Premises relating to any Environmental Requirement. If at any time it is determined that the operation or use of Premises violates any applicable Environmental Requirement or that there are Hazardous Materials located at, in, on, under or about Premises which, under any Environmental Requirement, require special handling or collection, storage, treatment or disposal, or any other form of cleanup or corrective action, Borrower shall, within thirty (30) days after receipt of notice thereof from any Governmental Authority take, at the Borrower's sole cost and expense, such actions as may be necessary to fully comply in all respects with all Environmental Requirements, provided, however, that if such compliance cannot reasonably be completed within such (30) day period, Borrower shall commence such necessary action within such thirty (30) day period and shall thereafter diligently and expeditiously proceed to fully comply in all respects and in a timely fashion with all Environmental Requirements.

(c) Borrower will defend, indemnify, and hold harmless Lender, its employees, agent, officers, and directors, from and against any and all claims, demands, penalties, causes of action, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, foreseen or unforeseen, contingent or otherwise (including, without limitation, counsel and consultant fees and expenses, investigation and laboratory fees and expenses, court costs, and litigation expenses) arising out of, or in any way related to, (i) any breach by the Borrower of any of the provisions of this paragraph 3.09, (ii) the presence, disposal, spillage, discharge, emission, leakage, release, or threatened release of any Hazardous Material in violation of any Environmental Requirement which is at, in, under about, from or affecting Premises including,

without limitation, any damage or injury resulting from any such Hazardous Material to or affecting Premises or the soil, water, air, vegetation, buildings, personal property, persons or animals located on the Premises or on any other property or otherwise that occurs or results on account of a release of Hazardous Material by Borrower which occurs after the date hereof and prior to (as distinguished from discovered after) the date Lender, as mortgagee, or anyone claiming by, through or under Lender, as mortgagee, shall acquire title to the Premises through foreclosure, deed in lieu of foreclosure or otherwise, (iii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to any such Hazardous Material that occurs or results on account of a release of Hazardous Material which occurs after the date hereof and prior to (as distinguished from discovered after) the date Lender, as mortgagee, or anyone claiming by, through or under Lender, as mortgagee, shall acquire title to the Premises through foreclosure, deed in lieu of foreclosure or otherwise, (iv) any lawsuit brought or threatened, settlement reached, or order or directive of or by any Governmental Authority relating to such Hazardous Material, or (v) any violation by Borrower of any Environmental Requirement which relates to the Premises. This indemnity shall survive satisfaction of this Mortgage.

3.10 Purchaser's Mortgagee. Lender hereby agrees that it shall cause the holder ("Purchaser's Mortgagee") of any mortgage ("Purchaser's Mortgage") on the fee simple estate owned by Lender in the Land to acknowledge that the Purchaser's Mortgage is subordinate to the Phase II Ground Lease, to join in that certain Agreement of Subdivision between Borrower and Lender (as described in the Phase I Agreement) pursuant to which the Land will be subdivided from the land comprising Phase I and agree to execute and deliver a termination of the Purchaser's Mortgage releasing the Land from the Purchaser's Mortgage held by Purchaser's Mortgagee, such termination to be delivered to Morris, Manning & Martin as Escrow Agent in accordance with the terms of that certain Document Escrow Agreement of even date herewith.

3.11 Leasehold Deed in Lieu of Foreclosure. Notwithstanding any other provisions of the Loan Documents of any other documents evidencing or securing the Secured Indebtedness, Borrower shall have no liability or obligation under the Loan Documents or any other documents evidencing or securing the Secured Indebtedness and Lender shall bring no action or proceeding to enforce any such obligation of Borrower to pay the indebtedness or obligations created by or arising in connection with the indebtedness evidenced by the Loan Documents or any other documents evidencing or securing the Secured Indebtedness and Borrower hereby waives any and all rights to seek a judgment or a deficiency judgment against Borrower with respect to the Secured Indebtedness provided Borrower shall:

(i) deliver to Lender an updated Phase I Environmental Report on Phase II dated no earlier than the Maturity Date which states that there has been no material adverse change in the environmental condition of the Premises from that represented to Lender pursuant to the Phase I Agreement, and

(ii) if, as and when due, pay all accrued interest due and payable under the Note as provided in the Document Escrow Agreement; and

(iii) instruct the Escrow Agent under the Document Escrow Agreement to record the Leasehold Foreclosure Deed in accordance with the requirements of the Document Escrow Agreement.

Maker's obligations with respect to its Master Lease Obligations shall not be impaired, diminished or released in any respect notwithstanding the satisfaction of the Note, the Mortgage, or any other Loan Documents.

3.12 Set-off Rights. The Lender acknowledges that in accordance with the Note, the Lender has granted Borrower certain set-off rights which Borrower may exercise to the full extent of the Secured Indebtedness and in such event, this Mortgage shall be terminated and the Lender agrees to cancel this Mortgage of record. Lender agrees that in the event of a dispute between Borrower and Lender concerning the amount due under the Note, the Borrower may at its option pay into escrow with First American Title Insurance Company, or such other escrow agent as the parties may determine, the amounts which Lender claims to be due and owing under the Loan Documents and in such event, the Mortgage and all other security agreements with respect to Phase II shall be deemed satisfied and shall be released of record and the Escrow Agent under the Document Escrow Agreement shall be authorized to record the satisfaction of the Mortgage; provided, however, the indebtedness under the Note shall not be deemed to be satisfied, shall remain fully enforceable in accordance with its terms, and at such time as the parties agree on the amount due or a court of competent jurisdiction enters a judgment in favor of Lender, the Escrow Agent shall pay over to Lender such amounts as may have been agreed to or as provided in the judgment entered against Borrower. The Borrower's payment of the amount claimed to be due by Lender shall not be deemed a waiver of Borrower's rights of set-off.

3.13 Subordination to Construction Loan. Pursuant to the terms of the Phase II Agreement and in consideration of Borrower entering into the Phase II Agreement, Lender has agreed to subordinate all of its rights under the Loan Documents and the lien of this Mortgage and Security Agreement to a construction loan to be obtained by Borrower to finance the construction of retail spaces and buildings on Phase II.

3.14 Phase II Agreement. If Borrower has elected to develop Phase II as provided in the Phase II Agreement, and the provisions of the Phase II Agreement with respect to Insurance and Condemnation are in conflict with paragraphs 1.04 and 1.05 herein, the provisions of the Phase II Agreement shall control.

IN WITNESS WHEREOF, Borrower has caused this instrument to be executed by its duly authorized general partner as of the day and year first above written.

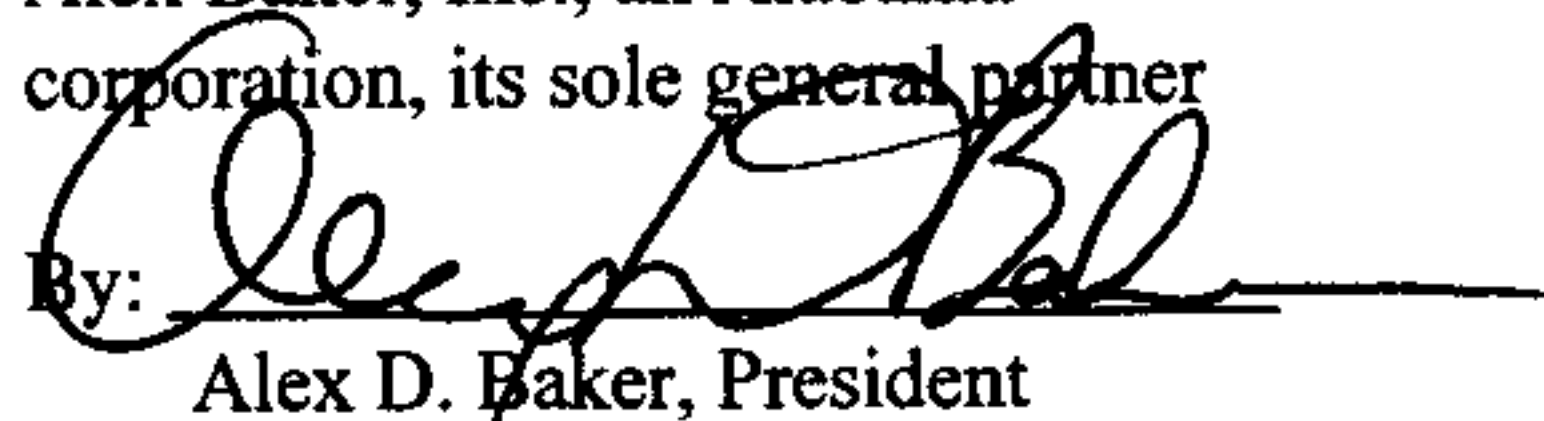
BORROWER:

BROOK HIGHLAND LIMITED PARTNERSHIP,
a Georgia limited partnership

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


Witness

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

By: 
Alex D. Baker, President

(CORPORATE SEAL)

STATE OF GEORGIA

COUNTY OF FULTON

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 which is the sole general partner of BW 280 Limited Partnership, a Georgia limited partnership which is 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 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: _____

(AFFIX NOTARY SEAL)

EXHIBIT " A "

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 "B"

PERMITTED TITLE EXCEPTIONS

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 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 Probate Office.
4. Brook Highland Common Property Declaration of Covenants, Conditions and Restrictions, recorded in Real 307 page 950 in 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 Employees 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 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 Probate Office.
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 Probate Office.
9. Permit to South Central Bell Telephone Company recorded in Deed 349 page 865 in Probate Office.
10. Sewer Easement Agreement dated October 12, 1993, by Brook Highland Limited Partnership and AmSouth/NationsBank, recorded as Instrument #1993-32518 in Probate Office.
11. Easement in instrument from Brook Highland Limited Partnership to The Water Works and

Inst # 1994-37772

12. 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 Probate Office.
13. Required Approvals by Architectural Review Committee recorded as Instrument #1993-32513 in Probate Office.
14. Required Approvals by Architectural Review Committee recorded as Instrument #1993-32514 in Probate Office.
15. Short Form Lease by and between Brook Highland Limited Partnership and Winn-Dixie Montgomery, Inc. dated September 20, 1993 as Instrument #1993-32898 in Probate Office.
16. 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.
17. Easement Agreement between AmSouth Bank/NationsBank and Brook Highland Limited Partnership dated October 12, 1993 as Instrument #1993-32515 in the Probate Court.
18. Matters shown ALTA Survey prepared for A.B. Shopping Center Properties, prepared by Carr & Associates Engineers, bearing seal and certification of Barton F. Carr, Registered Land Surveyor No. 16685, dated November 25, 1994, last revised December 21, 1994.
19. Declaration of Restrictions dated December 30, 1994 by Brook Highland Limited Partnership, to be recorded in the Probate Office.
20. Easement Agreement dated December 30, 1994 by and between Brook Highland Limited Partnership, to be recorded 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 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 Probate Office.
23. Rights of Tenants, if any, as Tenants only, under unrecorded leases.
24. Declaration of Restrictive Covenants in regard to usage of "Out Parcels" as set out in Instrument #1994-22322 in the Probate Office.
25. 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 Probate Office.

12/30/1994-37772
04:11 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
022 MEL 2716.00