

## **MEMORANDUM OF NET GROUND LEASE (PHASE II)**

THIS MEMORANDUM OF NET GROUND LEASE (PHASE II) ("Memorandum") is made and entered into this 30<sup>th</sup> day of December, 1994, by and between DEVELOPERS DIVERSIFIED OF ALABAMA, INC. ("Lessor"), an Alabama corporation, and BROOK HIGHLAND LIMITED PARTNERSHIP ("Lessee"), a Georgia limited partnership.

### **WITNESSETH:**

WHEREAS, Lessor and Lessee entered into that certain Net Ground Lease (Phase II) ("Lease") of even date herewith pursuant to which Lessor leased to Lessee and Lessee took and hired from Lessor that certain tract of real property being Phase II of Brook Highland Plaza, City of Birmingham, Shelby County, Alabama, and being more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof ("Property").

WHEREAS, Lessor and Lessee intend to set forth in this Memorandum certain terms and conditions with respect to the Lease.

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00) in hand paid and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, Lessor and Lessee do hereby agree as follows:

1. Lessor shall and by these presents does hereby demise unto Lessee and Lessee by these presents does hereby take and hire from Lessor the Property, subject to the Permitted Encumbrances (as defined in the Lease).

2. The Lease shall be for a term of ninety-nine (99) years commencing on the date hereof and ending December 31, 2093, at 11:59 p.m. unless otherwise terminated in accordance with the terms of the Lease.

3. Lessor shall not sell, assign or transfer all or a portion of Phase II or Lessor's interest therein unless such sale, assignment or transfer expressly is made subject to this Lease and the Phase II Agreement (as defined in the Lease). Lessor shall not encumber all or a portion of Phase II or Lessor's interest therein unless such encumbrance is made subject to this Lease. Lessee from time to time shall have the right to sublease, assign, convey, alien, pledge or hypothecate all or a part of Lessee's rights under and by virtue of this Lease herein or in and to Phase II, as provided in the Phase II Agreement or with the prior written consent of Lessor, which consent shall not be unreasonably withheld, delayed or conditioned. Lessor, upon request from Lessee, shall grant such easements or other similar encumbrances as may be reasonably required to construct, use and operate shopping center improvements on Phase II for lease to tenants open to the public.

4. This Lease is nonterminable by Lessor for any reason except by operation of law upon merger of fee and leasehold estates.

This memorandum is being re-recorded to evidence the acknowledgment of Lessee's signature and is a re-recording of the instrument recorded in Instrument No. 1994-37771.

02/03/1995-03023  
08:17 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
17.00

*Calaha Title*

Inst # 1995-03023

5. The Lease and all renewals, extensions, modifications and amendments thereto is and shall remain superior to any mortgage or other liens placed upon the Property by Lessor.

6. In the event of any conflict between this Memorandum and the Lease, the terms of the Lease shall control.

IN WITNESS WHEREOF, Lessor and Lessee have executed or caused this Lease to be executed as of the date first above written.

**LESSOR:**

DEVELOPERS DIVERSIFIED  
OF ALABAMA, INC. , an Alabama corporation

Martha B. Sagnor  
Witness

By: Joan Allgood  
Joan Allgood, Vice President

[CORPORATE SEAL]

**LESSEE:**

BROOK HIGHLAND LIMITED PARTNERSHIP,  
a Georgia limited partnership

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

Joel D. Baker  
Witness

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

By: Alex D. Baker  
Alex D. Baker, President

(CORPORATE SEAL)

[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 20<sup>th</sup> day of December, 1994.

Martha B. Ferguson  
Notary Public

My Commission Expires:

[Notary 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 will full authority, executed the same voluntarily for and as the act of said corporation, acting in its capacity as general partner as aforesaid.

Given under my hand and official seal this 30<sup>th</sup> day of December, 1994.

Eileen Keenan  
Notary Public

My Commission Expires:

**EILEEN KEENAN**  
Notary Public, Cobb County, Georgia  
My Commission Expires Jan. 30, 1995

[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 ~~31~~ 1994. 1995-03023

12/29/94 05:29 PM

02/03/1995-03023  
08:17 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
004 MCD 17.00

0060978.01