

MEMORANDUM OF NET GROUND LEASE (PHASE 1-A)

THIS MEMORANDUM OF NET GROUND LEASE (PHASE 1-A) ("Memorandum") is made and entered into this 30th 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 1-A) ("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 1-A 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 1-A or Lessor's interest therein unless such sale, assignment or transfer expressly is made subject to this Lease and the Phase 1 Agreement (as defined in the Lease). Lessor shall not encumber all or a portion of Phase 1-A 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 1-A, as provided in the Phase 1 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 1-A 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.

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08:17 AM CERTIFIED
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17:00

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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

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

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 30th day of December, 1994.

Martha S. 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 ____ 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 those tracts or parcels of land lying and being in Section 31, Township 18 South, Range 1 West, Shelby County Alabama, being more particularly described as follows:

PAD C-1

Commence 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, 848.96 feet from the Northeast corner of Lot 1, Brook Highland Plaza Resurvey (MB 18, PG 99); thence South $9^{\circ}24'27''$ West, 621.86 feet to the Point of Beginning; thence South $01^{\circ}38'44''$ East, 95.00 feet; thence South $88^{\circ}21'16''$ West, 70.55 feet; thence North $01^{\circ}38'44''$ West, 95.00 feet; thence North $88^{\circ}21'16''$ East, 70.55 feet to the Point of Beginning, and

PAD A

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

PAD B

Commence 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, 848.96 feet from the Northeast corner of Lot 1, Brook Highland Plaza Resurvey (MB 18, PG 99); thence South $56^{\circ}07'09''$ East, 138.82 feet to the Point of Beginning; thence South $00^{\circ}28'11''$ East, 166.67 feet; thence South $89^{\circ}31'49''$ West, 150.00 feet; thence North $00^{\circ}28'11''$ West, 166.67 feet; thence North $89^{\circ}31'49''$ East, 150.00 feet to the Point of Beginning.

Said tracts being designated as "Pad A", "Pad B" and "Pad C-1" on that certain survey for A. B. Shopping Center 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 January 5, 1995.

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SHELBY COUNTY JUDGE OF PROBATE
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