

Lot 1 and Lot 2

STATE OF OHIO )

CUYAHOGA COUNTY )

SEWER EASEMENT

In consideration of ten dollars (\$10.00) and other valuable consideration paid to DEVELOPERS DIVERSIFIED OF ALABAMA, INC., an Alabama corporation (hereinafter called "the Grantor") by The Water Works and Sewer Board of the City of Birmingham, an Alabama public corporation organized under and by virtue of the laws of the State of Alabama, (hereinafter called "the Board"), the receipt and sufficiency of which the Grantor hereby acknowledges, the Grantor does hereby grant, bargain, sell and convey unto the Board, its successors and assigns, a perpetual easement over, across, under and through the hereinafter described real estate for the purposes of, at such times and from time to time in the future as the Board may elect, laying, constructing, installing, maintaining, operating, renewing, repairing, changing the size of, relocating, removing and/or replacing sanitary sewer pipelines and water pipelines and such appurtenances, appliances, fixtures and equipment, whether above or beneath the surface of the ground, deemed by the Board to be necessary or useful in connection with the collection and treatment of sewage and the transportation, distribution and sale of water (hereinafter collectively called "Pipelines"), together with all rights and privileges necessary or convenient for the full enjoyment or use of the rights herein granted, including, but not limited to, the free right of ingress

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and egress over the hereinafter described real estate, together with the right, from time to time, in connection with the enjoyment of the privileges herein conveyed, to cut and keep clear all trees, brush, undergrowth and other obstructions, whether located upon or near said easement, to the extent necessary to permit the full enjoyment of the rights and privileges herein granted, and the protection of the Pipelines, and together with the right, from time to time, in connection with the enjoyment of the privileges herein conveyed, to cut and remove or otherwise disturb paving or other road covering to the extent necessary to permit the full enjoyment of the rights and privileges granted to the Board hereunder; said real estate being more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof.

The rights and privileges herein granted and accepted upon the following conditions and subject to the following stipulations:

1. The Grantor hereby covenants with the Board that the Grantor is lawfully seized in fee simple of the above described real estate, that it is free from all encumbrances except as set forth below and that the Grantor has a good right to grant the easement and right of way granted hereby as aforesaid and that the Grantor will warrant against the claims of all persons claiming by, through or under the Grantor, subject to:

- a. General and special taxes or assessments for 1994 and subsequent years not yet due and payable.

- b. Easement(s) to D & D Water Renovation Systems, Inc. as shown by instrument recorded in Real 107, page 968 in Probate Office, and as shown on Map Book 16, page 102 in Probate Office of Shelby County, Alabama ("Probate Office").
- c. Rights of Alabama State Land Company and its successors and assigns in and to the mineral rights within and underlying the property as more particularly set out in Deed Book 28, Page 581 in Probate Office.
- d. Declaration of Covenants, Conditions, and Restrictions by AmSouth Bank, N.A., as Ancillary Trustee for NCNB National Bank of North Carolina, N.A., as Trustee from the Public Employees Retirement System of Ohio, recorded in Real 307, Page 950 in Probate Office.
- e. Restrictions, covenants and conditions as set out in Agreement between AmSouth Bank, N.A., as Ancillary Trustee for NCNB National Bank of North Carolina, N.A., 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, as amended by Amendment dated April 26, 1993, to be recorded in Probate Office (as to Lot 1 only).
- f. 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 (as to Lot 2 only).

- g. 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 (as to Lot 1 only).
- h. Transmission Line Permit to Alabama Power Company recorded in Deed Book 112, Page 134 in Probate Office.
- i. Subdivision plat of Brook Highland Plaza recorded in Map Book 16, Page 102 discloses the following:
  - (i) 10 foot utility easements along interior boundary lines and 20 foot utility and maintenance easements along exterior boundary lines, being easements established in instrument referred to in Item (d) above.
  - (ii) Sanitary sewer easement crossing the Property, being the same easement referred to in Item (b) above.
  - (iii) Covenant of Restrictions as set out on said plat.
- j. Permit to South Central Bell Telephone Company recorded in Real 349, Page 865 in Probate Office (as to Lot 1 only).
- k. Restrictions and Conditions as set out in Special Warranty Deed recorded in Real 308, Page 1 in Probate Office (as to Lot 2 only).



1. Declaration of Sewer Easement by Brook Highland Limited Partnership recorded in Probate Office.
- m. Sewer Easement Agreement by and between Brook Highland Limited Partnership and AmSouth Bank, N.A., as Ancillary Trustee for NationsBank of North Carolina, N.A., as Trustee for the Public Employees Retirement System of Ohio, recorded in Probate Office (as to Lot 1 only).
- n. Sign Easement Agreement by and between Brook Highland Limited Partnership and AmSouth Bank, N.A., as Ancillary Trustee for NationsBank of North Carolina, N.A., as Trustee for the Public Employees Retirement System of Ohio, recorded in Probate Office (as to Lot 1 only).
- o. Declaration of Sign Easement by Brook Highland Limited Partnership recorded in Probate Office.
- p. General utility easements to be granted The Water Works and Sewer Board of the City of Birmingham and Alabama Power Company, recorded in Probate Office.
- q. All other matters of records in Probate Office which are listed on Exhibit "B" which is attached hereto and by this reference made a part hereof.

2. The Grantor agrees not to construct, cause to be constructed, or permit to be constructed, on the above described real estate any lake or pond or any building, fence, wall or structure of any kind; provided nothing herein shall prohibit

Grantor from constructing on the easement area paving or other road covering, gutters, curbing or landscaping.

3. No delay of the Board in the use of the easement and rights hereby granted or in laying or installing Pipelines in or along said easement shall result in the loss, limitation or abandonment of any right, title, interest, right of way, easement or estate granted hereby.

4. This instrument states the entire agreement between the Grantor and the Board and merges in this instrument all statements, representations and covenants heretofore made and any agreements not included in this instrument are void and of no force and effect. This instrument may be modified only by a written instrument signed by the Grantor and the Board.

5. By the acceptance of this instrument, the Board agrees, at its sole cost, to maintain the Pipelines in good operating condition and to repair and replace the Pipelines, as necessary, at all times in the future, so long as the Pipelines are being used by the Board. The Board agrees to repair at its sole cost, any damage caused to the easement areas by it or its contractors and subcontractors, including damage to any pavement, gutters, curbing, landscaping and other permitted improvements within the easement areas. If the Board damages the easement areas, the Board agrees to restore same to substantially the same condition existing at the time of the damage as soon as reasonably practicable under the circumstances.

6. This instrument shall inure to the benefit of, and be binding upon, the Grantor and the Board and their respective successors and assigns.

To have and to hold unto the Board, its successors and assigns forever.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed by its duly authorized officer as of this 2nd day of February, 1995.

GRANTOR:

DEVELOPERS DIVERSIFIED OF ALABAMA,  
INC., an Alabama corporation

By: Joan Allgood  
Title: Vice President

(CORPORATE SEAL)

STATE OF Ohio

COUNTY OF Cuyahoga

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Jean Allwood, 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 the instrument, she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 2ND day of February, 1995.

Elizabeth A. Berry

Notary Public

**ELIZABETH A. BERRY**

Notary Public, State of Ohio, Cuya. Cty.

My Commission Expires Mar. 8, 1998

My Commission Expires: \_\_\_\_\_

(AFFIX NOTARY SEAL)



EXHIBIT APARCEL 1

The following is the centerline of an easement crossing Lot 1 Brook Highland Plaza as recorded in Map Book 18 page 99 in the office of the Judge of Probate of Shelby County, Alabama and is more particularly described as follows:

Commence at the Northwest corner of the Southeast Quarter of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama; thence North 00°38'38" West, 355.06 feet; thence North 89°50'48" West, 52.20 feet to the Point of Beginning at the centerline of a twenty foot wide easement being ten feet wide on both sides of the centerline; thence South 00°02'36" West, 128.29 feet to the center of a manhole; thence continue South 02°23'19" East, 223.17 feet to the center of a manhole and the termination of the twenty-foot easement, being the commencement of the centerline of a twenty-five foot easement; thence South 00°06'16" East, 279.08 feet to the termination of the centerline of the twenty five foot easement at a manhole and the commencement of a centerline of a varying easement whose beginning width is fifty feet and terminating width is thirty feet; thence South 49°28'29" East, 274.59 feet to a manhole and the termination of said varying width easement, said termination width being thirty feet; thence South 54°47'19" East, 361.50 feet along the centerline of a varying width easement whose termination width is twenty feet at a manhole; thence South 37°43'45" East, 408.36 feet along the centerline of a twenty foot easement to a manhole; thence South 68°07'07" East, 309.30 feet along the centerline of a twenty foot easement to the West line of Lot 3, Brook Highland Plaza as recorded in Map Book 16, page 102, said point being North 68°07'07" West, 0.46 feet from the centerline of a manhole; thence South 01°38'40" East, 187.38 feet along the Easterly side of a ten foot wide easement to the termination of said overall easement.

TOGETHER WITH THE FOLLOWING DESCRIBED PARCEL:

The following is the centerline of an easement crossing Lot 1 Brook Highland Plaza as recorded in Map Book 18, page 99 in the Office of the Judge of Probate of Shelby County, Alabama; more particularly described as follows:

Commence at the Northwest corner of the Southeast Quarter of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama; thence North 00°38'38" West, 355.06 feet; thence North 89°50'48" West, 52.20 feet at the centerline of a twenty foot wide easement being ten feet wide on both sides of the centerline; thence South 00°02'36" West, 128.29 feet to the center of a manhole; thence continue South 02°23'19" East, 223.17 feet to the center of a manhole and the Point of Beginning of the twenty foot easement; thence South 87°20'31" West, 222.88 feet along the centerline of a twenty foot easement to the center of a manhole; thence South 61°17'21" West, 379.74 feet along the centerline of a twenty foot easement to the center of a manhole; thence South 61°12'11" West, 286.04 feet along the centerline of a twenty foot easement; thence North 28°47'49" West, 15 feet, more or less, along the centerline of a twenty-foot easement to the Southeasterly right-of-way of Brook Highland Parkway and the termination of said overall easement.

Said parcels being more particularly shown on that certain survey entitled "Sewer Easement", Sheet 1 of 2, prepared for A.B. Shopping Center Properties, prepared by Carr & Associates Engineers, Inc., dated November 25, 1994.

## **EXHIBIT "B"**

1. 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. (Lot 1)
2. Required Approvals by Architectural Review Committee recorded as Instrument #1993-32513 in Probate Office. (Lot 1)
3. Required Approvals by Architectural Review Committee recorded as Instrument #1993-32514 in Probate Office. (Lot 2)
4. 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. (Lot 1)
5. Covenant and Restrictions, building setback line, rear-yard setback line, utilities easements, maintenance easements, access easement, all as 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 16 at page 102, as recorded in Map Book 18, page 99, in Probate Office of Shelby County, Alabama. (Lots 1 and 2)
6. 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. (Lot 1)
7. Easement Agreement between AmSouth Bank/NationsBank and Brook Highland Limited Partnership dated October 12, 1993, as Instrument #1993-32515 in the Probate Office. (Lots 1 and 2)
8. Easement Agreement dated December 30, 1994, by Brook Highland Limited Partnership to Developers Diversified of Alabama, Inc., recorded in the Probate Office. (Lots 1 and 2)
9. Memorandum of Net Ground Lease (Phase II) dated December 30, 1994, by and between Brook Highland Limited Partnership and Developers Diversified of Alabama, Inc., recorded in the Probate Office (Lot 1).
10. Leasehold Mortgage, Security Agreement and Assignment of Leases and Rents dated December 30, 1994, by Brook Highland Limited Partnership in favor of Developers Diversified of Alabama, Inc., recorded in the Probate Office. (Lot 1)

11. Memorandum of Net Ground Lease (Phase 1-A) dated December 30, 1994, by and between Brook Highland Limited Partnership and Developers Diversified of Alabama, Inc., recorded as Instrument # 1995-03025 in the Probate Office.
12. Declaration of Restrictive Covenants dated July 7, 1994 by Brook Highland Limited Partnership, recorded as Instrument #1994-22322 in the Probate Office.
13. Memorandum of Lease dated December 4, 1994 between Brook Highland Limited Partnership and Big B, Inc., recorded as Instrument #1994-37215 in the Probate Office.
14. Retail Lease Agreement between Brook Highland Limited Partnership and Wings of Inverness, Inc., recorded as Instrument #1994-36744 in the Probate Office.

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