

RESTRICTIONS AGREEMENT

THIS RESTRICTIONS AGREEMENT ("Agreement") made as of the 30th day of December, 1994, by and between BROOK HIGHLAND LIMITED PARTNERSHIP ("Partnership"), a Georgia limited partnership, with its principal place of business at Suite 303, 1900 International Park Drive, Birmingham, Alabama 35243, and DEVELOPERS DIVERSIFIED OF ALABAMA, INC. ("Developers"), an Alabama corporation, with its principal place of business at 34555 Chagrin Boulevard, Moreland Hills, Ohio 44022-1004.

WITNESSETH:

WHEREAS, the Partnership on December 30, 1994, conveyed to Developers the property described in attached Exhibit A in the City of Birmingham, County of Shelby, State of Alabama, commonly known as Brook Highland Plaza Shopping Center and shown on attached Exhibit A-1 as the "Shopping Center Parcel" (the "Shopping Center Parcel");

WHEREAS, the Partnership retained the fee ownership of that certain outparcel located adjacent to the Shopping Center Parcel and more particularly shown as Lot 1F on that certain map entitled "Brook Highland Plaza Resurvey", recorded in Map Book 18, Page 99, in the Probate Office of Shelby County, Alabama, which outparcel is shown on Exhibit A-1 (hereinafter the "Outparcel") (the Outparcel and the Shopping Center Parcel are collectively referred to as the "Entire Premises");

WHEREAS, in connection with the future development of the Outparcel, the Partnership intends to lease and/or sell the Outparcel to tenants and/or purchasers;

WHEREAS, Wal-Mart Stores, Inc. ("Wal-Mart") is a tenant located on the Shopping Center Parcel; and

WHEREAS, Partnership and Developers intend to establish and create certain rights, restrictions, duties and responsibilities relating to the use of the Outparcel;

NOW THEREFORE, Developers, as the owner of the Shopping Center Parcel, and the Partnership, as the owner of the Outparcel, each for themselves, their successors, and assigns, do hereby agree as follows:

ARTICLE 1 TERM

09/27/1995-27238
02:18 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
019 NCD 53.50

1.1 Term. The covenants and restrictions relating to the Outparcel as set forth in this Agreement shall apply to the Outparcel for a period of fifty (50) years from the date of this Agreement, unless earlier terminated as provided in Paragraph 2.2 or by mutual agreement between Developers and the Partnership (so long as Partnership holds title to the Outparcel), or by mutual agreement between Developers and each successors-in-title to the Partnership as to the

Inst # 1995-27238

Outparcel. The Partnership, so long as it owns title to the Outparcel and any of its successors-in-title to the Outparcel, are all hereinafter collectively referred to as "Occupants" or individually as an "Occupant"). If applicable law restricts the time period during which any of the provisions of this Agreement may be enforced to a period shorter in duration than fifty (50) years, then any such provision shall continue in full force for the maximum period of time permitted by such applicable law.

ARTICLE 2

ZONING AND USE RESTRICTIONS

2.1 Zoning and Use. The Outparcel may be used and operated for any lawful purpose as permitted under applicable zoning laws of the City of Birmingham, Shelby County, Alabama; provided, however, except as otherwise provided herein, the Outparcel shall not be used or operated for the following purposes:

- (a) as a furniture and/or bedding store;
- (b) as a motion picture, "legitimate" or amusement theater;
- (c) as a retail super drugstore engaged in the sale of drug items and drugs prepared and compounded from prescriptions and medical doctors;
- (d) as a supermarket, grocery store, meat, fish or vegetable market for the sale of:
 - (i) packaged or fresh seafood, meat, or poultry for off-premises consumption;
 - (ii) packaged or fresh produce or vegetables for off-premises consumption;
 - (iii) dairy products (excluding cone ice cream) for off-premises consumption;
 - (iv) packaged or fresh bakery products for off-premises consumption; or
 - (v) grocery items, including without limitation fruits, vegetables, dairy products, frozen foods and staple or fancy groceries;
- (e) as a photo kiosk store engaged in the business of developing film and photographic supplies;
- (f) as an establishment, other than a package store, which sells beer or wine for off premises consumption;
- (g) as a spa, recreational activity or health club;
- (h) as a warehouse;
- (i) for non-retail or non-service type activities;
- (j) as a bakery or delicatessen; provided nothing herein shall prohibit an ice cream store, yogurt shop, health food store, doughnut shop or a deli-type restaurant so long as its primary business is that of a sit-down restaurant and not that of the sale of meat, cheeses and wine for off-premises consumption and so long as it maintains no more than seven (7) linear feet of refrigerated deli cases;
- (k) as a business or professional office (except for finance company or banking offices, legal, medical, optical, dental, chiropractic, tax preparation offices, real estate sales offices (but not schools) or insurance offices dealing with the public; any such office building shall be limited to one story in height or twenty-two (22) feet in height, excepting copulas, weathervanes and similar architectural adornments);

- (l) as a massage parlor, topless or bottomless club, adult book store, peep show store, head shop store, or any store selling pornographic inventory, including nude photos, magazines, videos, tapes or objects;
- (m) as a ballroom, dance hall or discotheque;
- (n) as a manufacturing or wholesale or industrial operation;
- (o) as a car wash;
- (p) for the sale or repair of:
 - (i) automobiles;
 - (ii) boats;
 - (iii) trailers; or
 - (iv) mobile homes;
- (q) as a skating rink;
- (r) as a book store or a greeting card store;
- (s) as a scuba diving supply store or store having the right to sell regulators, compressors and wet suits and containing 15,000 square feet or less;
- (t) as a women's clothing store, including discount or budget stores, featuring large or half-size, popular to moderate priced junior or missy, women's clothing containing 2001 square feet or more;
- (u) as a picture framing shop and art gallery;
- (c) as a one price point variety store (i.e. a "dollar store");
- (w) as a store devoting more than twenty percent (20%) of its gross leasable area to the sale of shoes, or a family shoe store in excess of 3000 square feet;
- (x) as a full service hair salon or a beauty supply store in which the sale of beauty supply products exceeds 10% of gross sales;
- (y) as a party store;
- (z) as a traditional Mexican restaurant;
- (aa) as a store containing less than 10,000 square feet whose primary use is the sale of supplements and vitamins;
- (bb) as a chiropractic clinic;
- (cc) as a store whose primary business is the sale and service of cellular telephones and pagers;
- (dd) as a jewelry store containing less than 15,000 square feet;
- (ee) as a meeting hall (except in connection with a library);
- (ff) as an amusement park;
- (gg) as a banquet facility (except in connection with a restaurant operation);
- (hh) as a sports facility;
- (ii) as a store selling men's and boys' wear such that men's suits and sportcoats exceed 50% of the value of its inventory valued at retail;
- (jj) as a junior department store, or other use as operated by a majority of stores in the "Goody's" chain;
- (kk) as a pawn shop;
- (ll) as a "teen lounge";
- (mm) as a flea market;
- (nn) as a bar or a "social encounter" restaurant;

- (oo) as a lumber yard (except as part of a general home improvement center); or
- (pp) as an off-track betting facility;
- (qq) as a carnival;
- (rr) as a bowling alley; or
- (ss) as a video arcade, a bingo or electric game parlor.

2.2 Termination of Exclusives. Developers acknowledges that many of the prohibited uses listed above are exclusive uses set forth in those certain tenant leases for space in buildings on the Shopping Center Parcel, as more fully identified on Exhibit "B" attached hereto; accordingly, when any such lease terminates, the prohibited use which corresponds to the exclusive use granted in such lease shall likewise terminate with respect to the Outparcels. Developers, within thirty (30) days after receipt of a written request from Partnership or its successors in title, shall record in the Probate Records of Shelby County, Alabama, an instrument describing any such lease that has terminated, the date such termination occurred and the prohibited use which has also terminated as a result of such lease termination. Any such instrument may be relied upon by all third parties as to the matters set forth therein.

2.3 Wal-Mart Restrictions. Wal-Mart shall be deemed to be a tenant at the Shopping Center Parcel if Wal-Mart or an affiliate of Wal-Mart is occupying and conducting business from its demised premises in the Shopping Center Parcel pursuant to the terms of that certain lease dated June 29, 1993, between the Partnership and Wal-Mart ("Wal-Mart Lease"), a memorandum of which is recorded as Instrument No. 1994-20695 in the Probate Office (Wal-Mart and any affiliate of Wal-Mart that is a successor tenant pursuant to the Wal-Mart Lease are hereinafter referred to as the WM-Tenant"). Upon expiration or termination of the Wal-Mart Lease, or upon such date as WM Tenant shall no longer be a tenant at the Shopping Center Parcel, Developers, within thirty (30) days after receipt of a written request from Partnership or its successors in title, shall record in the Probate Records of Shelby County, Alabama, an instrument indicating that the Wal-Mart Lease has terminated or expired or that WM Tenant is no longer a tenant of the Shopping Center Parcel. So long as WM Tenant is a tenant, no Outparcel shall be used or operated for the following purposes, without the prior written consent of WM Tenant and Developers; provided, however, that if WM Tenant shall consent to such use, Developers also shall be deemed to have consented to such use:

- (a) theater;
- (b) night club;
- (c) bowling alley;
- (d) health spa;
- (e) cafeteria;
- (f) billiard parlor or other place of recreation or amusement;
- (g) warehouse; or
- (h) a business serving or selling alcoholic beverages as an incidental part thereof;
- (i) a discount department store or a variety, general or "dollar store";
- (j) a supermarket, grocery store, meat, fish or vegetable market, or any business dealing in or which shall keep in stock or sell for off-premises consumption any

staple or fancy groceries, meats, fish, vegetables, fruits, bakery goods, dairy products (provided, however, businesses selling ice cream and yogurt products are permitted and are not included in the dairy products exclusive) or frozen foods.

None of the foregoing restrictions shall apply to restaurants which may sell any of the products listed above only as an incidental part of its business.

ARTICLE 3

BUILDING AND CONSTRUCTION

3.1 Size and Signage. Any building constructed on the Outparcel (hereinafter referred to as the "Building") shall be restricted to one story and shall not contain more than six thousand five hundred (6,500) square feet (unless WM Tenant, while WM Tenant is a tenant in the Shopping Center Parcel, and Developers shall consent in writing to a greater square footage; provided, however, that if the WM Tenant shall consent to such use, Developers also shall be deemed to have consented to such use). The Building and all other improvements on the Outparcel shall conform to the requirements set forth herein; provided, however, in no event shall (i) the canopy of the Building or other improvements extend higher than twenty-four feet (24') above the ground; (ii) the parapet of the Building or other improvements extend higher than twenty-four feet (24') above the ground; (iii) any sign be erected or maintained on the exterior of the Building or other improvements except directional signs and a sign upon the canopy or against the parapet of the Building, the characters of which sign shall not exceed four feet (4') in height and the top of which sign shall not be higher than twenty-four feet (24') above the ground; (iv) any sign that is visible from the exterior of the Building have any bulbs or other forms of lighting that intermittently switch on and off; (v) any directional sign be of a type other than monument type and exceed a height of three feet three inches (3'3"); (vi) any sign be erected or maintained on the roof top of the Building; (vii) the Building have a second story or basement; and (viii) any sign be a so-called "portable" or similar type sign. The Outparcel shall be entitled to one separate pylon sign which shall not exceed thirty feet (30') in height measured from the ground to the top of the sign and the sign panel itself shall not exceed fifteen feet (15') in length, four feet (4') in height, and two feet (2) in thickness; provided, such pylon sign may not block the visibility of the Wal-Mart store located on the Shopping Center Parcel.

3.2 Set Back. The Building or any other structure (except for the drive-through lanes, if any, shown on the approved plans) constructed on the Outparcel shall comply with any set back, side yard, or front setback requirements of the City of Birmingham, Alabama on the Map of Book Highland Plaza Resurvey, appearing of record in the Office of the Judge of Probate of Shelby County, Alabama, Map Book 18, Page 99, and applicable zoning laws.

3.3 Plans. So long as WM Tenant shall be a tenant at the Shopping Center Parcel, all plans for the Building and improvements for the Outparcel (including site layout, exterior appearance and parking) shall be subject to the prior written consent of WM Tenant and Developers; provided that if WM Tenant consents to such plans, Developers shall be deemed to have consented to the plans for such Building and improvements. WM Tenant's consent and

Developers' consent shall be deemed given to any plans submitted to WM Tenant and Developers, if WM Tenant and Developers shall not object to the plans within ten (10) days of receipt of such plans.

3.4 Compliance with Covenants and Resolution of Record. Notwithstanding any provision in this Agreement to the contrary, the Occupant covenants and agrees that in addition to the restrictions and covenants set forth in this Agreement, the use, operation and construction of the Outparcel and the Building or other improvements constructed on the Outparcel shall be in full compliance with any and all applicable laws, regulations, codes, ordinances and easements, declarations, agreements, covenants, restrictions and conditions of record, including without limitation, those instruments listed on attached Exhibit "C".

ARTICLE 4 **PARKING AND ACCESS**

4.1 Parking and Access. The Occupant of the Outparcel shall keep and maintain the entire area outside the Building on the Outparcel only as and for landscaping, access drives, parking areas and sidewalks used only in connection with the use permitted under Section 2.1 above. The Occupant of the Outparcel shall continuously provide and maintain parking on the Outparcel equal to one of the following: (a) fifteen (15) parking spaces per each one thousand (1,000) square feet of gross building area for any restaurant or entertainment use in excess of five thousand (5,000) square feet, (the same ratio shall be utilized for a McDonald's restaurant, notwithstanding a building footprint of less than five thousand (5,000) square feet) or (b) ten (10) spaces for every one thousand (1,000) square feet of building area used for any restaurant or entertainment use less than five thousand (5,000) square feet (subject to the exception above) or (c) five (5) parking spaces per each one thousand (1,000) square feet of gross building area.

4.2 Curb Cuts. There shall be no curb cuts between the Outparcel and Brook Highland Parkway or U.S. Highway 280. The curb cuts or access points between the Outparcel and any adjoining roadway shall generally be of such size and at such location as is shown on Sheet C4B3-R1 of the civil plans prepared by Sain and Associates dated September 30, 1993; any other modification or change to the number, size or location of curb cuts or access points between the Outparcel and any adjoining roadway as shown on such sheet C4B3-R1 shall require that the prior written consent of Developers; provided, however, the location of any particular curb cut on the Outparcel may be relocated in connection with the construction and development of vertical improvements on the Outparcel, as permitted by the City of Birmingham.

4.3 Obstructions. No Occupant of the Outparcel shall permit any fence, barricade, barrier, chain, structure or other obstruction of any kind whatsoever to be placed, kept, permitted or maintained between the Outparcel and the Shopping Center Parcel except to the extent any temporary obstruction shall be reasonably required:

- A. In connection with the construction, expansion, repair or replacement of any of the improvements from time to time located on the Outparcel; or
- B. Once in each calendar year for the purpose of blocking off access to the Outparcel in order to avoid the possibility of dedicating the same for public use or creating prescriptive rights therein, such barriers to be temporarily erected for such purpose.

Except as specifically set forth in this Section 4.3, the Occupant shall not take any action to prohibit, impede or discourage the free and uninterrupted flow of proper and safe pedestrian and vehicular traffic to or from the Outparcel and the Shopping Center Parcel or to or from any adjoining public right-of-way and the Outparcel on the Shopping Center Parcel as approved by appropriate governmental authority, or to create a traffic hazard or congestion of, or on any adjoining or nearby public right-of-way, or access thereto or therefrom.

ARTICLE 5

MAINTENANCE, REPAIR AND INSURANCE

5.1 Maintenance and Repair. The Occupant of the Outparcel shall keep or cause to be kept the Building and other improvements at any time located on the Outparcel in good order, condition and repair at all times. In addition, the Occupant shall maintain and keep in a first-class, clean and orderly condition, consistent with standards of maintenance of the Shopping Center Parcel, the Building, improvements, grass, landscaping, parking areas and driveways located on the Outparcel. In the event of damage or destruction of the Building or other improvements on the Outparcel, the Occupant shall either promptly repair and restore the Building(s) and improvements to the same condition as the same were in immediately prior to such damages or destruction, or clear the Outparcel of all debris and hazardous conditions and shall leave, keep and maintain the same in a grassed, landscaped, clean, safe, sightly and attractive condition. The Occupant shall cause all of the unimproved portions of the Outparcel to be grassed and kept in a sightly condition at all times, until such time as the unimproved portions shall be improved.

5.2 Insurance. The Occupant of each Outparcel shall at all times, at its sole cost and expense, continuously maintain comprehensive general liability insurance, endorsed to cover personal injury and contractual liability, covering the Buildings, parking and other areas of the Outparcel. The limits of which insurance shall never be less than:

- A. \$1,000,000 for death of, or bodily injury to, or personal injury to one or more persons resulting from one occurrence; and
- B. Property damage to the limit of not less than \$500,000 for each occurrence.

The Occupant shall deliver to Developers a copy of such policies or certificates of such insurance evidencing that such insurance in such levels of coverage is in full force and effect. The insurance policy or policies shall provide that none of the terms or conditions of such

insurance policy or policies contained therein be modified or canceled by the insurer without at least thirty (30) days prior written notice to the Developers. Such insurance policy or policies shall name Developers as an additional insured.

ARTICLE 6

DEFAULT AND REMEDIES

6.1 Default and Remedies. In the event that any obligation of the Occupant of the Outparcel is not promptly complied with as and when required hereby and the Occupant fails to cure or correct such default in the performance of such obligation within fifteen (15) days after Developers delivers written notice to the Occupant of such failure to perform such obligation, then without limiting any other legal or equitable right or remedy which Developers may have for such default, Developers shall have the right to exercise all of the following remedies:

- a. Injunction.
- b. Specific performance.
- c. Damages.
- d. The right to perform any obligation of the Occupant without being obligated to do so whether or not Developers shall have previously performed any such obligation of the Occupant. In the event that Developers performs such obligation, then the Occupant covenants to pay Developers immediately upon demand and without any set-off, the moneys expended by Developers therefor together with Developers' reasonable administrative expenses in connection therewith, and attorney's fees, all together with interest thereon at the highest rate then permitted by Alabama law, and if at such time there is no maximum rate of interest for the amount involved, then at the rate equal to 15% per annum. The performance by Developers of any obligation of the Occupant on any one or more occasions shall not be construed to be an assumption by Developers of any duty to perform any such obligation in the future.
- e. Reasonable attorneys' fees in attempting to enforce such obligation or obligations.

It is understood, however, that in the event the Occupant fails to comply with any obligation hereunder, which failure results solely from an Unavoidable Delay (as hereinafter defined), then the Occupant's obligation to perform such duty shall be extended for a time equal to that during which it is prevented from complying with such obligation solely as a result of such Unavoidable Delay, provided and upon the further condition that the Occupant gives to Developers notice of the event relating to said Unavoidable Delay within ten (10) days after the commencement thereof. The foregoing remedies shall be in addition to any other available remedies as provided

by applicable laws, regulations, codes, ordinances, and easements, covenants, resolutions and conditions of record.

ARTICLE 7

COVENANTS RUNNING WITH THE LAND

7.1 Covenants Running with the Land. The rights, duties, responsibilities and covenants herein contained shall be covenants running with the land, and shall inure to the benefit of, and be binding upon Developers, Partnership and their successors and assigns and all Occupants of all or any portion of the Outparcel, and their respective heirs, successors and assigns, and all persons claiming under them. In the event that all or any portion of the Shopping Center Parcel is sold, transferred or conveyed, the successor to the rights, duties and obligations of Developers under this Agreement shall be deemed to be the successor fee owner of fifty percent (50%) or more of the total land area of the Shopping Center Parcel.

ARTICLE 8

MODIFICATIONS

8.1 Modifications. The provisions of this Agreement may be abrogated, modified, rescinded, terminated or amended in whole or in part only with the consent of Developers and the Partnership (so long as the Partnership holds title to the Outparcel) or as to the Outparcel with the consent of Developers and the Occupant of the Outparcel in writing, executed and delivered with the necessary formalities of a deed by the proper parties, and duly recorded in the appropriate public records. This Agreement may not otherwise be abrogated, modified, rescinded, terminated or amended in whole or in part. Notwithstanding the foregoing, Developers reserves the right, in its sole discretion to waive or modify the whole or any part of Articles 2 and 3 hereof, so as to remove, or reduce the severity of, any restrictions contained herein, without requiring the consent or approval of the Occupant or any other person or party.

ARTICLE 9

MISCELLANEOUS PROVISIONS

9.1 Common Dues, Fees, Assessments or Other Costs. The Occupant of the Outparcel shall be responsible for and shall pay as and when due, its pro rata share of any dues, fees, assessments or other costs imposed pursuant to the Declaration of Protective Covenants which relate to the Watershed Property and maintenance thereof, as set out by instrument recorded in the Office of the Judge of Probate of Shelby County, Alabama in Real 194, page 54, or by the Brook Highland Common Property Agreement of Covenants, Conditions and Restrictions, as set out by instrument recorded in the Office of the Judge of Probate of Shelby County, Alabama in Real 307, Page 954.

9.2 Severability. Any provision of this Agreement or any section, sentence, clause, phrase or wording appearing herein which shall prove to be invalid, void or illegal for any reason shall in no way affect, impair or invalidate any other provision hereof, and the remaining

provisions, paragraphs, sentences, clauses, phrases and words hereof shall nevertheless remain in full force and effect. If in this Agreement there is any restriction, covenant or agreement which is effective beyond the period permitted by law, it shall be effective only for such period or time as shall be lawful and shall then expire, all without affecting, impairing or invalidating any such as may be lawfully effective thereafter.

9.3 Time of Essence. Time is of the essence with respect to the obligations of the parties and the Occupant to perform each of their respective covenants and agreements as herein set forth.

9.4 Construction. It is agreed in the construction and interpretation of the provisions hereof the rule of construction that a document is to be construed most strictly against the party who prepared the same shall not applied; it being agreed that both parties hereto have participated in the preparation of the final form of this instrument.

9.5 Headings. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

9.6 Notice. All notices or communications herein required or which either party desires to give to the other shall be in writing and sent by United States Registered or Certified Mail, postage prepaid, return receipt requested, and shall be mailed as follows, or to such other address as may be designed by similar notice from time to time in writing:

If to Developers: Developers Diversified of Alabama, Inc.
34555 Chagrin Boulevard
Moreland Hills, Ohio 44022
Attention: General Counsel

If to Partnership: Brook Highland Limited Partnership
Suite 303
1900 International Park Drive
Birmingham, Alabama 35243
Attention: Alex D. Baker

If to Occupant: Addressed to the Outparcel owned or leased

If to Wal-Mart: Wal-Mart Stores, Inc.
The Mitchell Building
701 S. Walton Blvd.
Bentonville, Arkansas 72716

Such notice shall be deemed to have been received within three (3) business days after such mailing. The address for giving of such notice may be changed by similar notice.

9.7 Gender and Number. As written herein, one gender shall be construed to mean or include any and all other applicable genders, the singular number shall be construed to mean the plural, and the plural number shall be construed to mean the singular number, in all instances where the context of this Agreement so admits or requires.

9.8 Limitation. By imposition of the covenants, restrictions, and agreements herein, there is no express or implied obligation on Developers to, in any manner, restrict the use of the Shopping Center.

9.9 Delay. For purposes of this Agreement, "Unavoidable Delay" shall mean delays caused by the following reasons: (i) governmental statutes, ordinances or edicts; (ii) governmental rationing or allocation of materials; (iii) unusually severe weather conditions; strikes, blackouts, unavoidable casualty and disasters, delays in transportation, shortage of labor or materials, or any other cause beyond the reasonable control of the Occupant.

9.10 Parties Bound. The provisions hereof shall inure to the benefit of, and shall be binding on, Developers and its successors and assigns in the interest in the Shopping Center Parcel, and shall inure to the benefit of, and be binding upon, the Partnership, the Occupant(s) and their successors and assigns in and to the Outparcel.

9.11 Consents. In any instance herein where the consent of a party is required, such consent shall not be unreasonably withheld, delayed or conditioned.

9.12 Entire Agreement. All Exhibits referred to herein and attached hereto are incorporated herein.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be signed ^{as of} this 21st day of September, 1995, to be effective as of the day and year first above written.

PARTNERSHIP:

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

STATE OF Alabama

COUNTY OF Jefferson

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

Given under my hand and official seal of office this 21st day of September, 1995.

Jennifer Carlson
Notary Public

MY COMMISSION EXPIRES MARCH 12, 1997

My Commission Expires: _____

[Notary Seal]

DEVELOPERS:

DEVELOPERS DIVERSIFIED OF ALABAMA,
INC., an Alabama corporation

By: Joan Allgood
Joan Allgood, Vice President

[CORPORATE SEAL]

STATE OF OHIO

COUNTY OF Cuyahoga

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 22nd
day of September, 1995.

Peggy L. Jenkins
Notary Public

My Commission Expires:

[Notary Seal]

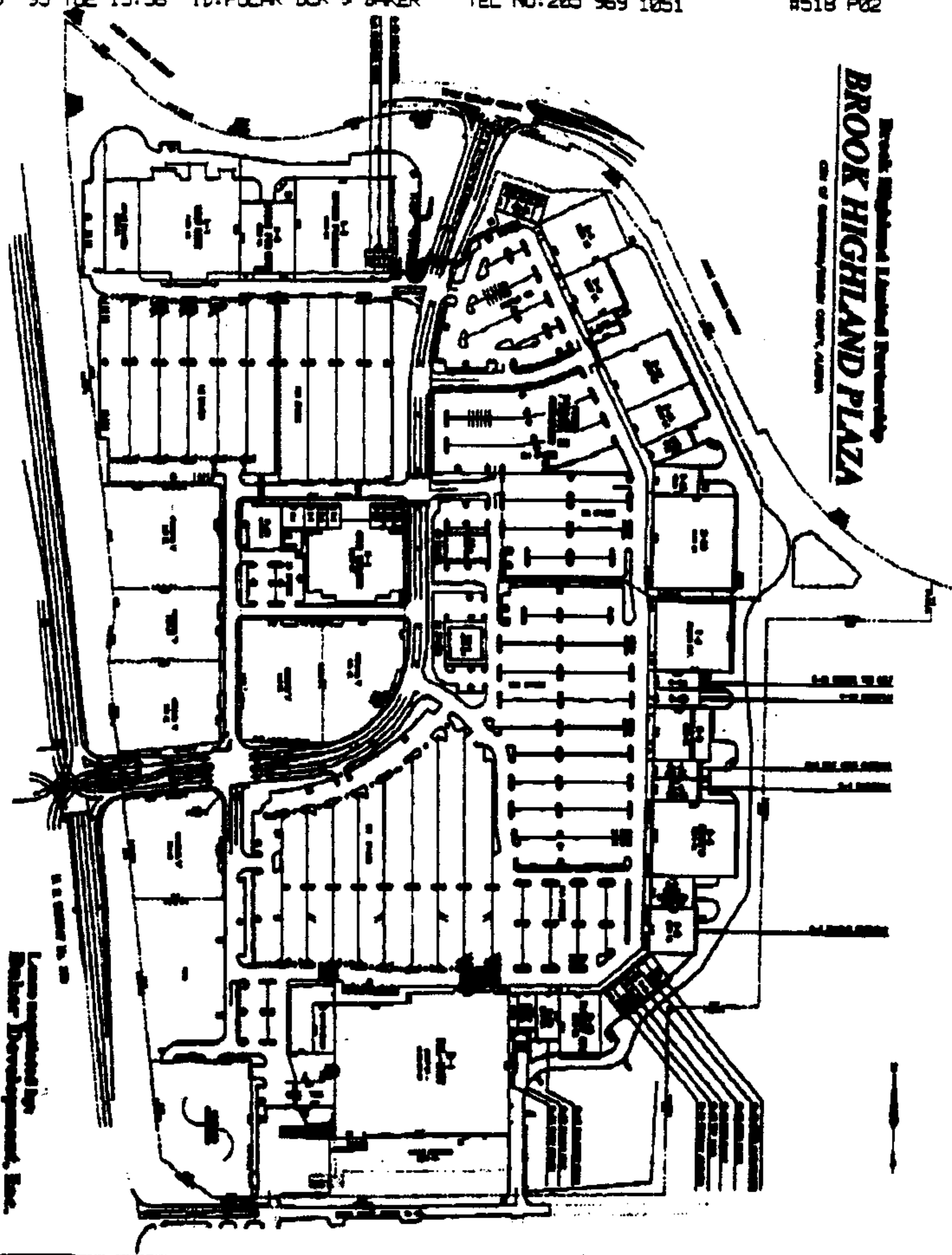
PEGGY L. JENKINS, Notary Public
State of Ohio
My Commission Expires Nov. 9, 1999

Phase I

EXHIBIT " A "

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

BROOK HIGHLAND PLAZA
City of Birmingham, Alabama



Landscaped by
Baker Development, Inc.

Exhibit A-1

BROOK HIGHLAND PLAZA	
City of Birmingham, Alabama	
Project Name	BROOK HIGHLAND PLAZA
Project Number	100-10-00000
Project Date	10/10/1994
Project Status	Completed
Project Location	100-10-00000
Project Owner	City of Birmingham
Project Manager	City of Birmingham
Project Engineer	City of Birmingham
Project Architect	City of Birmingham
Project Contractor	City of Birmingham
Project Subcontractor	City of Birmingham
Project Consultant	City of Birmingham
Project Inspector	City of Birmingham
Project Surveyor	City of Birmingham
Project Planner	City of Birmingham
Project Designer	City of Birmingham
Project Draftsman	City of Birmingham
Project Estimator	City of Birmingham
Project Accountant	City of Birmingham
Project Administrator	City of Birmingham
Project Coordinator	City of Birmingham
Project Assistant	City of Birmingham
Project Secretary	City of Birmingham
Project Receptionist	City of Birmingham
Project Mail Room	City of Birmingham
Project Storage Room	City of Birmingham
Project Office	City of Birmingham
Project Conference Room	City of Birmingham
Project Meeting Room	City of Birmingham
Project Training Room	City of Birmingham
Project Seminar Room	City of Birmingham
Project Reception Area	City of Birmingham
Project Entrance	City of Birmingham
Project Exit	City of Birmingham
Project Elevator	City of Birmingham
Project Staircase	City of Birmingham
Project Corridor	City of Birmingham
Project Lobby	City of Birmingham
Project Hallway	City of Birmingham
Project Restroom	City of Birmingham
Project Kitchen	City of Birmingham
Project Dining Room	City of Birmingham
Project Cafeteria	City of Birmingham
Project Conference Room	City of Birmingham
Project Meeting Room	City of Birmingham
Project Training Room	City of Birmingham
Project Seminar Room	City of Birmingham
Project Reception Area	City of Birmingham
Project Entrance	City of Birmingham
Project Exit	City of Birmingham
Project Elevator	City of Birmingham
Project Staircase	City of Birmingham
Project Corridor	City of Birmingham
Project Lobby	City of Birmingham
Project Hallway	City of Birmingham
Project Restroom	City of Birmingham
Project Kitchen	City of Birmingham
Project Dining Room	City of Birmingham
Project Cafeteria	City of Birmingham

Exhibit "B"

**SCHEDULE OF LEASES
BROOK HIGHLAND PLAZA
BIRMINGHAM, ALABAMA**

Lease between Brook Highland Limited Partnership and the Dive Site, Inc., dated March 7, 1994; doing business as The Dive Site.

Lease between Brook Highland Limited Partnership and Fast Frame, Inc., dated July 19, 1993; doing business as Moore Frames.

Lease between Brook Highland Limited Partnership and Winn-Dixie Montgomery, Inc., dated September 20, 1993; with Corporate Guaranty given by Winn-Dixie Stores, Inc., dated September 24, 1993; doing business as Winn-Dixie.

Lease between Brook Highland Limited Partnership and Fashion Bug #2861, Inc., dated August 25, 1993; doing business as Fashion Bug.

Lease between Brook Highland Limited Partnership and First Place of Birmingham, Inc., dated September 1, 1993; doing business as First Place.

Lease between Brook Highland Partnership and GSR Enterprises, Inc., dated July 16, 1993; doing business as Fantastic Sam's.

Lease between Brook Highland Limited Partnership and Only One Dollar Inc., dated July 16, 1993; doing business as Dollar Tree.

Lease between Brook Highland Limited Partnership and REM Cleaners, Inc., dated July 7, 1993; with Individual Guaranty of Lease given by Rick E. Massing, II, dated July 7, 1993; doing business as Brook Highland Cleaners.

Lease between Brook Highland Limited Partnership and Sally Beauty Company, Inc., dated July 22, 1993; doing business as Sally Beauty Company.

Lease between Brook Highland Limited Partnership and Books-A-Million, Inc., dated October 13, 1993; doing business as Books-A-Million.

Lease between Brook Highland Limited Partnership and Lerner Shoes, Inc., dated August 6, 1993; doing business as Rack Room.

Lease between Brook Highland Limited Partnership and Wal-Mart Stores, Inc., dated June 29, 1993; doing business as Wal-Mart.

Lease between Brook Highland Limited Partnership and R.C. Cobb, Inc., dated July 28, 1993; doing business as Cobb Theaters.

Lease between Brook Highland Limited Partnership and Big B, Inc., dated September 1, 1993; doing business as Drugs For Less/Big B.

Lease between Brook Highland Limited Partnership and Rhodes, Inc., dated July 7, 1993; doing business as Marks Fitzgerald

Lease between Brook Highland Limited Partnership and Brown Group Retail, Inc., dated September 24, 1993; doing business as Famous Footwear.

Lease between Brook Highland Limited Partnership and Goody's Family Clothing Inc., dated August 9, 1993; doing business as Goody's Family Clothing Store.

Lease between Brook Highland Limited Partnership and Friedman's Inc., dated June 3, 1994; doing business as Friedman's Jewelers.

Lease between Brook Highland Limited Partnership and United Retail Incorporated, dated September 22, 1993; doing business as Sizes Unlimited.

Lease between Brook Highland Limited Partnership and Tony Bui, dated December 20, 1993; doing business as Top Nails.

Lease between Brook Highland Limited Partnership and Steve Tucker, dated October 26, 1994; doing business as Schlotzky's Deli.

Lease between Brook Highland Limited Partnership and Alabama Cellular Communications, Inc., dated November 15, 1994; doing business as Alabama Cellular.

Lease between Brook Highland Limited Partnership and Anthony J. Cooley, dated November 4, 1994; doing business as Davis Hotdogs.

Lease between Brook Highland Limited Partnership and Lyda Sports, Inc., dated August 17, 1994; with Individual Guaranty of Lease given by Larry L. Lyda, dated August 17, 1994; and Individual Guaranty of Lease given by Larry L. Lyda, Jr., dated August 17, 1994; doing business as Special Tee Golf.

Lease between Brook Highland Limited Partnership and Dr. Sheila Estes and Dr. Vance Estes, dated August 19, 1994; doing business as Estes Chiropractic.

Lease between Brook Highland Limited Partnership and Russell, Russell & Associates, Inc., dated October 24, 1994; with Individual Guaranty of Lease given by C. Douglas Russell, dated October 24, 1994; doing business as General Nutrition Center.

Lease between Brook Highland Limited Partnership and City Paper Company, dated June 29, 1994; doing business as Paper Works Outlet.

Lease between Brook Highland Limited Partnership and S&K Famous Brands, Inc., dated September 16, 1994; doing business as S&K Menswear.

Lease between Brook Highland Limited Partnership and Ann Macias and Iasmie Perez, dated March 21, 1994; doing business as Mexicali.

Lease between Brook Highland Limited Partnership and Wings of Inverness, Inc., dated May 6, 1994; doing business as Wings Sports Grille.

Lease between Brook Highland Limited Partnership and Michael Wenning and Barbara Wenning, dated December 15, 1994, doing business as The Bike Shop.

EXHIBIT "C"
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 the 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 the Probate Office.
4. Brook Highland Common Property Declaration of Covenants, Conditions and Restrictions recorded in Real 307, page 950, in the 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 Employee 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 the 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 the 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 the Probate Office.
9. Permit to South Central Bell Telephone company recorded in Deed 349, page 865, in the Probate Office.
10. Restrictions and conditions as set out in Statutory Warranty Deed, recorded in Real 308, page 1; Real 220, page 339, and as Instrument #1992-14567 in the Probate Office.
11. Sign Easement Agreement dated October 13, 1993, by Brook Highland Limited Partnership in favor of AmSouth Bank N.A. as Ancillary Trustee for NationsBank of North Carolina, N.A., as Trustee for the Public Employees System of Ohio (AmSouth/NationsBank) recorded as Instrument #1993-32519 in the Probate Office.

12. Sewer Easement Agreement dated October 12, 1993, by Brook Highland Limited Partnership and AmSouth/NationsBank, recorded as Instrument #1993-32518 in the Probate Office.
13. Declaration of Sign Easement dated October 13, 1993, by Brook Highland Limited Partnership, recorded as Instrument #1993-32516, in the Probate Office.
14. Easement in instrument from Brook Highland Limited Partnership to The Water Works and Sewer Board of the City of Birmingham dated October 14, 1993, recorded as Instrument #1993-32517, in the Probate Office.
15. 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 the Probate Office.
16. Required Approvals by Architectural Review Committee recorded as Instrument #1993-32513, in the Probate Office.
17. Required Approvals by Architectural Review Committee recorded as Instrument #1993-32514, in the Probate Office.
18. Short Form Lease by and between Brook Highland Limited Partnership and Winn-Dixie Montgomery, Inc. dated September 20, 1993, as Instrument #1993-32898, in the Probate Office.
19. 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.
20. Easement Agreement between AmSouth Bank/NationsBank and Brook Highland Limited Partnership dated October 12, 1993, as Instrument #1993-32515, 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 the 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 the Probate Office.
23. Easement Agreement dated December 30, 1994, by and between Brook Highland Limited Partnership and Developers Diversified of Alabama, Inc.
24. 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 the Probate Office.

Inst # 1995-27238