

AGREEMENT RE ACCESS EASEMENT

13th THIS AGREEMENT RE ACCESS EASEMENT ("Agreement") is made and entered into this day of November, 1998, by and between BROOK HIGHLAND LIMITED PARTNERSHIP, a Georgia limited partnership ("Brook Highland"), and IHOP REALTY CORP., a Delaware corporation ("IHOP"), with reference to and based upon the following:

RECITALS:

WHEREAS, Brook Highland is the owner of that certain property located in the City of Birmingham, County of Shelby, State of Alabama, as more particularly described in **Exhibit A** attached hereto and by this reference incorporated herein ("Brook Highland Property");

WHEREAS, IHOP is the owner of that certain property located in the City of Birmingham, County of Shelby, State of Alabama, as more particularly described in **Exhibit B** attached hereto and by this reference incorporated herein ("IHOP Property");

WHEREAS, the Brook Highland Property and the IHOP Property abut various portions of an access easement and related roadway ("Access Easement" or "Roadway") serving as the principal means of ingress and egress to and from the Brook Highland Property, IHOP Property, and U.S. Highway No. 280, as more particularly shown on that certain Map and Survey of Brook Highland Plaza Resurvey, recorded in Map Book 18, Page 99, in the Office of the Judge of Probate of Shelby County, Alabama ("Map");

WHEREAS, the Access Easement shown on the Map is also the subject, among other easements, of that certain Easement Agreement dated December 30, 1994, by and between Brook Highland and Developers Diversified of Alabama, Inc., an Alabama corporation ("Developers"), recorded in the Office of the Judge of Probate of Shelby County, Alabama, as Instrument No. 1995-27233 ("Easement Agreement");

WHEREAS, since the Access Easement and related Roadway are the only means of access to the Brook Highland Property and the IHOP Property from U.S. Highway No. 280, the parties hereto are desirous of entering into an agreement to provide that neither of them, without the prior written consent of the other, shall take any action, alone or in conjunction with any other party, that would have the effect of relocating or eliminating, or permitting the relocation or elimination of, the Access Easement and related Roadway, as hereinafter provided.

NOW, THEREFORE, for and in consideration of the above premises, Ten Dollars (\$10) in hand paid by each party to the other, the covenants contained herein, and other valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

Birmingham, AL

11/23/1998-46413
08:00 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE

005 CRH 19.00

Agmt-Acc.1 (11/06/98)

Inst # 1998-46413

1. Brook Highland, for itself and its successors and assigns, and IHOP, for itself and its successors and assigns, hereby agree that neither of them will take any action, alone or in conjunction with any other party, that would have the effect of relocating or eliminating, or permitting the relocation or elimination of, the Access Easement and related Roadway, including, without limitation, approving, entering into, or joining in the execution of, any amendment or modification of the Map or Easement Agreement, or granting any approvals or consent under the terms of the Easement Agreement.

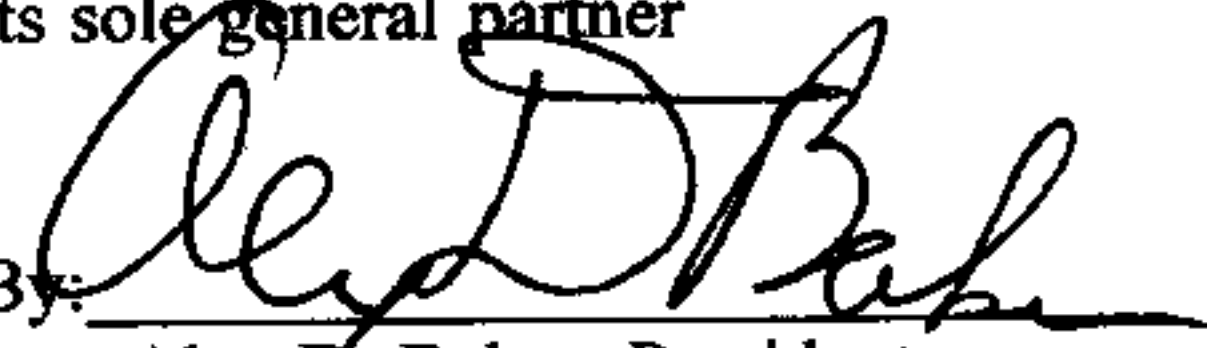
2. The provisions of this Agreement shall run with the land with respect to both the benefits and burdens created herein and affecting the Brook Highland Property and the IHOP Property, and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement, and all the terms, covenants, conditions contained herein, shall be enforceable as equitable servitudes, and constitute covenants running with the land under applicable law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

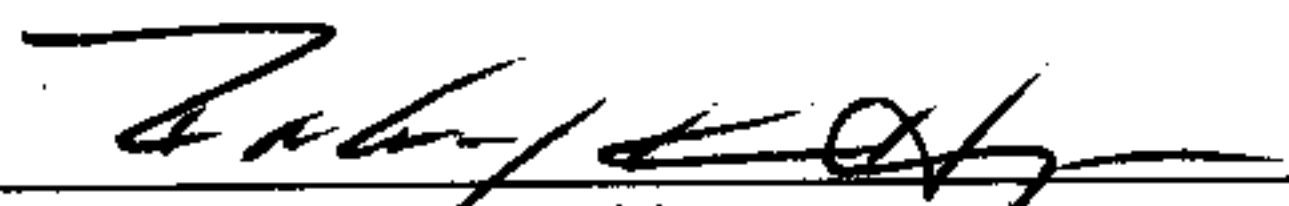
BROOK HIGHLAND LIMITED PARTNERSHIP,
a Georgia limited partnership

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, President

IHOP REALTY CORP.,
a Delaware corporation

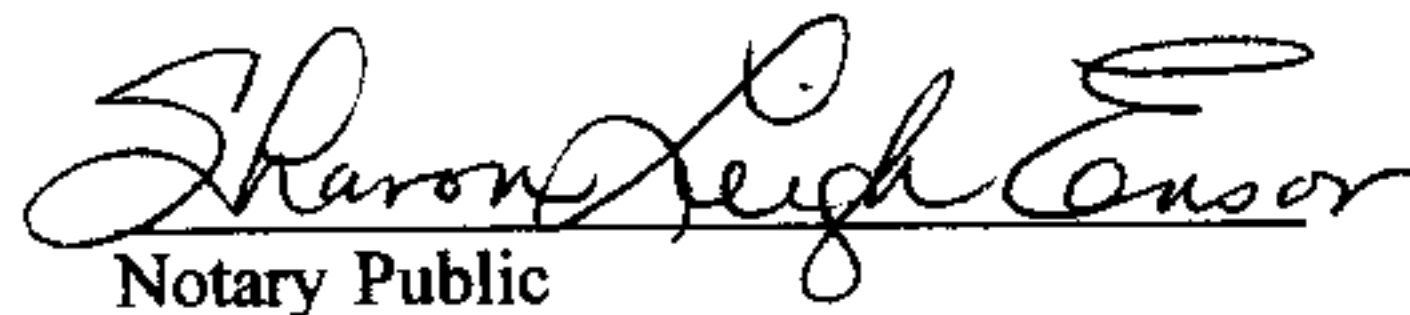
By: 
Richard K. Herzer, President

JS

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 12th day of November, 1998.


Notary Public

My commission expires: 01/02/01

[Notary Seal]

State of California)
) S.S.
County of Los Angeles)

On Nov. 13, 1998, before me, Cathy Celano, a Notary Public in and for said County and State, personally appeared Richard K. Herzer, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature 



(Seal)

Exhibit A

Legal Description of Brook Highland Property

Lot 1B and Lot 1E, according to the Map and Survey of Brook Highland Plaza Resurvey, recorded in Map Book 18, Page 99, in the Office of the Judge of Probate of Shelby County, Alabama.

Exhibit B

Legal Description of IHOP Property

That certain real property situate and being in the City of Birmingham, County of Shelby, State of Alabama, described as follows:

Lot 2B, according to the Map and Survey of Brook Highland Plaza Resurvey, recorded in Map Book 18, Page 99, in the Office of the Judge of Probate of Shelby County, Alabama.

Birmingham, AL

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