

STATE OF ALABAMA )

COUNTY OF SHELBY )

Inst # 1999-23930

06/08/1999-23930  
08:33 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
006 HNS 21.00

### CONSENT AND AGREEMENT

This Consent and Agreement (this "Agreement") dated as of May 27, 1999, is hereby entered into by and between **WAL-MART REAL ESTATE BUSINESS TRUST**, a Delaware business trust of 702 S.W. 8<sup>th</sup> Street, Bentonville, Arkansas 72716, with notices sent to 2001 S.E. 10<sup>th</sup> Street, Bentonville, Arkansas 72712-6489 ("Wal-Mart"), **DEVELOPERS DIVERSIFIED OF ALABAMA, INC.**, an Alabama corporation of 3300 Enterprise Parkway, Beachwood, Ohio 44122, with notices sent to this address ("Developers"), and **LARRY R. HOUSE** of Seven Montatgel Way, Shoal Creek, Alabama, with notices sent to this address ("House"):

### WITNESSETH:

**WHEREAS**, pursuant to that certain Declaration of Easements and Restrictive Covenants (Brook Highland Development - 1.35 Acre Out Parcel) dated August 29, 1990, established 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 and recorded at Real 307, Page 985 in the Office of the Judge of Probate of Shelby County, Alabama, certain restrictive covenants (the "Covenants") were placed on property known as Lot 1F as shown on that certain map entitled "Brook Highland Plaza Resurvey" recorded in Map Book 18, Page 99, aforesaid records (the "Property").

**WHEREAS**, pursuant to that certain Restrictions Agreement dated December 30, 1994 by and between Brook Highland Limited Partnership and Developers Diversified of Alabama, Inc. and recorded at Instrument No. 1995-27238, aforesaid records (the "Additional Covenants") certain restrictive covenants were placed on the Property.

**WHEREAS**, Wal-Mart Stores, Inc. is occupying and conducting business from its demised premises in the Shopping Center Parcel as more particularly defined in the Additional Covenants pursuant to a certain lease dated June 29, 1999, a memorandum of which is recorded at Instrument No. 1994-20696.

**WHEREAS**, House intends to sublease the Property to Early Bird Enterprises, LLC, an Alabama limited liability company ("Early Bird") which entity will conduct at the Property an Early Bird business, which business specializes in the buying, selling, bartering, exchanging, trading and otherwise dealing generally in all classes of merchandise, goods, wares, supplies and articles of trade at wholesale and retail, including the discounted sale of luxury goods found in such stores as Nieman Marcus, Macy's and Rich's (the "Early Bird Store").

**WHEREAS**, the use of the Property as an Early Bird Store violates certain restrictions found in Paragraph 7 of the Covenants and Section 2.3 of the Additional Covenants.

**WHEREAS**, pursuant to the Covenants, the owner of the Wal-Mart Parcel (as defined in the Covenants) which is Developers has the power and authority to consent to a violation of the Covenants, and pursuant to the Additional Covenants, Wal-Mart has the power and authority to consent to any violation of the Wal-Mart Restrictions as set forth in the Additional Covenants.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, the parties hereto mutually agree as follows:

1. By executing below, Developers hereby acknowledges and consents to the use of the Property by House or his heirs, representatives, lessees, successors and assigns, as an Early Bird Store.
2. By executing below, Wal-Mart hereby acknowledges and consents to the use of the Property by House or his heirs, representatives, lessees, successors and assigns, as an Early Bird Store.
3. Developers' and Wal-Mart's consent is only valid so long as the Property is used as an Early Bird Store and any deviation of said use by House or his heirs, representatives, lessees, successors and assigns shall be prohibited by Developers and Wal-Mart unless additional consent and agreement is obtained.
4. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
5. This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which taken together shall constitute but one and the same instrument.

THE REMAINDER OF THIS PAGE  
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**IN WITNESS WHEREOF**, each of the parties hereto has caused this Agreement to be duly executed and delivered in its name and on its behalf, all as of the day and year first above written.

**WAL-MART REAL ESTATE BUSINESS TRUST**, a Delaware business trust

By: \_\_\_\_\_

Its: \_\_\_\_\_

*Director of Realty Management*

*Oh  
WST*

**DEVELOPERS DIVERSIFIED OF ALABAMA**, an Alabama corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

**LARRY R. HOUSE**

STATE OF ARKANSAS )

COUNTY OF Benton )

I, Michelle L. Rhoden, a notary public in and for said county in said state, hereby certify that Kimberly K. Styrns, whose name as Director of Realty of Wal-Mart Real Estate Business Trust, a Delaware business trust, 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 such instrument, he, 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 31<sup>st</sup> day of May, 1999.

[ Notarial Seal ]

Michelle L. Rhoden

Notary Public

My Commission Expires: 3-14-2007

Michelle L. Rhoden, Notary Public  
Benton County, Arkansas  
My Commission Expires 3/14/2007

**IN WITNESS WHEREOF**, each of the parties hereto has caused this Agreement to be duly executed and delivered in its name and on its behalf, all as of the day and year first above written.

**WAL-MART REAL ESTATE BUSINESS TRUST**, a Delaware business trust

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**DEVELOPERS DIVERSIFIED OF ALABAMA**, an Alabama corporation

By: *Paul Allegood*  
Its: *Vice President*

  
**LARRY R. HOUSE**



STATE OF OHIO )

COUNTY OF CUYAHOGA )

I, Mark E. Florak, a notary public in and for said county in 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 such instrument, he, 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 27<sup>th</sup> day of May, 1999.

Mark E. Florak  
Notary Public  
My Commission Expires: \_\_\_\_\_

[ Notarial Seal ]



MARK E. FLORAK, Attorney At Law  
NOTARY PUBLIC, STATE OF OHIO  
My commission has no expiration date.  
Section 147.03 R.C.

STATE OF ALABAMA )

COUNTY OF SHELBY )

I, the undersigned, a notary public in and for said County, in said State, hereby certify that **Larry R. House** whose name is signed to the forgoing conveyance, and who is known to me, acknowledged to me on this day that, being informed of the contents of the conveyance, he executed the same voluntarily on the date the same bears date.

Given under my hand and official seal this 2 day of <sup>June</sup>~~May~~, 1999.

*Stephen J. Singleton*  
Notary Public  
My Commission Expires: 10/19/99

[Notarial Seal]

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