


DRAWN OUTSIDE OF THE STATE
OF ALABAMA AND WHEN RECORDED,
RETURN TO:

Kimberly Brown Blacklow, Esq.
Cleary Gottlieb Steen & Hamilton
1 Liberty Plaza
New York, NY 10006


20030318000163400 Pg 1/23 50,589.50
Shelby Cnty Judge of Probate, AL
03/18/2003 13:38:00 FILED/CERTIFIED

THIS INSTRUMENT IS ALSO A FINANCING STATEMENT FILED AS A FIXTURE FILING, PURSUANT TO THE CODE OF ALABAMA (1975) SECTION 7-9A-502, AND IS ALSO TO BE INDEXED IN THE INDEX OF FINANCING STATEMENTS UNDER THE NAMES OF DEBTOR, AS DEBTOR, AND LENDER, AS SECURED PARTY WITH ADDRESSES AS SHOWN IN THE FIRST PARAGRAPH OF THE INSTRUMENT.

STATE OF ALABAMA

COUNTY OF SHELBY

MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT, AND
FIXTURE FILING

This Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing (as modified or replaced from time to time, this “Security Instrument”) is made, and is executed as of March 11, 2003, by GS II Brook Highland LLC, a Delaware limited liability company (together with its successors and permitted assigns, “Debtor”), whose address for all purposes hereunder is c/o Developers Diversified Realty Corporation, 3300 Enterprise Parkway, P.O. Box 228042, Beachwood, Ohio 44122, to and for the benefit of ARCHON FINANCIAL, L.P., a Delaware limited partnership (together with all successors and assigns, the “Lender”), whose address for all purposes hereunder is 600 East Las Colinas Boulevard, Suite 800, Irving, Texas 75039.

ARTICLE 1

DEFINITIONS

Section 1.1 Definitions. As used herein, the following terms shall have the following meanings:

“Borrowers”: Debtor, GS II Jacksonville Regional LLC, GS II Green Ridge LLC, GS II Indian Hills LLC, GS II Big Oaks LLC, GS II Oxford Commons LLC, GS II University Centre LLC, GS II Uptown Solon LLC and GS II North Pointe LLC, each a Delaware limited liability company, and their respective successors and permitted assigns, all of whom are co-borrowers under the Loan Agreement.

“Indebtedness”: The sum of all principal, interest and other amounts due from Borrowers under, or secured by, the Loan Documents, subject, in the case of each Borrower, to its “Limit of Liability” under the Note and provided that in no event will the principal amount secured by this Security Instrument at any time exceed \$150,000,000.00.

“Loan Agreement”: The Loan Agreement, dated as of the date hereof, by and among Sponsor (as defined therein), Borrowers and Lender, as lender, as the same may be replaced, amended, supplemented, extended or otherwise modified from time to time.

“Loan Documents”: The (1) Loan Agreement, (2) the Promissory Note executed by Borrowers pursuant to the Loan Agreement, in the initial, aggregate principal amount of \$123,500,000 (which principal amount may be increased to \$150,000,000) having a final maturity date of March 1, 2008 (as the same may be amended, supplemented, modified, divided into multiple notes or replaced and in effect from time to time, the **“Note”**), (3) this Security Instrument and the other mortgages, deeds of trust and deeds to secure debt executed by the other Borrowers pursuant to the Loan Agreement, (4) the Assignments of Rents and Leases executed by Debtor or any of the other Borrowers pursuant to the Loan Agreement, (5) all other documents now or hereafter executed by Debtor, or any other person or entity to evidence or secure the payment of the Indebtedness and (6) all modifications, restatements, extensions, renewals and replacements of the foregoing.

“Obligations”: All of the agreements, covenants, conditions, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Borrowers under the Loan Documents.

“Permitted Encumbrances”: shall mean the Permitted Encumbrances, as defined in the Loan Agreement.

“Property”: All of the following, or any interest therein (whether now owned or hereafter acquired or arising, or in which Lender now or hereafter has any right):

(1) the real property described in Exhibit A attached hereto and made a part hereof (the **“Land”**),

(2) all buildings, structures and other improvements, now or at any time situated, placed or constructed in, under or upon the Land (the **“Improvements”**),

(3) all materials, machinery, supplies, equipment, fixtures, apparatus and other items of personal property now owned or hereafter acquired by Debtor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, including, without limitation, any and all partitions, dynamos, window screens and shades, drapes, rugs and other floor coverings, awnings, motors, engines, boilers, furnaces, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, heating, ventilating, plumbing, lighting, communications and elevator fixtures, laundry, incinerating, air conditioning and air cooling equipment and systems, gas and electric machinery and equipment, disposals, dishwashers, furniture, refrigerators and ranges, security systems, art work, recreational and pool equipment and facilities of all kinds, water, gas, electrical, storm

and sanitary sewer facilities of all kinds, and all other utilities whether or not situated in easements together with all accessions, replacements, betterments and substitutions for any of the foregoing (the “Fixtures”),

(4) all right, title and interest of Debtor in and to all goods, accounts, general intangibles, instruments, documents, accounts receivable, chattel paper and all other personal property of any kind or character, including such items of personal property as defined in the UCC, now owned or hereafter acquired by Debtor and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Land and/or the Improvements or which may be used in or relating to the planning, development, financing or operation of the Land and/or the Improvements, including, without limitation, furniture, furnishings, equipment, machinery, money, insurance proceeds, condemnation awards, accounts, contract rights, trademarks, goodwill, chattel paper, documents, trade names, licenses and/or franchise agreements, rights of Debtor under leases of Fixtures or other personal property or equipment, inventory, all refundable, returnable or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Debtor with any governmental authorities, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs and all refunds, rebates or credits in connection with a reduction in real estate taxes and assessments against the Property as a result of tax certiorari or any applications or proceedings for reduction (the “Personalty”),

(5) all reserves, escrows or impounds, if any, required under the Loan Agreement ,

(6) all plans, specifications, shop drawings and other technical descriptions prepared for construction, repair or alteration of the Improvements, and all amendments and modifications thereof (the “Plans”),

(7) subject to the rights of Debtor hereunder and under the Loan Agreement, all leasehold estates, leases, subleases, sub-subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect and every modification, amendment or other agreement relating thereto, including every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto) which grant a possessory interest in, or the right to use or occupy, all or any part of the Property, together with all related security and other deposits (the “Leases”),

(8) all of the rents, revenues, income, proceeds, issues, profits (including all oil or gas or other mineral royalties and bonuses), security and other types of deposits, and other benefits paid or payable and to become due or payable by parties to the Leases other than Debtor for using, leasing, licensing, possessing, occupying, operating from, residing in, selling or otherwise enjoying any portion or portions of the Property (the “Rents”),

(9) all other agreements, such as construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, management agreements, service contracts, permits, licenses, certificates and entitlements in any way relating to the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Property or the sale of goods or services produced in or relating to the Property (the "Property Agreements"),

(10) all rights, privileges, titles, interests, liberties, tenements, hereditaments, rights-of-way, easements (including, without limitation, any reciprocal easement agreements), sewer rights, water, water courses, water rights and powers, air rights and development rights, licenses, permits and construction and equipment warranties, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Debtor in and to any streets, ways, alleys, passages, strips or gores of land adjoining the Land or any part thereof,

(11) all accessions, replacements, renewals, additions and substitutions for any of the foregoing and all proceeds thereof,

(12) subject to the rights of Debtor hereunder or under the Loan Agreement, all insurance policies, unearned premiums therefor and proceeds from such policies, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments or settlements made in lieu thereof, covering any of the above property now or hereafter acquired by Debtor,

(13) all mineral, riparian, littoral, water, oil and gas rights now or hereafter acquired and relating to all or any part of the Property, and

(14) all of Debtor's right, title and interest in and to any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements, Fixtures or Personalty.

"UCC": The Uniform Commercial Code of the State of Alabama as in effect from time to time.

Capitalized terms used herein but not otherwise defined shall have the respective meanings ascribed to such terms in the Loan Agreement.

ARTICLE 2

HABENDUM

Section 2.1 Grant. To secure in part the full and timely payment of the Indebtedness and the full and timely performance of the Obligations, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DEBTOR HAS MORTGAGED AND WARRANTED, GIVEN, GRANTED, BARGAINED, SOLD, TRANSFERRED, PLEDGED, ASSIGNED and CONVEYED, and does hereby MORTGAGE AND WARRANT, GIVE, GRANT, BARGAIN, SELL, TRANSFER, PLEDGE, ASSIGN and

CONVEY to the Lender, and its heirs, successors and assigns, the Property, subject, however, to the Permitted Encumbrances, TO HAVE AND TO HOLD all of the Property unto and for the use and benefit of Lender, its successors and assigns in fee simple forever, and Debtor does hereby bind itself, its heirs, successors and assigns to WARRANT AND FOREVER DEFEND the title to the Property unto the Lender and its successors and assigns.

ARTICLE 3

DEFAULT AND FORECLOSURE

Section 3.1 Remedies. If an Event of Default (as defined in the Loan Agreement) exists and is continuing, the Lender may, at the Lender's election, take such action permitted at law or in equity, without notice or demand (except as explicitly provided in the Loan Agreement), as it deems advisable to protect and enforce its rights against Debtor and to the Property, including but not limited to, any or all of the following rights, remedies and recourses each of which may be pursued concurrently or otherwise, at such time and in such order as the Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of the Lender:

(a) Acceleration. Declare the Indebtedness to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Debtor (except as provided in the Loan Agreement)), whereupon the same shall become immediately due and payable.

(b) Entry on Property. Enter the Property and take exclusive possession thereof and of all books, records and accounts relating thereto. If Debtor remains in possession of the Property after an Event of Default and after demand from Lender to turn over possession of the Property, the Lender may invoke any legal or equitable remedies to dispossess Debtor.

(c) Operation of Property. Whether or not a receiver has been appointed pursuant to Section 3.1(e) hereof, hold, lease, develop, manage, operate, control and otherwise use the Property upon such terms and conditions as the Lender may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as the Lender deems reasonably necessary or desirable), exercise all rights and powers of Debtor with respect to the Property, whether in the name of Debtor or otherwise, including without limitation the right to make, cancel, enforce or modify leases, obtain and evict tenants, and demand, sue for collect and receive all Rents, and apply all Rents and other amounts collected by the Lender in connection therewith in accordance with the provisions of Section 3.7 hereof.

(d) Foreclosure and Sale. (i) Institute proceedings for the complete foreclosure of this Security Instrument by exercise of any STATUTORY POWER OF SALE or otherwise in which case the Property may be sold for cash or credit in one or more parcels or in several interests or portions and in any order or manner.

(ii) With respect to any notices required or permitted under the UCC, Debtor agrees that ten (10) business days' prior written notice shall be deemed commercially reasonable. At any such sale by virtue of any judicial proceedings or any other legal right, remedy or recourse, including any statutory power of sale, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Debtor shall be completely and irrevocably divested of all of its right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Debtor, and against all other persons claiming or to claim the property sold or any part thereof, by, through or under Debtor. The Lender may be a purchaser at such sale and if the Lender is the highest bidder, may credit the portion of the purchase price that would be distributed to the Lender against the Indebtedness in lieu of paying cash.

(e) Receiver. Prior to, concurrently with, or subsequent to the institution of foreclosure proceedings, make application to a court of competent jurisdiction for, and (to the extent permitted by applicable law) obtain from such court as a matter of strict right and without notice to Debtor or anyone claiming under Debtor or regard to the value of the Property or the solvency or insolvency of Debtor or the adequacy of any collateral for the repayment of the Indebtedness or the interest of the Debtor therein, the appointment of a receiver or receivers of the Property, and Debtor irrevocably consents to such appointment. Any such receiver or receivers shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 3.7 hereof.

(f) Other. Exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity (including an action for specific performance of any covenant contained in the Loan Documents, or a judgment on the Note either before, during or after any proceeding to enforce this Security Instrument).

Section 3.2 Separate Sales. The Property may be sold in one or more parcels and in such manner and order as the Lender in its sole discretion, may elect, subject to applicable law; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

Section 3.3 Remedies Cumulative, Concurrent and Nonexclusive. The Lender shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent and shall be in addition to every other remedy so provided or permitted, (b) may be pursued separately, successively or concurrently against Debtor, or against the Property, or against any one or more of them, at the sole discretion of the Lender, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by the Lender in the enforcement of any rights, remedies or recourses under the Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

Section 3.4 Release of and Resort to Collateral. The Lender may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Property, any part of the Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Loan Documents or their stature as a first and prior lien and security interest in and to the Property. For payment of the Indebtedness, the Lender may resort to any other security in such order and manner as the Lender may elect.

Section 3.5 Waiver of Redemption, Notice and Marshaling of Assets. To the fullest extent permitted by law, Debtor for itself and all who may claim through or under it hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Debtor by virtue of any present or future statute of limitations or “moratorium law” or other law or judicial decision exempting the Property or any part thereof, or any part of the proceeds arising from any sale of any such property, from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, or extension of time for payment, (b) any right to a marshaling of assets or a sale in inverse order of alienation, (c) any right of redemption from sale or reinstatement, including under any order or decree of foreclosure of this Security Instrument, and (d) any and all rights it may have to require that the Property be sold as separate tracts or units in the event of foreclosure.

Section 3.6 Discontinuance of Proceedings. If the Lender shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, the Lender shall have the unqualified right to do so and, in such an event, Debtor and the Lender shall be restored to their former positions with respect to the Indebtedness, the Obligations, the Loan Documents, the Property and otherwise, and the rights, remedies, recourses and powers of the Lender shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of the Lender thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

Section 3.7 Application of Proceeds. Except as otherwise provided in the Loan Documents and unless otherwise required by applicable law, the proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Property, shall be applied by the Lender (or the receiver, if one is appointed) in the following order or in such other order as the Lender shall determine in its sole discretion:

(a) to the payment of the reasonable costs and expenses of taking possession of the Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation (1) any receiver’s fees and expenses, (2) court costs, (3) reasonable attorneys’, accountants’, appraisers’, environmental consultants’, engineers’ and other experts’ fees and expenses, (4) costs of advertisement, (5) costs of procuring title searches, title policies and similar data and assurance with respect to title, and (6) the payment of all ground rent, real estate taxes and assessments except any taxes, assessments or other charges subject to which the Property shall have been sold;

(b) to the payment of all amounts, other than the unpaid principal balance of the Note and accrued but unpaid interest, which may be due under the Loan Documents;

(c) to the payment of the Indebtedness and performance of the Obligations in such manner and order of preference as the Lender in its sole discretion may determine; and

(d) the balance, if any, to the payment of the persons legally entitled thereto.

If the Lender shall be ordered, in connection with any bankruptcy, insolvency or reorganization of Debtor, to restore or repay to or for the account of Debtor or its creditors any amount theretofore received under this Section 3.7, the amount of such restoration or repayment shall be deemed to be a part of the Indebtedness so as to place the Lender in the same position it would have been in had such amount never been received by the Lender.

Section 3.8 Occupancy After Foreclosure. The purchaser at any foreclosure sale pursuant to Section 3.1(d) shall become the legal owner of the Property. All occupants of the Property shall, at the option of such purchaser, become tenants of the purchaser at the foreclosure sale and, subject to such occupants' rights under their leases, shall deliver possession thereof immediately to the purchaser upon demand. It shall not be necessary for the purchaser at said sale to bring any action for possession of the Property other than the statutory action of forcible detainer in any court having jurisdiction over the Property.

Section 3.9 Additional Advances and Disbursements; Costs of Enforcement. If any Event of Default has occurred and is continuing, the Lender shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Debtor. All sums reasonably advanced and expenses incurred at any time by the Lender under this Section 3.9, or otherwise under this Security Instrument or any of the other Loan Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the Default Rate (as defined in the Loan Agreement), and all such sums, together with interest thereon, shall constitute additions to the Indebtedness and shall be secured by this Security Instrument and Debtor covenants and agrees to pay them to the order of the Lender promptly upon demand.

Section 3.10 No Lender in Possession. Neither the enforcement of any of the remedies under this Article 3, the assignment of the Rents and Leases under Article 4, the security interests under Article 5, nor any other remedies afforded to the Lender under the Loan Documents, at law or in equity shall cause the Lender to be deemed or construed to be a mortgagee in possession of the Property, to obligate the Lender to lease the Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise. Debtor shall, and hereby agrees to indemnify the Lender for, and to hold the Lender harmless from and against, any and all claims, liability, expenses, losses or damages which may or might be asserted against or incurred by the Lender, as the case may be, solely by reason of the Lender's status as an assignee pursuant to the assignment of Rents and Leases contained herein prior to Lender's taking possession or ownership of the Property, but excluding any claim to the extent of the Lender's gross negligence or willful misconduct or to the extent arising after Lender has taken possession or ownership of the Property. Should the Lender incur any such claim, liability, expense, loss or damage, the amount thereof, including all actual expenses and reasonable fees of attorneys, shall constitute Indebtedness secured hereby, and Debtor shall reimburse the Lender, as the case may be, therefor immediately upon demand.

ARTICLE 4

ASSIGNMENT OF RENTS AND LEASES

Section 4.1 Assignment. Debtor does hereby presently, absolutely and unconditionally assign to the Lender, Debtor's right, title and interest in all current and future Leases and the absolute, unconditional and continuing right to receive and collect all Rents, it being intended by Debtor that this assignment constitutes a present, outright, immediate, continuing and absolute assignment and not an assignment for additional security only. Such assignment to the Lender shall not be construed to bind the Lender to the performance of any of the covenants, conditions or provisions contained in any such Lease or otherwise impose any obligation upon the Lender. The Lender shall have no responsibility on account of this assignment for the control, care, maintenance, management or repair of the Property, for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property. Debtor agrees to execute and deliver to the Lender such additional instruments, in form and substance reasonably satisfactory to the Lender, as may hereafter be requested by the Lender to further evidence and confirm such assignment.

Section 4.2 License. Notwithstanding that Debtor hereby presently grants to the Lender an outright, immediate, continuing and absolute assignment of the Rents and Leases and not merely the collateral assignment of, or the grant of a lien or security interest in, the Rents and Leases, the Lender hereby grants to Debtor and its successors and not to any lessee or any other person, a revocable license to collect and receive the Rents and to retain, use and enjoy the same and otherwise exercise all rights as landlord under any Lease, including, without limitation, the right to collect and receive the Rents and other sums due under the Leases and to perform all obligations of the landlord and enforce all obligations of the tenants, in each case subject to the terms of Section 3.1(b) hereof, this Article 4 and the Loan Agreement. During the continuance of any Event of Default, the license granted herein to Debtor shall immediately and automatically cease and terminate and shall be of no further force or effect, at which time Debtor at the request of the Lender shall notify in writing all tenants and subtenants under any of the Leases that all Rent due thereunder should be paid to the Lender at its address set forth in the Loan Agreement, or at such other place as the Lender shall notify Debtor in writing (provided, that if such Event of Default ceases to exist, the license shall automatically be reinstated). Notwithstanding said license, Debtor agrees that the Lender, and not Debtor, shall be deemed to be the creditor of each tenant or subtenant under any Lease in respect to assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution or receivership proceedings affecting such tenant or subtenant (without obligation on the part of the Lender, however, to file or make timely filings of claims in such proceedings or otherwise to pursue creditors' rights therein), with an option in favor of the Lender to apply any money received by Debtor as such creditor in reduction of any amounts due under the Loan Documents. During the continuance of an Event of Default, any portion of the Rents held by Debtor shall be held in trust for the benefit of the Lender for use in the payment of the Indebtedness. Upon the occurrence and during the continuance of an Event of Default, the license granted to Debtor herein shall immediately and automatically cease and terminate and shall be of no further force or effect, and the Lender shall immediately be entitled to possession of all Rents, whether or not the Lender enters upon or takes control of the Property, provided that if such Event of Default ceases to exist, the license shall automatically be reinstated.

Section 4.3 Certain Rights of the Lender. Subject to the revocable license granted above, upon the occurrence and during the continuance of an Event of Default, the Lender shall have the immediate and continuing right, power and authority, either in person or by agent, without bringing any action or proceeding, or by a receiver appointed by a court, without the necessity of taking possession of the Property in its own name, and without the need for any other authorization or action by Debtor or the Lender, in addition to and without limiting any of the Lender's rights and remedies hereunder, under the Loan Agreement and any other Loan Documents and as otherwise available at law or in equity, (a) to notify any lessee or other person that the Leases have been assigned to the Lender and that all Rents are to be paid directly to the Lender, whether or not the Lender has commenced or completed foreclosure or taken possession of the Property; (b) to reasonably settle, compromise, release, extend the time of payment of, and make allowances, adjustments and discounts of any Rents or other obligations in, to and under the Leases; (c) to demand, sue for or otherwise collect, receive, and enforce payment of Rents, including those past-due and unpaid and other rights under the Leases, prosecute any action or proceeding, and defend against any claim with respect to the Rents and Leases; (d) subject to the rights of tenants under the Leases, to enter upon, take possession of and operate the Property whether or not foreclosure under this Security Instrument has been instituted and without applying for a receiver; (e) to lease all or any part of the Property; and/or (f) to perform any and all obligations of Debtor under the Leases and reasonably exercise any and all rights of Debtor therein contained to the full extent of Debtor's rights and obligations thereunder.

Section 4.4 Irrevocable Instructions to Tenants. At the Lender's request, Debtor shall deliver a copy of the assignment granted hereby to each tenant under a Lease and to each manager and managing agent or operator of the Property, and the Lender shall have the continuing right to do so. Debtor irrevocably directs any tenant, manager, managing agent, or operator of the Property, without any requirement for notice to or consent by Debtor, to comply with all demands of the Lender under this Article 4 and to turn over to the Lender on demand all Rents which it receives. Debtor hereby acknowledges and agrees that payment of any Rents by a person to the Lender as hereinabove provided shall constitute payment by such person, as fully and with the same effect as if such Rents had been paid to Debtor. The Lender is hereby granted and assigned by Debtor the right, at its option, upon revocation of the license granted herein, upon an Event of Default that is continuing, to enter upon the Property in person or by agent, without bringing any action or proceeding, or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of the license shall be applied in accordance with the provisions of the Loan Agreement. Neither the enforcement of any of the remedies under this Article 4 nor any other remedies or security interests afforded to the Lender under the Loan Documents, at law or in equity shall cause the Lender to be deemed or construed to be a mortgagee in possession of the Property, to obligate the Lender to lease the Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise. Debtor shall, and hereby agrees to indemnify the Lender for, and to hold the Lender harmless from and against, any and all claims, liability, expenses, losses or damages which may or might be asserted against or incurred by the Lender solely by reason of the Lender's status as an assignee pursuant to the assignment of Rents and Leases contained herein, but excluding any claim to the extent caused by the Lender's negligence or willful misconduct or related to conditions first arising after foreclosure of this Security Instrument, acceptance of a deed in lieu of foreclosure or possession of the Property by

Lender. Should the Lender incur any such claim, liability, expense, loss or damage solely by reason of the Lender's status as an assignee pursuant to the assignment of Rents and Leases, the amount thereof, including all actual expenses and reasonable fees of attorneys, shall constitute Indebtedness secured hereby, and Debtor shall reimburse the Lender therefor ten (10) days after written demand.

Section 4.5 Unilateral Subordination. Lender may, at any time and from time to time by specific written instrument intended for the purpose, unilaterally subordinate the lien of this Security Instrument to any Lease, without joinder or consent of, or notice to, Debtor, any tenant or any other person, and notice is hereby given to each tenant under a Lease of such right to subordinate. No such subordination shall constitute a subordination to any lien or other encumbrance, whenever arising, or improve the right of any junior lienholder; and nothing herein shall be construed as subordinating this Security Instrument to any Lease.

ARTICLE 5

SECURITY AGREEMENT

Section 5.1 Security Interest. This Security Instrument constitutes both a real property mortgage and a "Security Agreement" on personal property within the meaning of the UCC and other applicable law and with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements (said portion of the Property subject to the UCC, the "Collateral"). The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Debtor in the Property. Debtor, by executing and delivering this Security Instrument, hereby grants to the Lender, a first and prior security interest in the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements and all other Property which is personal property to secure the payment of the Indebtedness and performance of the Obligations, subject only to Permitted Encumbrances, and agrees that the Lender shall have all the rights and remedies of a secured party under the UCC with respect to such property including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as the Lender may deem necessary for the care, protection and preservation of the Collateral. Debtor shall pay to the Lender on demand any and all expenses, including actual reasonable legal expenses and attorneys' fees, incurred or paid by the Lender in protecting the interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by the Lender with respect to the Collateral sent to Debtor in accordance with the provisions hereof at least ten (10) business days prior to such action, shall constitute commercially reasonable notice to Debtor. The proceeds of any disposition of the Collateral, or any part thereof, shall, except as otherwise required by law, be applied by the Lender in accordance with Section 3.7 hereof.

Section 5.2 Further Assurances. Debtor shall execute and deliver to the Lender and/or file, in form and substance reasonably satisfactory to the Lender, such further statements, documents and agreements, financing statements, continuation statements, and such further assurances and instruments, and do such further acts, as the Lender may, from time to time, reasonably require to create, perfect and preserve the Lender's security interest hereunder and to carry out the purposes of this Security Instrument, and the Lender may cause such statements and

assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest; provided that such further statements, documents, agreements, assurances, instruments and acts do not increase the liability or obligations or decrease the rights of Debtor from those provided for in the Loan Documents. Debtor's chief executive office and principal place of business is at the address set forth in the first paragraph of this Security Instrument.

Section 5.3 Fixture Filing. To the extent permitted by applicable law, this Security Instrument shall also constitute a "fixture filing" for the purposes of the UCC upon all of the Property which is or is to become "fixtures" (as that term is defined in the UCC), upon being filed for record in the real estate records of the City or County wherein such fixtures are located. Information concerning such security interest, to the extent herein granted, may be obtained at the addresses of Debtor and Secured Party (the Lender) as set forth in the first paragraph of this Security Instrument.

ARTICLE 6

MISCELLANEOUS

Section 6.1 Notices. Any notice required or permitted to be given under this Security Instrument shall be given in the manner described in the Loan Agreement.

Section 6.2 Covenant Running with the Land. All representations, warranties, covenants and Obligations contained in the Loan Agreement are incorporated herein by this reference and, to the extent relating to the Property, are intended by the parties to be, and shall be construed as, covenants running with the Land. As used herein, "Debtor" shall refer to the party named in the first paragraph of this Security Instrument and to any subsequent owner of all or any portion of the Property (without in any way implying that the Lender has or will consent to any such conveyance or transfer of the Property). All persons or entities who may have or acquire an interest in the Property shall be deemed to have notice of, and be bound by, the terms of the Loan Agreement and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of the Lender.

Section 6.3 Attorney-in-Fact. Debtor hereby irrevocably appoints the Lender and its successors and assigns, as its attorney-in-fact, which appointment is irrevocable and coupled with an interest, after and during the continuance of an Event of Default (a) to execute and/or record any notices of completion, cessation of labor or any other notices that the Lender deems appropriate to protect the Lender's interest, if Debtor shall fail to do so within ten (10) days after written request by the Lender, (b) upon the issuance of a deed pursuant to the foreclosure of this Security Instrument or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Personalty, Fixtures, Plans and Property Agreements in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, (c) to the extent that Lender may lawfully do so, to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve the Lender's security interests and rights in or to any of the collateral, and (d) during the continuance of any Event of Default, to perform any obligation of Debtor hereunder; however: (1) the Lender shall not under any

circumstances be obligated to perform any obligation of Debtor; (2) any necessary sums advanced by the Lender in such performance shall be included in the Indebtedness and shall bear interest at the Default Rate; (3) the Lender as such attorney-in-fact shall only be accountable for such funds as are actually received by the Lender; and (4) the Lender shall not be liable to Debtor or any other person or entity for any failure to take any action which it is empowered to take under this Section 6.3.

Section 6.4 Successors and Assigns. This Security Instrument shall be binding upon and inure to the benefit of the Lender and Debtor and their respective successors and assigns.

Section 6.5 No Waiver. Any failure by the Lender to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same, and the Lender shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

Section 6.6 Subrogation. To the extent proceeds of the Note have been used to extinguish, extend or renew any indebtedness against the Property, then the Lender shall be subrogated to all of the rights, security titles, liens and interests existing against the Property and held by the holder of such indebtedness and shall have the benefit of the priority of all of the same, and such former rights, security titles, liens and interests, if any, are not waived, but are continued in full force and effect in favor of the Lender.

Section 6.7 Loan Agreement. If any conflict or inconsistency exists between this Security Instrument and the Loan Agreement, the Loan Agreement shall govern.

Section 6.8 Release. Upon payment in full of the Indebtedness and performance in full of the Obligations, or upon the sale of the Property in the manner permitted by the Loan Agreement, the estate hereby granted shall cease, terminate and be void and the Lender, at Debtor's expense, shall release the liens and security interests created by this Security Instrument. Upon the sale of a portion of the Property in accordance with the Loan Agreement and the partial prepayment or defeasance of the Indebtedness to the extent required thereunder, the Lender, at Debtor's expense, shall effect a partial release of this Security Instrument to the extent required under, and in the manner set forth in, the Loan Agreement.

Section 6.9 Waiver of Jury Trial; Consent to Jurisdiction. (a) TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, DEBTOR AND, BY ITS ACCEPTANCE OF THIS SECURITY INSTRUMENT, LENDER EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS SECURITY INSTRUMENT, ANY OTHER LOAN DOCUMENT, OR ANY DEALINGS, CONDUCT, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS BY EITHER OF THEM RELATING TO THE SUBJECT MATTER OF THIS SECURITY INSTRUMENT AND THE LENDER/BORROWER RELATIONSHIP BETWEEN THEM. THE SCOPE OF THIS WAIVER IS INTENDED TO ENCOMPASS ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING

WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. DEBTOR AND LENDER EACH ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS SECURITY INSTRUMENT, AND THAT EACH WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS. DEBTOR AND LENDER EACH FURTHER WARRANT AND REPRESENT THAT EACH OF THEM HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT EACH OF THEM KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS SECURITY INSTRUMENT, OR ANY OTHER LOAN DOCUMENTS OR AGREEMENTS RELATING TO THIS SECURITY INSTRUMENT. IN THE EVENT OF LITIGATION, THIS SECURITY INSTRUMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

(b) DEBTOR AND, BY ITS ACCEPTANCE HEREOF, LENDER EACH FURTHER CONSENT, GENERALLY, UNCONDITIONALLY AND IRREVOCABLY, TO THE NONEXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS OF THE STATE IN WHICH ANY OF THE COLLATERAL IS LOCATED IN RESPECT OF ANY PROCEEDING RELATING TO ANY MATTER, CLAIM OR DISPUTE ARISING WITH RESPECT TO SUCH COLLATERAL. DEBTOR AND, BY ITS ACCEPTANCE OF THIS SECURITY INSTRUMENT, LENDER FURTHER IRREVOCABLY CONSENT TO THE SERVICE OF PROCESS, GENERALLY, UNCONDITIONALLY AND IRREVOCABLY, AT THE ADDRESSES SET FORTH IN THE FIRST PARAGRAPH HEREOF IN CONNECTION WITH ANY OF THE AFORESAID PROCEEDINGS IN ACCORDANCE WITH THE RULES APPLICABLE TO SUCH PROCEEDINGS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF DEBTOR AND, BY ITS ACCEPTANCE OF THIS SECURITY INSTRUMENT, LENDER HEREBY IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY NOW HAVE OR HAVE IN THE FUTURE TO THE LAYING OF VENUE IN RESPECT OF ANY OF THE AFORESAID PROCEEDINGS BROUGHT IN THE COURTS REFERRED TO ABOVE AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. NOTHING HEREIN SHALL AFFECT THE RIGHT OF LENDER TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW OR TO COMMENCE PROCEEDINGS OR OTHERWISE PROCEED AGAINST DEBTOR IN ANY JURISDICTION.

Section 6.10 Governing Law. THIS SECURITY INSTRUMENT SHALL BE GOVERNED BY, AND BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED. ALL PROVISIONS OF THE LOAN AGREEMENT INCORPORATED HEREIN BY REFERENCE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, AS SET FORTH IN THE GOVERNING LAW PROVISION OF THE LOAN AGREEMENT.

Section 6.11 Headings. The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify, limit or define, or be used in construing, the scope, intent or text of such Articles, Sections or Subsections.

Section 6.12 Entire Agreement. This Security Instrument and the other Loan Documents embody the entire agreement and understanding between the Lender and Debtor pertaining to the subject matter hereof and thereof and supersede all prior agreements, understandings, representations or other arrangements, whether express or implied, written or oral, between such parties relating to the subject matter hereof and thereof. This Security Instrument and the other Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

Section 6.13 Severability. If any provision of this Security Instrument is invalid or unenforceable, then such provision shall be given full force and effect to the fullest possible extent, and all of the remaining provisions of this Security Instrument shall remain in full force and effect and shall be binding on the parties hereto.

Section 6.14 Waiver of Stay, Moratorium and Similar Rights. Debtor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any appraisal, valuation, stay, marshaling of assets, exemption, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Security Instrument or the Indebtedness secured hereby, or any agreement between Debtor and the Lender or any rights or remedies of the Lender.

Section 6.15 Lien Absolute, Multisite Real Estate and Multiple Collateral Transaction. Debtor acknowledges that this Security Instrument and a number of other Loan Documents and those documents required by the Loan Documents together secure the Indebtedness. Debtor agrees that, to the extent permitted by law, the lien of this Security Instrument and all obligations of the Debtor hereunder shall be absolute and unconditional and shall not in any manner be affected or impaired by:

(a) any lack of validity or enforceability of the Loan Agreement or any other Loan Document, any agreement with respect to any of the Indebtedness or Obligations or any other agreement or instrument relating to any of the foregoing;

(b) any acceptance by the Lender of any security for or guarantees of any of the Indebtedness hereby secured;

(c) any failure, neglect or omission on the part of the Lender to realize upon or protect any of the Indebtedness hereby secured or any of the collateral security therefor, including the Loan Documents, or due to any other circumstance which might otherwise constitute a defense available to, or a discharge of, the Debtor in respect of the Indebtedness and Obligations hereby secured or any collateral security therefor, including the Loan Documents, or due to any other circumstance which might otherwise constitute a defense available to, or a discharge of, the Debtor in respect of the Indebtedness or Obligations or this Security Instrument

(other than the indefeasible payment in full in cash of all the Indebtedness and Obligations hereby secured);

(d) any change in the time, manner or place of payment of, or in any other term of, all or any of the Indebtedness or Obligations;

(e) any release (except as to the property released), sale, pledge, surrender, compromise, settlement, nonperfection, renewal, extension, indulgence, alteration, exchange, modification or disposition of any of the Indebtedness or Obligations hereby secured or of any of the collateral security therefor;

(f) any amendment or waiver of or any consent to any departure from the Loan Agreement or any other Loan Documents or of any guaranty thereof, if any, and the Lender may in its discretion foreclose, exercise any other remedy available to it under any or all of the Loan Documents without first exercising or enforcing any of its rights and remedies hereunder;

(g) any exercise of the rights or remedies of the Lender hereunder or under any or all of the Loan Documents;

(h) any sale, assignment or foreclosure of the Note, the Mortgages (other than this Security Instrument) or any of the other Loan Documents (other than this Security Instrument);

(i) any assumption or any other change in the composition of Debtor or any of the other Borrowers including the withdrawal or removal of the Sponsor from any current or future position of ownership, management or control of Debtor or any of the other Borrowers;

(j) the accuracy or inaccuracy of the representations and warranties made by Debtor or any of the other Borrowers in any of the Loan Documents;

(k) any insolvency, bankruptcy, arrangement, adjustment, composition, liquidation, disability, dissolution or lack of power of Debtor, any of the other Borrowers, or any other party at any time liable for the payment of all or part of the Indebtedness or Obligations; or any dissolution of Debtor or any of the other Borrowers, or any sale, lease or transfer of any or all of the assets of any of Debtor or any of the other Borrowers or of the Property, or any changes in the shareholders, partners or members of any of the Debtor or of the other Borrowers; or any merger, consolidation or reorganization of any of the Debtor or any of the other Borrowers;

(l) any payment by any of the Borrowers to Lender is held to constitute a preference under bankruptcy laws, or for any reason Lender is required to refund such payment or pay such amount to any of the Borrowers or someone else; or

(m) any other action taken or omitted to be taken with respect to the Loan Documents, the Indebtedness and Obligations, or the security and collateral therefor, whether or not such action or omission prejudices Debtor or the other Borrowers or increases the likelihood that Debtor or the other Borrowers will be required to pay the Indebtedness and the Obligations or that Lender will enforce its rights hereunder, it is the unambiguous and unequivocal intention of Debtor that Debtor and the other Borrowers shall be obligated to pay the Indebtedness and Obligations when due and to perform its obligations hereunder, notwithstanding any occurrence,

circumstance, event, action, or omission whatsoever, whether contemplated or un contemplated, and whether or not otherwise or particularly described herein, which obligation shall be deemed satisfied only upon the full and final payment and satisfaction of the Indebtedness and Obligations.

Section 6.16 Real Estate Taxes. The Debtor shall not be entitled to any credit upon the Indebtedness or deduction from the assessed value of the Property by virtue of payment of real estate taxes on the Property. If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Indebtedness from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Indebtedness or Lender's interest in the Property, Debtor will pay such tax and shall reimburse Lender for any such amounts paid by Lender. In the event that the payment or reimbursement of such tax by Debtor would, in the opinion of Lender's counsel, be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then in any such event, Lender shall have the option, by written notice of not less than 90 days, to declare the Indebtedness immediately due and payable, in which event no prepayment premium or fee or Release Price or Yield Maintenance Premium will be due.

Section 6.17 Incorporation by Reference. (a) All obligations of Debtor under this Security Instrument shall be limited by the provisions of Section 9.19 of the Loan Agreement, the provisions of which are incorporated herein by this reference.

(b) The parties hereby acknowledge that the Loan Agreement, among other things, contains restrictions on the prepayment of the Indebtedness, as well as restrictions on the sale, transfer and encumbrance of the Property and the ownership interests in the Debtor.

Section 6.18 Intentionally Omitted.

Section 6.19 State Specific Provisions. The provisions of Exhibit B attached hereto are hereby incorporated by reference as though set forth in full herein.

Section 6.20 Recording Taxes. Debtor hereby covenants to pay any and all recording or other taxes or fees due in connection with this Security Instrument.

Section 6.21 Multiple Exercise of Remedies. To the extent permitted by law, Debtor specifically consents and agrees that the Lender may exercise rights and remedies hereunder and under the other Loan Documents separately or concurrently and in any order that the Lender may deem appropriate.

Debtor hereby acknowledges receipt of a true copy of the within Security Instrument.

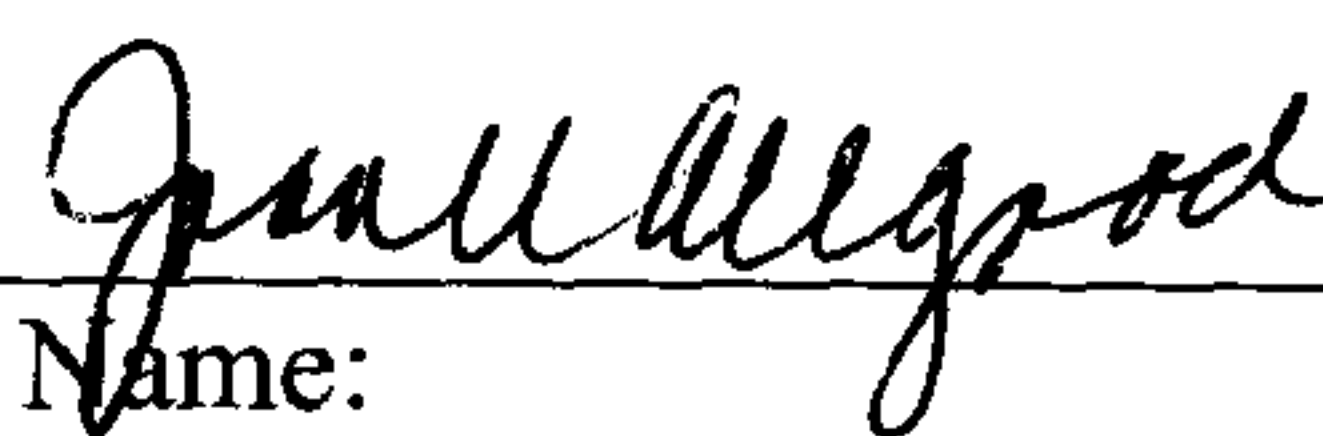
[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, this Security Instrument has been duly executed and delivered to
Lender by Debtor on the date of the acknowledgment attached hereto.

DEBTOR:

GS II BROOK HIGHLAND LLC,
a Delaware limited liability company

By: Developers Diversified of Alabama, Inc.,
its Manager Member

By: ]
Name:
Title: **Joan U. Allgood**
Vice President

STATE OF Ohio)

COUNTY OF Cuyahoga

I, the undersigned, a Notary Public, in and for said County, in said State, hereby certify that Joan U. Allgood, whose name as Vice President of Developers Diversified of Alabama, Inc., an Alabama corporation, as sole and managing member of GS II Brook Highland LLC, a Delaware limited liability company, is signed to the foregoing Mortgage, Financing Statement and Security Agreement, and who is known to me, acknowledged before me on this day, that, being informed of the contents thereof, 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 4th day of March, 2003.

Paula Jones
NOTARY PUBLIC PAULA JONES
(Print Name)

(SEAL)

PAULA JONES, Notary Public
State of Ohio, Cuyahoga County
My Commission Expires Jan. 11, 2004

My Commission Expires: January 11, 2004

EXHIBIT "A"

PARCEL 1

LOTS 1, 1A, 2, 2A, ACCORDING TO THE BROOK HIGHLAND PLAZA RESURVEY, AS RECORD IN MAP BOOK 18M PAGE 99 IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA, BEING SITUATED IN SHELBY COUNTY, ALABAMA.

TOGETHER WITH ALL FO THE BENEFICIAL RIGHTS AND INTERESTS IN THE EASEMENT UNDER THE FOLLOWING INSTRUMENTS:

1). DECLARATION OF EASEMENTS AND RESTRICTIONS CONVENATS (BROOK HIGHLAND DEVELOPMENT-1.35 ACRES OUT PARCEL) BY AMSOUTH BANK N.A. AS ANCILLARY TRUSTEE FOR NBNC 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 SAID PROBATE OFFICE.

2.) EASEMENT AGREEMENT DATED OCTOBER 12, 1993, BY AN BETWEEN AMSOUTH BANK N.A., AS ANCILLARY TRUSTEE FOR NATIONSBANK OF NORTH CAROLINA, N.A. AS TRUSTEE FOR THE PUBLIC EMPLOYEES RETIREMENT SYSTEM OF OHIO, AND BROOK HIGHLAND LIMITED PARTNERSHIP, A GEORGIA LIMITED PARTNERSHIP RECORDED AS INSTRUMENT # 1993-32515 IN SAID PROBATE OFFICE.

PARCEL 2

ALL BENEFICIAL RIGHTS IN EASEMENTS GRANTED TO DEVELOPERS DIVERSIFIED OF ALABAMA CORP., BY THE EASEMENT AGREEMENT DATED DECEMBER 30, 1994, BY AND BETWEEN BROOK HIGHLAND LIMITED PARTNERSHIP AND DEVELOPERS DIVERSIFIED OF ALABAMA., AS RECORDED AS RECORDED AS INSTRUMENT NO. 1994-37773 IN PROBATE OFFICE OF SHELBY COUNTY, ALABAMA.

ALL BEING SITUATED IN SHELBY COUNTY, ALABAMA.

**ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN SECTION 31 ,
TOWNSHIP 18 SOUTH RANGE 1 WEST, SHELBY COUNTY, ALABAMA BEING
MORE PARTICULARLY DESCRIBED AS FOLLOWS;**

**BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER
OF SECTION 31, TOWNSHIP 18 SOUTH, RANGE 1 WEST, SHELBY COUNTY,
ALABAMA BEING SOUTH 89° 31'51" WEST A DISTANCE OF 848.96 FEET FROM
THE NORTHEAST CORNER OF LOT 1, BROOK HIGHLAND PLAZA RESURVEY
(MAP BOOK 18, PAGE 99);**

**THENCE RUN SOUTH 89°31'51" WEST A DISTANCE OF 50.00 FEET TO A POINT.
THENCE RUN SOUTH 00°38'38" EAST A DISTANCE OF 300.00 FEET TO A POINT;
THENCE RUN NORTH 89° 37'51" EAST A DISTANCE OF 20.00 FEET TO A POINT;
THENCE RUN SOUTH 01° 36'53" EAST A DISTANCE OF 295.07 FEET TO A POINT;
THENCE RUN SOUTH 89°31'51" WEST A DISTANCE OF 225.00 FEET TO A POINT;
THENCE RUN SOUTH 00°38'38" EAST A DISTANCE OF 145.41 FEET TO A POINT;
THENCE RUN SOUTH 88°24'44" WEST A DISTANCE OF 150.94 FEET TO A POINT;
THENCE RUN ALONG THE ARC OF A CURVE AN ARC DISTANCE OF 325.14 FEET
(SAID CURVE HAVING A RADIUS OF 910.27 FEET A CHORD BEARING OF NORTH
81°24'44" WEST A CHORD DISTANCE OF 323.42 FEET) TO A POINT;
THENCE RUN NORTH 71°10'44" WEST A DISTANCE OF 90.62 FEET TO A POINT;
THENCE RUN NORTH 64° 18'36" WEST A DISTANCE OF 37.79 FEET TO A POINT;
THENCE RUN NORTH 73°31'00" WEST A DISTANCE OF 110.98 FEET TO A POINT;
THENCE RUN NORTH 56 °07'21" WEST A DISTANCE OF 73.40 FEET TO A POINT;
LOCATED ON THE TO A POINT LOCATED ON THE EASTERLY RIGHT OF WAY
LINE OF BROOK-HIGHLAND PARKWAY (RIGHT OF WAY VARIES);
THENCE RUN ALONG AND COINCIDENT WITH THE EASTERLY RIGHT OF WAY
LINE OF BROOK HIGHLAND PARKWAY NORTH 16°29'00" EAST A DISTANCE OF
206.74 FEET TO A POINT;
THENCE RUN ALONG THE COINCIDENT WITH THE EASTERLY RIGHT OF WAY
LINE FO BROOK HIGHLAND PARKWAY NORTH 73°31'00" WEST A DISTANCE OF
12.00 FEET TO A POINT; THENCE RUN ALONG AND COINCIDENT WITH THE
EASTERLY RIGHT OF WAY LINE OF BROOK HIGHLAND PARKWAY, ALONG**

THE ARC OF A CURVE AN ARC DISTANCE OF 254.68 FEET (SAID CURVE HAVING A RADIUS OF 310.47 FEET, A CHORD BEARING OF NORTH 39°59'00" EAST , AND A CHORD DISTANCE OF 247.60 FEET) TO A POINT;
THENCE RUN ALONG AND COINCIDENT WITH THE EASTERLY RIGHT OF WAY LINE OF BROOK HIGHLAND PARKWAY NORTH 26°31'00" WEST A DISTANCE OF 12.00 FEET TO A POINT;
THENCE RUN ALONG AND COINCIDENT WITH THE EASTERLY RIGHT OF WAY LINE OF BROOK HIGHLAND PARKWAY NORTH 63°29'00" A DISTANCE OF 518.37 FEET TO A POINT; THENCE RUN ALONG AND COINCIDENT WITH THE EASTERLY RIGHT OF WAY LINE OF BROOK HIGHLAND PARKWAY 29°31'00" WEST A DISTANCE OF 20.00 FEET TO A POINT;
THENCE RUN ALONG AND COINCIDENT WITH THE EASTERLY RIGHT OF WAY LINE OF BROOK HIGHLAND PARKWAY, ALONG THE ARC OF A CURVE AN ARC DISTANCE OF 501.28 FEET (SAID CURVE HAVING A RADIUS OF 635.12 FEET, A CHORD BEARING OF NORTH 40°52'21" EAST, A CHORD DISTANCE OF 488.37 FEET) TO A POINT; THENCE LEAVING THE RIGHT OF WAY LINE OF BROOK HIGHLAND PARKWAY RUN SOUTH 89°50'48" EAST, A DISTANCE OF 85.21 FEET TO A POINT; THENCE RUN SOUTH 00°38'38" EAST, A DISTANCE OF 355.06 FEET TO A POINT; SAID POINT BEING THE POINT OF BEGINNING.

SAID TRACT BEING DESIGNATED AS PROPOSED "PHASE II" ON THAT CERTAIN SURVEY FOR A.B. SHOPPING CENTERS 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 DECEMBER 21, 1994.

EXHIBIT B

Special Alabama Provisions

The following provisions are incorporated by reference into Section 6.19 of the attached Security Instrument. If any conflict or inconsistency exists between this Exhibit B and the remainder of the attached Security Instrument, this Exhibit B shall govern.

1. Lender may institute proceedings for the partial or complete foreclosure of this Mortgage and Lender may, pursuant to any final judgment of foreclosure, sell the Property as an entirety or in separate lots, units, or parcels.

2. If a default or Event of Default should occur hereunder, the Lender, its successors or assigns shall have the right to enter upon and take possession of the Property and after, or without, taking such possession of the same, sell the Property or any portions thereof at public outcry, in front of the courthouse door of the county wherein the Property or any substantial part thereof is located, to the highest bidder for cash, either in person or by auctioneer, after first giving notice of the time, place and terms of such sale by publication once a week for three (3) successive weeks in some newspaper published in said county, and, upon the payment of the purchase money, the Lender or any person conducting said sale for it is authorized and empowered to execute to the purchaser at said sale a deed to the Property so purchased in the name and on behalf of the Debtor, and the certificate of the holder of the mortgage indebtedness appointing said auctioneer to make such sale, shall be prima facie evidence of his authority in the premises. Alternatively, the equity of redemption from this Mortgage may be foreclosed by suit in any court of competent jurisdiction as now provided by law in the case of past due mortgages. The Lender, or the then holder of the indebtedness hereby secured, may bid at any such sale and become the purchaser of the Property if the highest bidder therefor. Lender may in the manner provided by law postpone sale of all or any portion of the Property.

3. In case of a foreclosure sale of all or any part of the Property, the proceeds of sale shall be applied in accordance with the provisions of this Security Instrument, and Lender shall be entitled to seek a deficiency judgment against Debtor to enforce payment of any and all obligations secured hereby then remaining due and unpaid, together with interest thereon, and to recover a judgment against Debtor therefor, except as otherwise provided in this Security Instrument.

4. At Lender's option, this Mortgage may be foreclosed as provided by law or in equity, in which event a reasonable attorney's fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. Lender is authorized to foreclose this Mortgage subject to the rights of any tenants of the Property, or Lender may elect which tenants Lender desires to name as parties defendant in such foreclosure and failure to make any such tenants parties defendant to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted by Debtor to be, a defense to any proceedings instituted by Lender to collect the unpaid obligations secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Property.