

*Duplicate
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STATE OF ALABAMA

COUNTY OF SHELBY

AMENDMENT AGREEMENT

THIS AMENDMENT AGREEMENT (this "Amendment") is made and entered into as of the 26th day of April, 1993, by and 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 ("AMSOUTH/NATIONSBANK"), and WOMAN'S MISSIONARY UNION AUXILIARY TO SOUTHERN BAPTIST CONVENTION ("WMU");

STATEMENT OF PURPOSE

AmSouth/NationsBank is the owner of a certain tract of land fronting U.S. Highway 280 in Shelby County, Alabama, and being a portion of that certain development known as the Brook Highland Development, said property being more particularly described as Lot 1 (consisting of 57.395 acres) on a map recorded in Map Book 16 at Page 102 (Instrument # 1992-20262) in the Probate Office for Shelby County, Alabama ("Lot 1"). WMU is the owner of that certain tract of land located across Brook Highland Parkway from Lot 1 (the "WMU Property"), said WMU Property being more particularly described on Exhibit B attached to the Agreement (as defined below). AmSouth/NationsBank and WMU entered into a certain Agreement dated as of August 31, 1990 (the "Agreement"), which Agreement is recorded in Book 309 at Page 317 in the Probate Office for Shelby County, Alabama. The Agreement imposes a development restriction in favor of WMU on a portion of Lot 1 referred to as the "Buffer Area," the term "Buffer Area" having the same meaning as defined in Paragraph 2 of the Agreement. Paragraph 2 of the Agreement permits the development, use and operation of the Buffer Area "only for office and institutional uses and certain other uses, services and facilities as are harmonious with an office park development," unless written approval for a different or alternate use is given by WMU. As contemplated in Paragraphs 2 and 3 of the Agreement, AmSouth/NationsBank desires to obtain WMU's approval for an amendment to the existing covenants and restrictions contained in the Agreement to allow the Buffer Area to be developed, used and operated for retail purposes. WMU has consented to, and herein does give its written approval for, an amendment to the existing covenants and restrictions in the Agreement to allow the development, use and operation of the Buffer Area for retail purposes, subject to the terms and provisions below.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, AmSouth/NationsBank and WMU hereby agree as follows:

1. As contemplated in Paragraphs 2 and 3 in the Agreement, WMU hereby approves an amendment to the existing covenants and restrictions in the Agreement to allow the development, use and operation of the Buffer Area for retail purposes, subject to the following terms and conditions:

- (a) There shall not be permitted on Lot 1 (i) any store that has as its primary business the sale of liquor, beer, wine or other alcoholic beverages for off-site consumption (i.e., package stores, party stores, ABC stores, etc.) or (ii) any store or other place of business that has as a part of its business the on-site consumption of liquor, beer, wine or other alcoholic beverages, except restaurants which, as their primary means of business, serve food for on-site consumption.
- (b) The development and maintenance of the Buffer Area for retail use shall be substantially in accordance with the relevant portion of the plans and specifications attached

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hereto as Exhibit A and Exhibit B and incorporated by reference herein (the "Plans and Specifications"), except that with respect to the landscaping portion of the Plans and Specifications relating to location and size of berming, trees and other planting within the Buffer Area, such development shall be in strict compliance with the same. Without limiting the generality of the foregoing, (i) as shown on the Plans and Specifications, landscaping to be completed and maintained with regard to the Buffer Area shall include berming and three (3) rows of Virginia pine trees, or if Virginia pine trees are not available, then substitute trees may be used, provided that they give comparable screening and that the type of substitute tree is approved by WMU, which approval will not be unreasonably withheld or delayed, (ii) the surface of the back side of each building constructed within the Buffer Area will be compatible with the material and color scheme on the front side of each such building, and (iii) garbage and refuse containers located to the rear of the buildings constructed in the Buffer Area, including trash receptacles and dumpsters, shall be concealed by means of either landscaping or screening walls of materials compatible with the materials and color scheme on the front side of such buildings in such manner as to block or shield the view thereof from Brook Highland Parkway. For the purposes of this subparagraph, the phrase "compatible with the material and color scheme" contained herein shall include, but not be limited to, cinderblock painted the same color as that of the front side of such building. Provided the development of the Buffer Area is completed substantially in accordance with the Plans and Specifications, no further consents or approvals shall be required from WMU under the Agreement (as herein amended) in connection with such development.

2. The terms and provisions of this Amendment shall run with the land over which the Buffer Area extends and all of Lot 1 [as to the restriction in Paragraph 1(a) above] for the benefit of the WMU Property and shall be binding upon and enure to the benefit of WMU and AmSouth/NationsBank, and their successors and assigns.

3. Notwithstanding anything contained herein to the contrary, AmSouth Bank, N.A., hereby executes this Amendment solely in its capacity as Ancillary Trustee for NationsBank of North Carolina, N.A., as Trustee for the Public Employees Retirement System of Ohio, and except with respect to the execution of this Amendment, AmSouth Bank, N.A., shall have no obligations or responsibilities hereunder and makes no representations or warranties hereunder. The parties hereto further acknowledge and agree that in consideration of the service of AmSouth Bank, N.A., as Ancillary Trustee, NationsBank of North Carolina, N.A., as Trustee for the Public Employees Retirement System of Ohio, herein assumes all obligations and responsibilities of AmSouth Bank, N.A., hereunder and WMU, for itself and its successors and assigns, agrees to look solely to NationsBank of North Carolina, N.A., as Trustee for the Public Employees Retirement System of Ohio, for the performance of all obligations and responsibilities of AmSouth Bank, N.A., hereunder. WMU further agrees that this Amendment is executed by NationsBank of North Carolina, N.A., not personally or individually, but solely in its capacity as Trustee for the Public Employees Retirement System of Ohio and it is understood and agreed that all representations, covenants, understandings and agreements, if any, herein made on the part of NationsBank of North Carolina, N.A., are made and intended not as personal representations, covenants, understandings and agreements, but are made and intended for the purpose of binding only the assets of the trust over which NationsBank of North Carolina, N.A., is Trustee in favor of the Public Employees Retirement System of Ohio, which assets includes Lot 1. This Amendment is executed and delivered by AmSouth Bank, N.A., and if applicable, NationsBank of North Carolina, N.A., not in their own right, but solely in the exercise of powers conferred upon them by applicable trust agreements, and WMU, for itself and its successors and assigns, waives any and all personal liability against AmSouth Bank, N.A., and NationsBank of North Carolina, N.A.

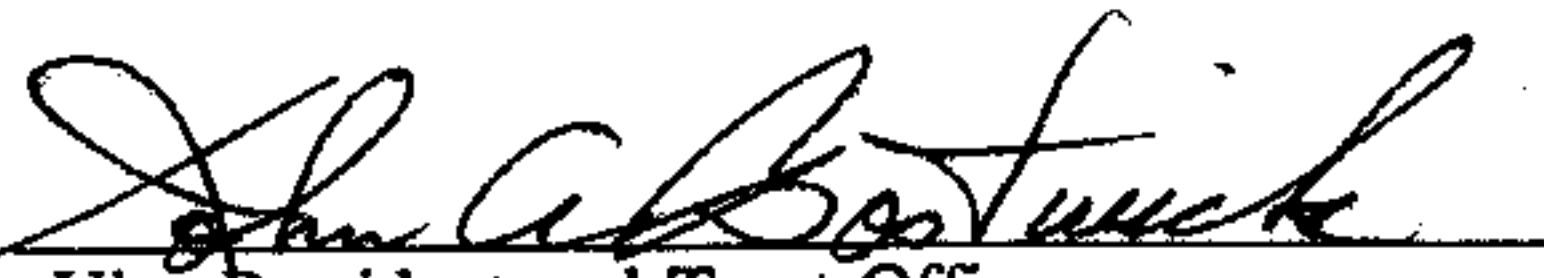
4. It is understood and agreed that this Amendment is and shall be enforceable only by WMU and AmSouth/NationsBank, and their successors and assigns (including any subsequent owners of the WMU Property), and no other parties have any rights, benefits or remedies under this Amendment.

5. In the event that any dispute shall arise in connection with the interpretation or enforcement of this Agreement which involves an allegation of material and substantial non-compliance with the terms of this Agreement by a party hereto or by any successor or assignee of a party hereto, and which results in litigation between the parties, it is understood and agreed that the prevailing party in any such litigation may assert its right to recover reasonable attorneys fees incurred in connection therewith; provided, however, that (a) in the event that either party to this Agreement, its successors or assigns, shall claim a default by the other party or its successors or assigns, the party claiming such default shall give notice of the same to the other party, and the other party shall have ten (10) days to cure any default involving the payment of money and shall have thirty (30) days to cure any default not involving the payment of money, provided, however, if such non-monetary default is of such nature that it cannot be reasonably expected to be cured within thirty (30) days, then within a reasonable period of time (not to exceed one hundred twenty (120) days), so long as the alleged defaulting party diligently continues to pursue such remedies; (b) in the event that WMU, its successors or assigns, shall claim a default against AmSouth/NationsBank, its successors or assigns, such claim may be made only against such persons, firms, corporations or other entities who (i) who are the owners of Lot 1 (or any portion thereof) at the time such default occurs or (ii) are the owners of Lot 1 (or any portion thereof) during any continuance of such default, or (iii) are the holders of a leasehold interest in Lot 1 (or any portion thereof) and have contributed to the occurrence or continuance of such default; and (c) in the event that such claim of default is made by AmSouth/NationsBank, its successors or assigns, against WMU, its successors or assigns, such claim of default may be made only against the owners of the WMU property at the time such default occurs or are the owners during any continuance of such default.

[SIGNATURES ON FOLLOWING PAGE]


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

AMSOUTH BANK, N.A., AS ANCILLARY TRUSTEE
FOR NATIONSBANK OF NORTH CAROLINA, N.A.,
AS TRUSTEE FOR THE PUBLIC EMPLOYEES
RETIREMENT SYSTEM OF OHIO

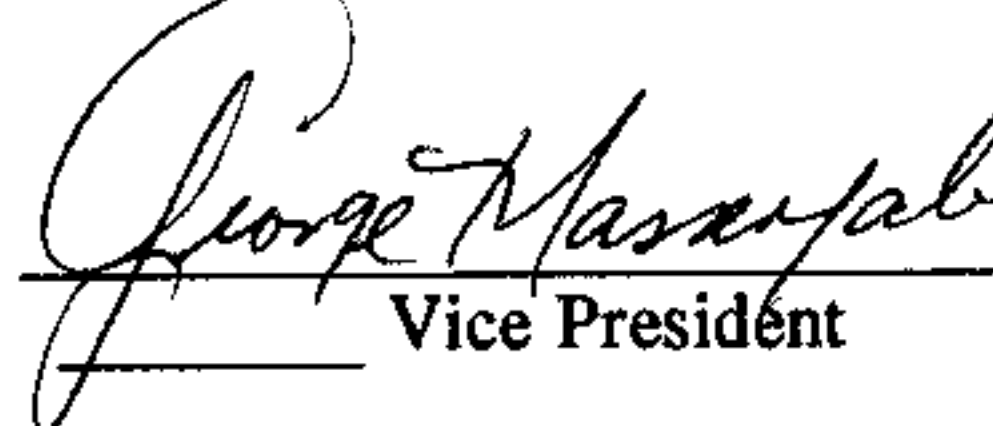
By: 
Vice President and Trust Officer

[CORPORATE SEAL]

ATTEST:

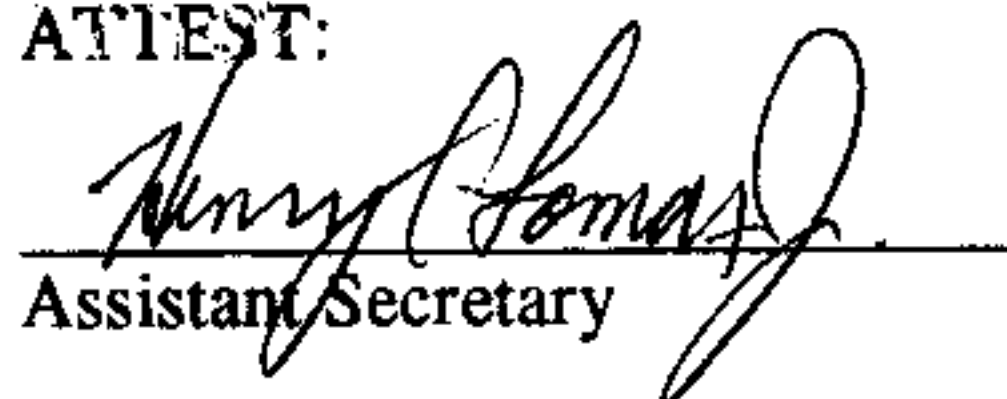

Trust Officer

NATIONSBANK OF NORTH CAROLINA, N.A., AS
TRUSTEE FOR THE PUBLIC EMPLOYEES RETIRE-
MENT SYSTEM OF OHIO


By: 
Vice President

[CORPORATE SEAL]

ATTEST:


Assistant Secretary

WOMAN'S MISSIONARY UNION AUXILIARY TO
SOUTHERN BAPTIST CONVENTION

By: 
Executive Director

[CORPORATE SEAL]

Witness

ATTEST:


Secretary Staff Services Section Director

STATE OF ALABAMA

COUNTY OF Jefferson

I, the undersigned, a Notary Public in and for said county in said state, hereby certify that John A. Bostwick, whose name as Vice President and Trust Officer of AmSouth Bank, N.A., a national banking association, as Ancillary Trustee for NationsBank of North Carolina, N.A., as Trustee for the Public Employees Retirement System of Ohio, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said association, acting in its capacity as Ancillary Trustee as aforesaid.

Given under my hand and official seal this the 27th day of Apr., 1993.

Carolyn A. Garrison
NOTARY PUBLIC

[NOTARIAL SEAL]

My Commission Expires:

3/20/94

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Kimberly H. Blackwelder, a Notary Public in and for said county in said state, hereby certify that George Massengale, whose name as _____ Vice President of NationsBank of North Carolina, N.A., a national banking association, as Trustee for the Public Employees Retirement System of Ohio, 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, he, as such officer and with full authority, executed the same voluntarily for and as the act of said association, acting in its capacity as Trustee for the Public Employees Retirement System of Ohio as aforesaid.

Given under my hand and official seal this 26th day of April, 1993.

Kimberly H. Blackwelder
NOTARY PUBLIC

[NOTARIAL SEAL]

My Commission Expires:

My Commission Expires May 25, 1993

STATE OF ALABAMA

COUNTY OF State at Large

I, Mary Ethel McCombs, a Notary Public in and for said county in said state, hereby certify that Hellanna O'Brien, whose name as Executive Director of Woman's Missionary Union Auxiliary to Southern Baptist Convention, 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, as such officer and with full authority, executed the same voluntarily for and as the act of said Woman's Missionary Union Auxiliary to Southern Baptist Convention.

Given under my hand and official seal this 28 day of April, 1993.

Mary Ethel McCombs
NOTARY PUBLIC

[NOTARIAL SEAL]

My Commission Expires:

6-15-93

EXHIBIT A

Plans and Specifications for Lot 1

1. Conceptual Planting Plan labeled "Brookhighland Plaza, Shelby County, Alabama for Polar-BEK & Baker, Birmingham, Alabama" prepared by Sain Associates, Inc. and Gradco Incorporated dated February 2, 1993. To the extent of site plan/layout discrepancies between this Conceptual Planting Plan and the Site Plan identified in Paragraph 4 below, the Site Plan shall control with regard to such site plan/layout issues.
2. Conceptual drawing labeled "Elevation of Shopping Center Entrance from Brook Highland Parkway" (Project 386.23) prepared for Polar-BEK & Baker by Crawford McWilliams Hatcher Architects, Inc. dated February 2, 1993.
3. Conceptual drawing labeled "Site View Line Sections as Noted on Site Plan" (Project 386.23) prepared for Polar-BEK & Baker by Crawford McWilliams Hatcher Architects, Inc. dated February 2, 1993.
4. Site plan labeled "Site Plan Scheme F for Brook Highland Plaza" prepared by Crawford McWilliams Hatcher Architects, Inc. dated February 17, 1993.
5. Elevation Drawings (3 sheets) labeled "Brook Highland Plaza" prepared for Polar-BEK & Baker by Crawford McWilliams Hatcher Architects, Inc. dated September 7, 1992. A copy of the Elevation Drawings is attached hereto as Exhibit B.

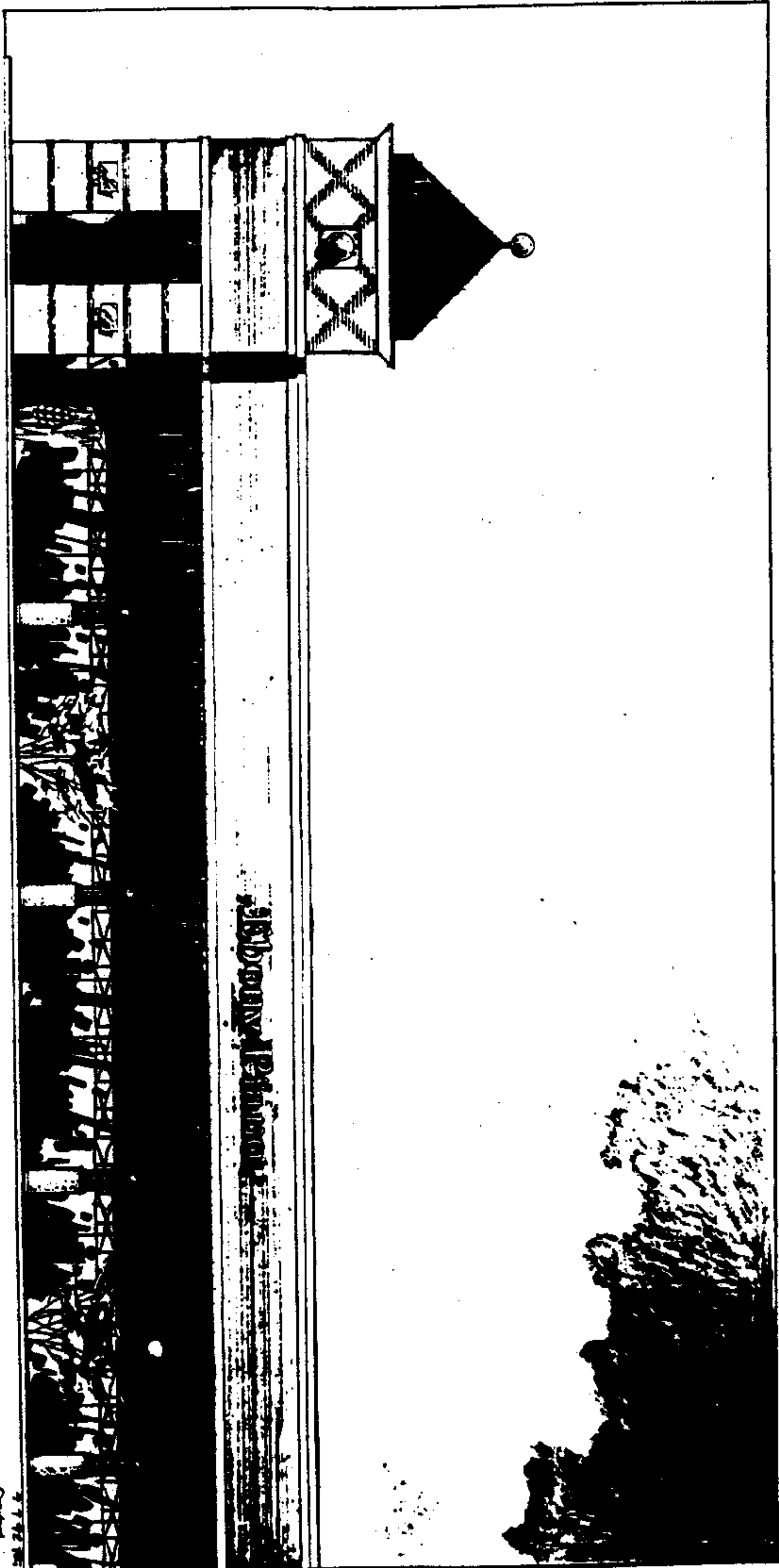
Exhibit B

Elevation Drawings
(Sheet 1 of 3)

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BROOK HILL AND PLAZA

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C. J. ...
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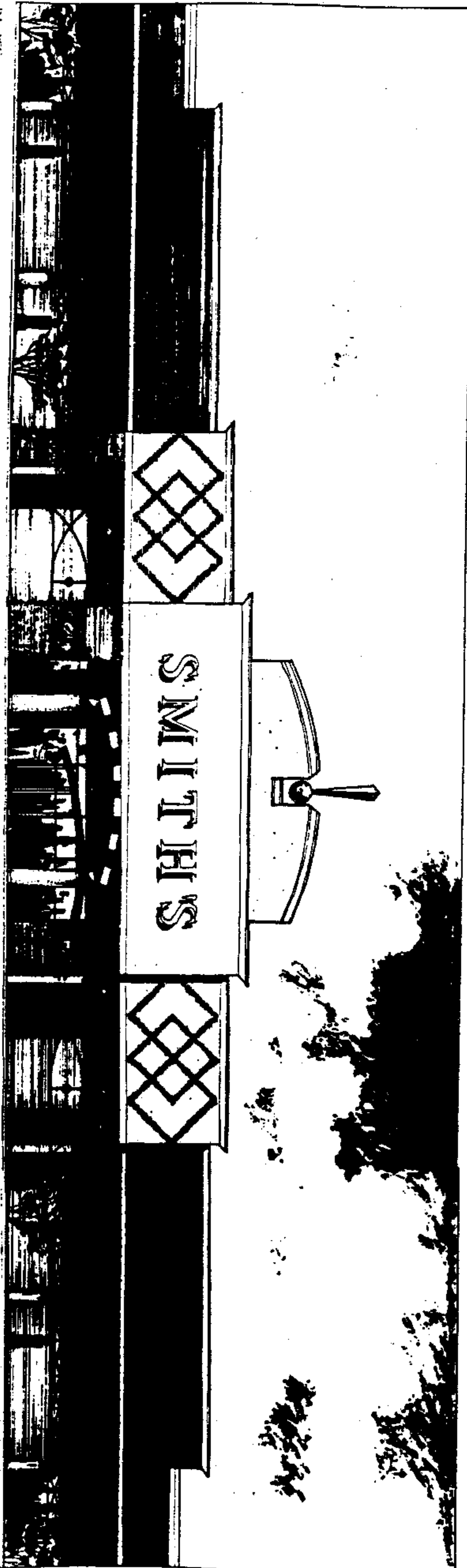


Elevation Drawings
(Sheet 2 of 3)

SECTION
2 NORTH

IRON HILL AND PLAZA

2 1/2" = 1' - 0"

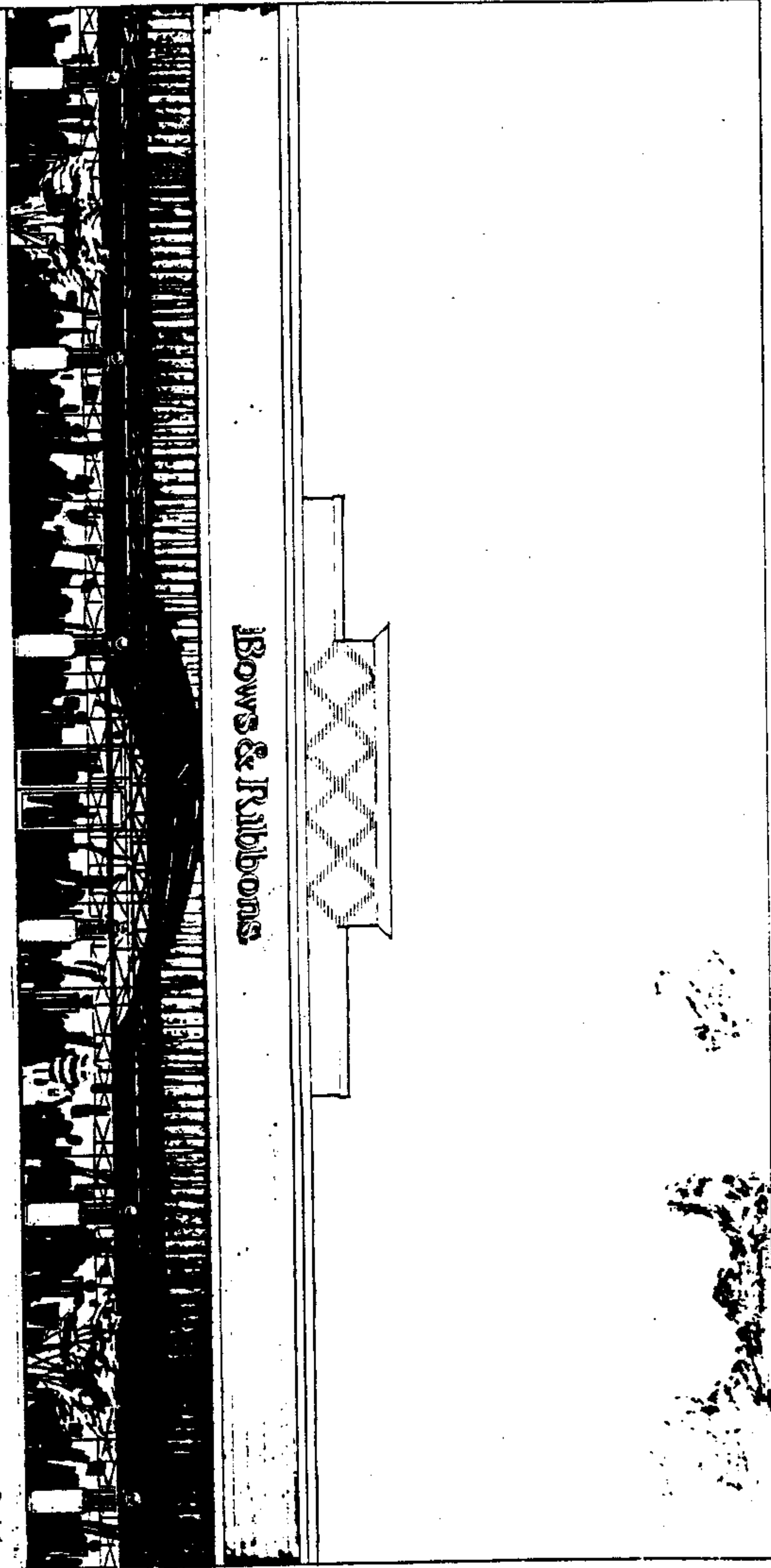


Elevation Drawings
(Sheet 3 of 3)

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BRONX HIGH AND PLAZA

Standard
Architects
P.C.



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