

THIS INSTRUMENT PREPARED BY:

Jill Verdeyen Deer, Esq.
Burr & Forman
3000 SouthTrust Tower
420 North 20th Street
Birmingham, Alabama 35203
Telephone: (205) 251-3000

Inst # 1993-32522

10/20/1993-32522
09:19 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
23.50
007 MCD

STATE OF ALABAMA)
SHELBY COUNTY)

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT, made as of the 15th day of October, 1993, is from **BROOK HIGHLAND LIMITED PARTNERSHIP**, a Georgia limited partnership (the "Borrower"), to **SOUTHTRUST BANK OF ALABAMA, NATIONAL ASSOCIATION**, a national banking association (the "Lender").

R E C I T A L S:

This Assignment is made as additional security for the payment of indebtedness due by Borrower to Lender in the principal amount of \$25,070,000 (the "Loan"), with interest thereon as evidenced by Borrower's Promissory Note of even date herewith payable to the order of Lender in said amount (as the same may hereafter be renewed, extended, modified or amended, the "Note"), and as further evidenced by that certain Construction Loan Agreement of even date herewith between Borrower and Lender (as the same may hereafter be renewed, extended, modified or amended, the "Loan Agreement"; capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Loan Agreement).

Cahaba Title

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, and as an inducement to the Lender to make the Loan to Borrower, Borrower does hereby sell, assign, transfer and set over unto Lender, its successors and assigns, all of the Borrower's interest in and to all leases presently existing or hereafter made, whether written or verbal, for any letting of, or agreement for the use or occupancy of, all or any part of that certain real property which is more particularly described on Exhibit A attached hereto (the "Property") and the improvements located or to be located thereon, including, without limitation, all the rents, issues, and profits now due and which may hereafter become due under or by virtue of said leases and agreements (the foregoing leases, agreements, rents, issues and profits are collectively referred to herein as the "Leases").

Borrower agrees to duly operate and maintain the Property and to perform all requisites on its part to keep any and all Leases for any part of the Property in full force and effect.

Borrower agrees that this Assignment shall cover all future Leases, whether written or verbal, or any letting of, or any agreement for the use or occupancy of, any part of Property.

Borrower further agrees that it will not assign the rent or any part of the rent of the Property nor collect rents under any Leases for a period further in advance than one (1) month without the written consent of the Lender, nor do any other act whereby the lien of the Mortgage and this Assignment may, in the opinion of the Lender, be impaired in value or quality.

Borrower agrees that it has not and will not enter into any fictitious lease or any lease for the purpose of avoiding creditors, and that any attempt to do so will be void. Borrower represents and warrants that all Leases presently in effect are, and all leases hereafter entered

into will be, arms-length leases for a rental rate, which, in Borrower's best judgment, represents a fair market rental.

Borrower further agrees that this Assignment is to remain in full force and effect so long as the Note remains unpaid and that it may be enforced by Lender, its successors and assigns or the holder of the Note.

Although it is the intention of the parties that this instrument be a present assignment, it is expressly understood and agreed by Borrower and Lender that Borrower reserves, and is entitled to collect, said rents, income and profits as and when the same become due, but for no more than one (1) month in advance of their accrual under the Leases, and to retain, use and enjoy the same unless and until the occurrence of an Event of Default pursuant to the Borrower's Loan Documents, or until the violation of any term, condition or agreement of this Assignment, each of which shall constitute an "Event of Default" hereunder. Upon the occurrence of any Event of Default, Borrower's privilege to collect the rents shall automatically terminate.

Borrower does hereby authorize and empower Lender, its successors and assigns, and any holder of the Note, to collect upon demand, after any Event of Default hereunder, all of the rents, issues and profits now due or which may hereafter become due under or by virtue of any Lease, whether written or verbal, or any letting of, or agreement for the use or occupancy of, any part of the Property, and to take such action, legal or equitable, as may be deemed necessary to enforce payment of such rents, issues and profits. Borrower hereby authorizes and directs the lessees under the Leases to pay to Lender all rents and other sums as the same become due upon notice from Lender that an Event of Default has occurred hereunder. Any

lessee making such payment to Lender shall be under no obligation to inquire into or determine the actual existence of any Event of Default claimed by Lender.

Any amount received or collected by Lender by virtue of this Assignment shall be applied for the following purposes, but not necessarily in the order named, priority and application of such funds being within the sole discretion of Lender:

(1) to the payment of all necessary expenses for the operation, protection and preservation of the Property, including the usual and customary fees for management services;

(2) to the payment of taxes and assessments levied and assessed against the Property as said taxes and assessments become due and payable;

(3) to the payment of premiums due and payable on any insurance policy related to the Property;

(4) to the payment of installments of principal and/or interest on the Note as and when they become due and payable pursuant to the terms of the Note whether by acceleration or otherwise;

(5) to the payment of any other sums due to Lender, including those due under the Borrower's Loan Documents; and

(6) the balance remaining after payment of the above shall be paid to the then owner of record of the Property.

Borrower hereby agrees to indemnify Lender for, and to save it harmless from, any and all liability, loss or damage which Lender might incur under the Leases or by virtue of this Assignment, and from any and all claims and demands whatsoever which may be asserted against Lender thereunder or hereunder, and, without limiting the generality of the foregoing, Borrower covenants that this Assignment shall not operate to place upon Lender: (i) responsibility for the control, care, management or repair of the Property; (ii) the carrying out of any obligations of the landlord under said Lease; (iii) the responsibility or liability for any

waste committed on the Property by the tenants or any other party; or (iv) the responsibility or liability for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, invitee, employee, stranger or other person.

This Assignment shall be binding upon the Borrower, its successors and assigns and subsequent owners of the Property, or any part thereof, and shall inure to the benefit of Lender, its successors and assigns and any holder of the Note.

BORROWER HEREBY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS ASSIGNMENT OR ANY OF THE LOAN DOCUMENTS. BORROWER CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF LENDER OR LENDER'S COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT LENDER WOULD NOT, IN THE EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THIS WAIVER OF TRIAL BY JURY PROVISION. BORROWER ACKNOWLEDGES THAT LENDER HAS BEEN INDUCED TO MAKE THE LOAN SECURED HEREBY IN PART BY THE PROVISIONS OF THIS WAIVER.

IN WITNESS WHEREOF, Borrower has caused these presents to be executed by its duly authorized partner 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 General Partner

By: Alex Baker, Inc., an Alabama corporation
Its General Partner

By: 
Alex D. Baker
Its President

STATE OF ALABAMA)
 :
JEFFERSON COUNTY)

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

Given under my hand and seal of office this 5th day of October, 1993.


Notary Public

[NOTARIAL SEAL]

My Commission Expires: 8-6-97

EXHIBIT A

Legal Description

Lot 1, according to the survey of Brook Highland Plaza, as recorded in Map Book 16 Page 102 in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

Lot 2, according to the survey of Brook Highland Plaza, as recorded in Map Book 16 Page 102 in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

Together with all of the Lender's right, title and interest in, to and under the following instruments:

(i) Declaration of Easements and Restrictive Covenants (Brook Highland Development - 1.35 acre Out Parcel) by AmSouth Bank, N.A., as Ancillary Trustee for NCNB National Bank of North Carolina, as Trustee for the Public Employees Retirement System of Ohio, dated August 29, 1990, and recorded in Real 307, Page 985 in said Probate Office.

(ii) Easement Agreement dated October 12, 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.

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