

STATE OF ALABAMA)

COUNTY OF SHELBY)

**FIRST AMENDMENT TO MORTGAGE
AND SECURITY AGREEMENT AND
ASSIGNMENT OF RENTS AND LEASES**

THIS FIRST AMENDMENT TO MORTGAGE AND SECURITY AGREEMENT AND ASSIGNMENT OF RENTS AND LEASES is made and entered into as of this 14th day of July, 1994, between **BROOK HIGHLAND LIMITED PARTNERSHIP**, a Georgia limited partnership (the "Borrower") and **SOUTHTRUST BANK OF ALABAMA, NATIONAL ASSOCIATION**, a national banking association (the "Lender").

R E C I T A L S:

A. Borrower is indebted to Lender pursuant to that certain Promissory Note dated October 15, 1993, from Borrower to Lender in the stated principal sum of \$25,070,000 (the "Note").

B. The Note is secured by that certain Mortgage and Security Agreement in favor of Lender dated October 15, 1993, and recorded as Instrument No. 1993-32521 in the Probate Office of Shelby County, Alabama (the "Mortgage"), and by an Assignment of Rents and Leases in favor of Lender dated October 15, 1993, and recorded as Instrument No. 1993-32522 in said Probate Office (the "Assignment").

C. The real property described in the Mortgage and Assignment has been replatted, and the Borrower and Lender desire to amend the Mortgage and Assignment accordingly.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the parties hereto agree as follows:

1. The Mortgage is hereby amended by deleting the legal description contained in Exhibit A thereto in its entirety, and inserting in lieu thereof the legal description contained in Exhibit A-1 attached hereto.

2. The Assignment is hereby amended by deleting the legal description contained in Exhibit A thereto in its entirety, and inserting in lieu thereof the legal description contained in Exhibit A-1 attached hereto.

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3. No right of Lender with respect to the Note, the Mortgage, the Assignment, or any other document or instrument evidencing, securing, or relating to the Note are or will be in any manner released, destroyed, diminished, or otherwise adversely affected by this Amendment.

4. Except as hereby expressly modified and amended, the Mortgage and Assignment shall remain in full force and effect, and the Mortgage and Assignment, as amended, are hereby ratified and affirmed in all respects, and shall continue to secure the Note. Borrower confirms that it has no defenses or setoffs with respect to its obligations pursuant to the Mortgage and Assignment, as amended hereby.

5. Borrower represents and warrants to Lender that all representations and warranties contained in the Mortgage and Assignment are true and correct as of the date hereof, and no Event of Default (as defined in the Mortgage and Assignment), or event, which with the giving of notice or lapse of time or both would constitute an Event of Default, exists.

6. This Amendment shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assignors.

7. This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which when taken together shall constitute one and the same instrument.

8. **BORROWER WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION (INCLUDING, BUT NOT LIMITED TO, ANY CLAIMS, CROSS-CLAIMS OR THIRD PARTY CLAIMS) ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AMENDMENT OR THE INDEBTEDNESS SECURED BY THE MORTGAGE. 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 JURY TRIAL PROVISION. BORROWER ACKNOWLEDGES THAT LENDER HAS BEEN INDUCED TO ENTER INTO THIS AMENDMENT IN PART BY THE PROVISIONS OF THIS PARAGRAPH.**

IN WITNESS WHEREOF, the parties have executed this Amendment on 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: W. Ernest Moss
W. Ernest Moss
Its Vice President

SOUTHTRUST BANK OF ALABAMA, NATIONAL ASSOCIATION, a national banking association

By: Andy Moss
Its SUP

STATE OF ALABAMA)
COUNTY OF Jefferson)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that W. Ernest Moss, whose name as Vice 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 official seal, this 15th day of July, 1994.

Pamela A. West
NOTARY PUBLIC

My Commission Expires:

8-10-95

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Andy Morris, whose name as Senior Vice President of SouthTrust Bank of Alabama, National Association, a national banking association, 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 national banking association.

Given under my hand and official seal this 15th day of July, 1994.

Pamela A. West
NOTARY PUBLIC

My Commission Expires:

8-10-95

This instrument prepared by:

Jill Verdeyen Deer, Esq.
BURR & FORMAN
Suite 3000, SouthTrust Tower
420 North 20th Street
Birmingham, AL 35203

EXHIBIT A-1

Lots 1, 1A, 1B, 1C, 1D, 1E, 1F, 2, 2A, and 2B, according to the Brook Highland Plaza resurvey, as recorded in Map Book 18, Page 99 in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

Together with all 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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07/15/1994-22326
04:21 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
005 MCD 18.50