

Prepared by:

F. G. Hummel, Jr.  
3120 Parrott Ave., NW  
Atlanta, GA 30318

### EASEMENT ENCROACHMENT AND PERMISSIVE USE AGREEMENT

This agreement is made on the 30<sup>th</sup> day of JUNE, 1995, by COLONIAL PIPELINE COMPANY ("COMPANY"), a Delaware corporation, and THE MAILWORKS-SOUTH, INC.. ("OWNER").

WHEREAS, COMPANY owns and operates a 16" pipeline across property of Owner under a Right of Way Easement (Right-of-Way or Easement) granted by: Emmie P. Davidson, a widow, dated March 4, 1963, recorded in D.B. 224, beginning at Pg. 758 of the land records of Shelby County, Alabama, as amended by Supplemental Right-of-Way Agreement (amending original Right-of-Way Easement) of this date between Company and Owner, and recorded in D.B. 1995, Pg. 18484 of said records; and

WHEREAS, the location of the Right-of-Way is generally depicted on drawings by George M. Phillippi, Architect entitled The Mailworks, Inc., Rev. date 5-16-95, which drawings by reference, are made a part hereof (the Drawings); and

WHEREAS, the Right-of-Way crosses a parcel of Owner's land ("Premises") being developed by Owner as MAIL WORKS as shown on the Drawings (the Owner's Improvements); and

WHEREAS, a portion of the Owner's Improvements on the Premises will encroach on the Right-of-Way, as depicted on the Drawings; and

WHEREAS, COMPANY approves the Owner's Improvements as depicted on the Drawings, provided that COMPANY's ability to exercise the rights granted by the Easement are not impaired.

NOW, THEREFORE, IN CONSIDERATION OF \$1.00 and other good and valuable consideration as specified in a separate PIPELINE ACCOMMODATION AGREEMENT, COMPANY agrees as follows:

COMPANY hereby allows the encroachments and permits certain use to be made of its Right-of-Way in those portions of the Right-of-Way above referenced and as shown on the Drawings for the Owner's Improvements upon the Premises.

COMPANY hereby authorizes OWNER, and its successors, purchasers, and assigns, to install and maintain those improvements on the Premises that will encroach upon the portions of the Right-of-Way which are delineated in the Drawings, subject to the conditions of this AGREEMENT being FURTHER defined herein, to wit;

OWNER shall not interfere with COMPANY's access to the Right-of-Way for the purposes of installation, inspection, maintenance, and repairs of its pipeline(s) or for any other reason as provided under the terms of the Easement. COMPANY has the right at all times to inspect its pipelines to determine whether maintenance and/or repairs are needed.

In the event that COMPANY must install, inspect, maintain, repair or replace its pipeline(s), COMPANY shall give OWNER(S) a minimum of five (5) working days' notice of any scheduled regular inspection, maintenance, or repair of the pipeline so that OWNER (at Owner's expense) may remove such improvements as may be feasible. Following such five (5) working days' notice, COMPANY may perform necessary maintenance without bearing responsibility for damage to any of OWNER'S improvements that may be remaining upon COMPANY'S Right-of-Way.

HOWEVER, in the case of required Emergency repairs to COMPANY'S facilities in and upon its Right-of-Way, such five (5) working days' prior notice to OWNER is waived and COMPANY bears no responsibility for damage to any of OWNER'S improvements within the Right-of-Way limits.

RETURN RECORDED INSTRUMENT TO:

Robert G. Paine, Legal Assistant  
JOHNSTON BARTON PROCTOR SWEDLAW & NAEF  
1901 Sixth Avenue North, Suite 2900  
Birmingham, Alabama 35203-2618

07/13/1995  
11:54 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
005 HCD 19.50

Inst # 1995-18485

**ADDITIONALLY:**

1. OWNER(S) shall notify T. E. Hummel, (phone 205/663-7282) at least two (2) Colonial working days prior to OWNER'S construction, subsequent maintenance or repair so that Colonial may provide a representative at the site. If he cannot be reached, then notify F. G. Hummel, Jr., (phone 404/792-8530).
2. No mechanized ditching or excavation shall be allowed within five (5) feet of either side of the extremities of the 16" pipeline. No excavation or construction is permitted over Colonial's pipeline or within its Right-of-Way without a Colonial representative being present. Sub-grading, grading and placement of fill over the pipeline will require the approval of Colonial's field representative as to method and extent; provided, however, that fill to the contours defined in the Drawings is approved by Colonial. Temporary stockpiling of spoilage or top soil over the pipeline is not permitted, unless otherwise approved by Colonial's representative.
3. During Owner's construction, subsequent maintenance or repair, the Right-of-Way will be kept clear of equipment, vehicles and material at all times or as temporarily authorized by Colonial's representative.
4. Permanent structures are not permitted on the Right-of-Way, except as expressly permitted herein or in the Drawings. Manholes, junction boxes, valve boxes, fire hydrants, service meters, storm drain inlets or outlets, and utility poles are considered permanent structures. The impoundment of water over the pipeline Right-of-Way is not allowed. No fences or temporary structures (such as signs, trailers, temporary power poles, etc.) shall be allowed in the Right-of-Way without the express approval of Colonial's representative.
5. Upon request by the Owner or its agents, Colonial will determine the approximate location of its pipeline and Right-of-Way; however, in so doing, Colonial makes no warranty as to the accuracy of the locations and measurements given. Colonial also cannot provide assurance that its permanent line markers are positioned directly over its pipeline. (See 10. E, F)
6. Pipeline markers made unusable or damaged by Owner (its agents, contractors or others under its employ) shall be repaired or replaced at the Owner's expense. In addition, no pipeline markers shall be obscured from public view.
7. The Owner agrees that all of its work within Colonial's Right-of-Way shall be performed in a workmanlike manner and in compliance with applicable governmental and industry standards and codes.
8. This approval is granted only to the extent of, and with no actual or implied diminishment of, Colonial's rights and interests, and without either express or implied warranty.
9. OWNER agrees to defend and hold Colonial harmless from all loss, cost, or other expense, attorney's fees and court costs necessary to enforce any of the provisions herein, including personal property and bodily injury damages, whether occurring to it or to Colonial; the respective employees, agents, or servants of either; or to third parties, which are proximately caused by or arise from the installation, maintenance, or repair of OWNER'S Improvements, with the exception of claims due to the sole negligence of Colonial and/or its contractors, subcontractors, employees and agents.
10. All of the following conditions shall apply:
  - A. Parallel occupancy of foreign utilities shall not be permitted within Colonial's Right-of-Way.
  - B. Foreign utilities, installed by OWNER, crossing Colonial's Right-of-Way shall be installed a minimum of 2'-0" above or below Colonial's pipeline, and this elevation must be maintained for the entire width of the Right-of-Way. The crossing shall be at as near a 90 degree angle as possible.
  - C. Ductile iron or steel foreign utility crossings do not require encasement. Other utility crossings shall be encased in steel.

- D. The Owner acknowledges that Colonial's pipeline(s) has (have) impressed electrical current for the protection of the steel. Any loss of this protection caused by the encroaching party will be corrected by Colonial personnel only. The cost to correct this damage will be paid by the encroaching party.
- E. If the approximate location of the pipeline is required, steel prod bars, shovels and electrical sensing devices may be used by Colonial's field personnel. It should be noted that these methods are only approximate and can be misleading. The exact location of the pipeline can best be found through test pitting.
- F. If test pitting is required at any time to determine the exact location and elevation of the pipeline, Caution: notify T. E. Hummel (per Item 1) so that a Colonial representative may be provided at the site. This representative must be present during the test pitting for the protection of the pipeline(s) and common verification of the location. All costs for the test pitting will be borne by the encroaching party. The cost of engineering based on Colonial or other design criteria stemming from the amount or location of this test pit data is the responsibility of the Owner.
- G. Colonial reserves the right to open, cut, excavate and dig across the proposed parking lot, including paving, curbs, avenues and sidewalks; and in either such event, Colonial shall not be liable for the restoration of same or the payment of any damages to Owner.
- H. Excavation or grading which might result in erosion or which could render Colonial's Right-of-Way inaccessible shall not be permitted unless Owner agrees to restore the area and provide protection to Colonial's pipeline and Right-of-Way. Erosion control measures within or protecting the Right-of-Way including diversion dikes, sediment traps, silt fences, gravel outlets, and emergency spillways requires approval of Colonial's field representative as to equipment and method of installation.
- I. Heavy equipment shall not be permitted to operate over the pipeline unless earth padding has been provided to protect the pipeline from vibrating, overloading or physical damage. Temporary equipment crossings over the pipeline are permitted at selected locations as approved by Colonial's field representative. Light to medium weight equipment will require five (5) vertical feet of cover over the pipeline(s), and heavy equipment will require six (6) vertical feet of cover. Colored strips of plastic shall be placed under the temporary fill at original grade so that original grade will not be disturbed when the temporary fill is removed.
- J. Original vegetation on Colonial's Right-of-Way shall not be disturbed except in areas of the above mentioned construction and approved equipment crossings. High visibility plastic fence or other Colonial approved barricade shall be installed and maintained by Owner along the edge Colonial's Right-of-Way within the limits of the project for the duration of the proposed construction to insure that traffic does not randomly travel over Colonial's pipeline.
- K. Burning or burying of trash, brush, debris, shall not be permitted within Colonial's Right-of-Way.
- L. Cover above the pipeline shall be a minimum of four (4) feet or existing grade (if less).
- M. Colonial recognizes that the Drawings do not constitute final working drawings for the construction of Owner's Improvements, and that the same may require minor modification. Provided that any such modification has no adverse impact upon Colonial's pipeline, Right-of-Way, or its rights under the Easement or any other agreement between Colonial and Owner, and that such modifications are made in accordance with the Work-Letter Agreement between Colonial and Owner attached to this agreement as Schedule 1, Colonial agrees that such modifications shall be permitted.

Upon failure of the OWNER or its agents to comply in any material way with respect to any of the terms of this Agreement, Colonial reserves the right to revoke this Agreement in its entirety, prevent same from continuing any activity in violation of the terms of this Agreement, or its rights under its Easements and prior agreements and make any necessary repairs or adjustments to its pipeline or Right-of-Way with its own forces and/or contractor at the expense of the Owner.

This agreement shall be recorded in Shelby County, Alabama by OWNER, shall run with the land and be binding upon the heirs, successors and assigns of the parties hereto.

As evidence of this agreement the parties hereto have executed this document on the date first recited above.

COLONIAL PIPELINE COMPANY

By: V. A. Yarbrough  
(Vice ) President

APPROVED:  
Description &  
Terms Sum  
Form 112

WITNESS:

Nicholas M. Buck

ATTEST:

Gary L. Davis (Seal)

STATE OF GEORGIA)

Fulton COUNTY)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that V. A. Yarbrough, whose name as (Vice) President of Colonial Pipeline Company, a Delaware corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and official seal, this 30th day of June, 1995.

Sandra L. Hunter  
Notary Public

My Commission Expires:  
1-11-98

WITNESS:

Dale D. Kilpatrick  
Treasurer

OWNER:

B. L. Howard, Jr. (Seal)

STATE OF ALABAMA)

Shelby COUNTY)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that B. L. Howard, Jr., whose name as President of the MailWorks-South, Inc., an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that being informed of the contents of said instrument, he as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and official seal, this 14th day of June, 1995.

Kim Vaughn  
Notary Public

My Commission Expires:  
1-10-98



GEORGE M. PHILLIPPI • ARCHITECT

**WORK LETTER**

4 OFFICE PARK CIRCLE  
SUITE 313  
BIRMINGHAM, AL 35223  
(205) 871-7955

May 25, 1995

Mr. Frank Hummell  
Colonial Pipeline Company  
3120 Parrott Avenue, NW  
Atlanta, Georgia 30318

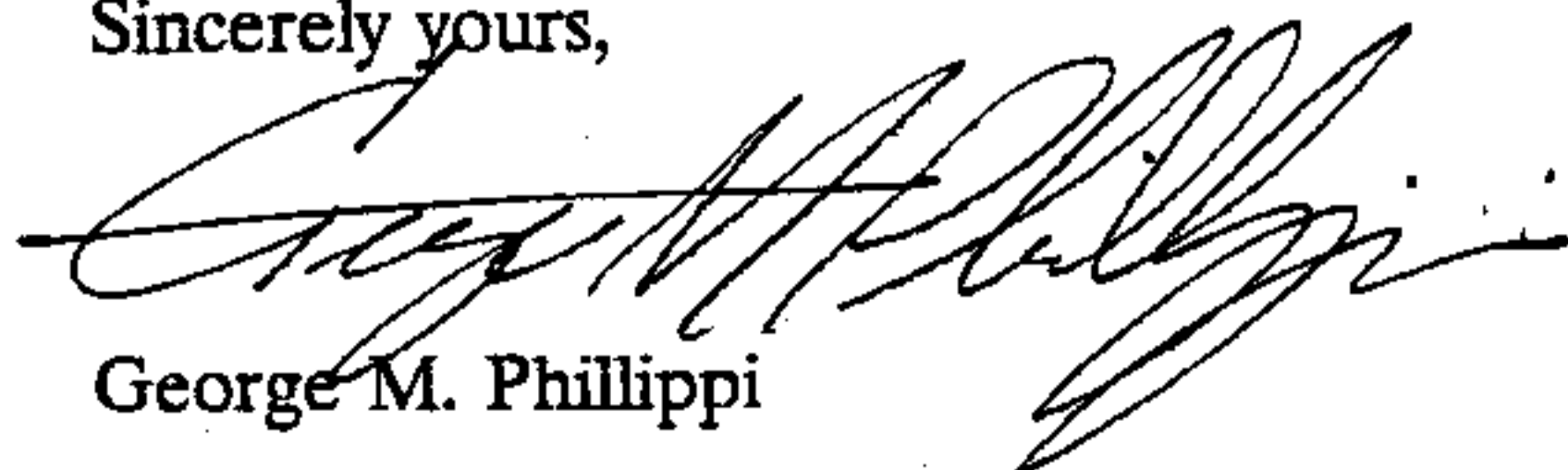
Re: Mailworks-South, Inc.  
Site Development

Dear Mr. Hummell:

This letter serves to verify the following issues on the above referenced project:

1. Site development shall be as generally depicted by Drawing A-1, revision date 5-16-95, prepared by George M. Phillippi-Architect. Deviations from this drawing are to be allowed providing that such deviations are approved by Colonial Pipeline Company prior to implementation.
2. All excavations performed by Colonial Pipeline Company shall be back-filled using suitable on-site material and compacted in no greater than 8 inch lifts to 95% standard procter minimum.
3. No above finished grade pipeline markers will be placed within areas to be developed for truck or car maneuvering and parking. Additional markers may be required by Colonial Pipeline Company in new locations to compensate for markers displaced by such development.
4. A business identification sign is to be installed near the intersection of County Highway No. 52 and Tennyson Drive. There shall be maintained a minimum of 30 feet from the centerline of the existing Colonial Pipeline Company pipe to the nearest point of the sign, sign supports, or accompanying foundation. See Drawing A-1, revision date 5-16-95 for approximate sign location.

Sincerely yours,



George M. Phillippi

GMP:vt

COPY

Inst # 1995-18485

07/13/1995-18485  
11:54 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
005 MCD 19.50

" SCHEDULE #1 "