

RESOLUTION 2008-028

Authorizing the City Manager to execute an Agreement with Insured Benefits, Inc. for reimbursement of costs and condemnation to acquire a 15' Sanitary Sewer Easement and 219 square foot off site easement on Lexington County TMS #01925-03-014 to serve property owned by Insured Benefits, Inc. known as Lexington County TMS #001925-03-011, 001925-03-012 and 001925-03-013

ORIGINAL
STAMPED IN RED

WHEREAS, it is necessary for the City of Columbia to acquire an off site sewer easement to facilitate development of property known as Lexington County TMS #001925-03-011, 001925-03-012 and 001925-03-013 as shown on the attached survey of Easement Exhibit for Dawkins, Audrey, et al. prepared by Civil Engineering of Columbia dated September 19, 2007; and

WHEREAS, Insured Benefits, Inc. has been unsuccessful in negotiations to obtain the 15' sanitary sewer easement to the City of Columbia from the owners; and

WHEREAS, Insured Benefits, Inc. has made a request of the City of Columbia to condemn for said easement and has agreed to bear all costs and expenses of the condemnation as per the attached Agreement; NOW, THEREFORE,

BE IT RESOLVED by the Mayor and City Council this 21st day of May, 2008 that the City Manager is authorized to execute the attached Agreement with Insured Benefits, Inc. and the City of Columbia condemn the following:

OWNERS:	LEXINGTON COUNTY TMS#/ PROPERTY DESCRIPTION:	RIGHT OF WAY AREA:
Audrey Dawkins, et al.	01925-03-014	15' permanent easement 219 sq. ft. off site easement

Requested by:

Insured Benefits, Inc.



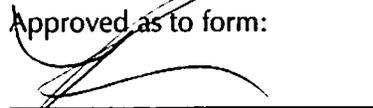
Mayor

Approved by:



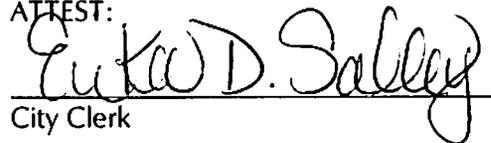
City Manager

Approved as to form:



City Attorney

ATTEST:



City Clerk

Introduced: 5/21/2008
Final Reading: 5/21/2008

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

AGREEMENT

THIS AGREEMENT made this 23RD day of April, 2008 by and between the **City of Columbia** (hereinafter referred to as "the City") and **Insured Benefits, Inc. Pension Plan, Robert L. Doolittle, Trustee** (hereinafter referred to as "IB, INC.").

WITNESSETH:

FOR AND IN CONSIDERATION of the mutual promises made between the City and IB, Inc., the parties agree as follows:

1. Condemnation. Pursuant to South Carolina Code § 5-31-460, the City agrees to condemn the necessary easement for a sewer line across property owned by Audrey Dawkins, et al (hereinafter referred to as "Landowner") being designated as Lexington County TMS No. 01925-03-014, and being more particularly shown on a survey prepared for the City of Columbia Department of Engineering by Civil Engineering of Columbia dated September 19, 2007 and attached hereto as Exhibit "A", for the construction of sewer line in order for the City to serve the property owned by IB, Inc., hereinafter referred to as the condemnation action.

2. Reimbursement by IB, Inc. IB, Inc. shall fully reimburse the City for the easement acquisition costs. "Easement acquisition costs" are defined as the ultimate cost paid to the Landowners of the subject property for the easement, either through settlement or court adjudication, and/or monies or costs paid under a right to take

challenge or injunctive relief sought by the Landowners, and shall include but not be limited to appraisal fees, expert witness fees, attorney's fees, any award of fees to the landowner and other litigation expenses and any amounts as may be negotiated, determined or awarded as just compensation, money judgments and prejudgment or post judgment interest, all of which are listed by way of illustration and not limitation. Notwithstanding the foregoing, IB, Inc. shall not be required to pay the City of Columbia's attorney's fees for the City Attorney Office's representation of the City of Columbia.

Prior to the commencement of the condemnation action, IB, Inc. shall deposit a sum equivalent to 1.5 times the appraised value of the easement as determined by the City. The City may, from time to time with or without IB, Inc.'s consent, draw against these funds to reimburse itself, pay easement acquisition costs or deposit sufficient funds with the Richland County Clerk of Court in order to take possession, all in the City's sole and exclusive discretion. The City may from time to time, in its sole and exclusive discretion, request IB, Inc. deposit additional funds with the City as the funds previously deposited are depleted by the City as the easement acquisition proceeds. IB, Inc. shall deliver such funds to the City within three days of the City's written request to IB, Inc. or its attorney. Upon final acquisition of the easement, any remaining overage will be refunded to IB, Inc. IB, Inc. shall not be entitled to receive interest on these monies.

During the pendency of the easement acquisition, the City shall consult with an attorney to be retained by IB, Inc. prior to any resolution of the condemnation action. IB, Inc.'s attorney shall, if requested by the City: participate in settlement negotiations, if any; assist with discovery; attend mediation or arbitration; attend court proceedings or provide other assistance or information as may be required by the City. Prior to any settlement with the Landowner, the City shall obtain IB, Inc.'s written approval of any settlement amount. If settlement is not reached or approved, IB, Inc. understands that it will be solely responsible for any jury or non-jury verdict. City shall have no obligation to appeal from a jury or non-jury verdict or Order of any Court. The decision to appeal is in the sole and exclusive discretion of the City. If the City elects to appeal, IB, Inc. agrees to be responsible for all costs of the appeal, if any.

3. In addition to and without in any way limiting IB, Inc.'s obligation of reimbursement as is provided for in Paragraph 2, IB, Inc. agrees to fully indemnify and hold harmless the City from and against any and all claims, liens, actions, losses, expenses, witness fees, costs, attorney's fees, damages, judgments of any nature whatsoever, all of which are listed by way of illustration and not limitation, which the City may hereinafter suffer, incur, pay, become obligated to pay because of the City agreeing to acquire the easement or providing IB, Inc. water service during the pendency of the easement acquisition. This hold harmless and indemnification agreement shall be given a broad and liberal interpretation and application to fully

protect the City. IB, Inc.'s obligations to indemnify and hold the City harmless shall survive the acquisition and shall remain in full force and effect until all applicable statutes of limitations have expired.

4. In the event IB, Inc. is in breach of this Agreement for any reason, the City may dismiss or abandon actions associated with the easement acquisition brought pursuant to this Agreement, upon three days written notice to IB, Inc., or its attorney. If any action associated with the easement acquisition is dismissed or abandoned for breach, IB, Inc. shall not be entitled to the refund of any monies spent for easement acquisition costs. Waiver of any breach shall not constitute a waiver of any subsequent breach.

5. This Agreement shall be binding upon IB, Inc., its successors and assigns.

WITNESS the hands and seals of the parties to this Agreement this 23rd day of

April, 2008.

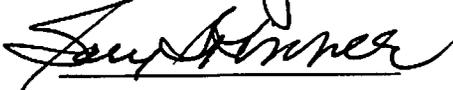
Richard D. Salley
Valerie R. Smith

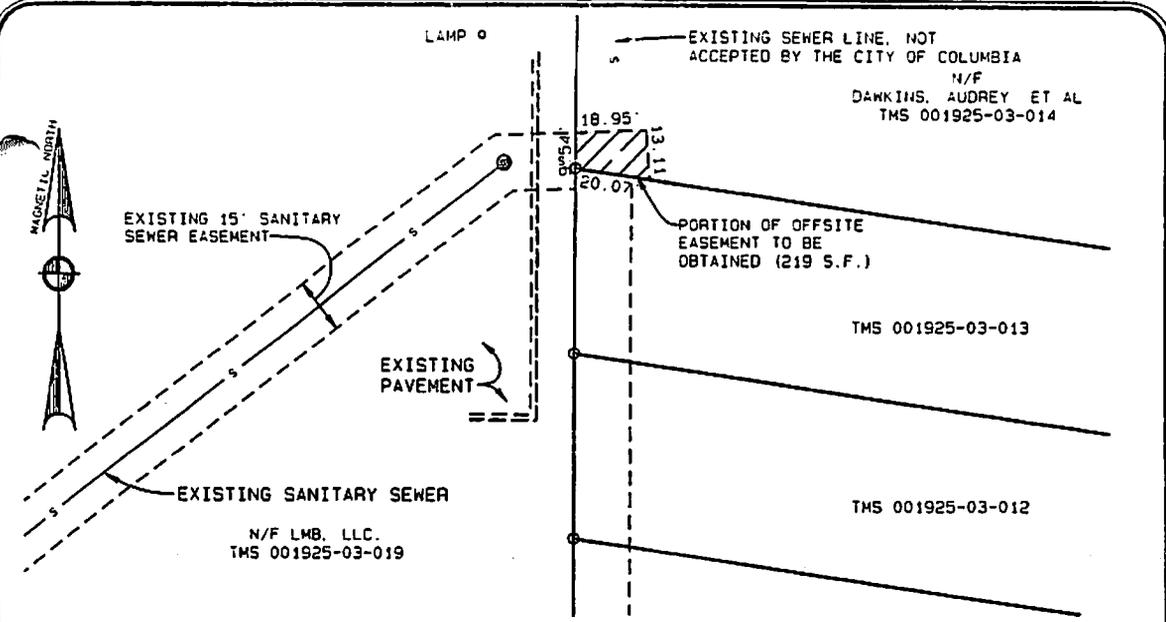
CITY OF COLUMBIA

BY: 
Charles P. Austin, Sr.
ITS: City Manager

INSURED BENEFITS, INC., PENSION PLAN

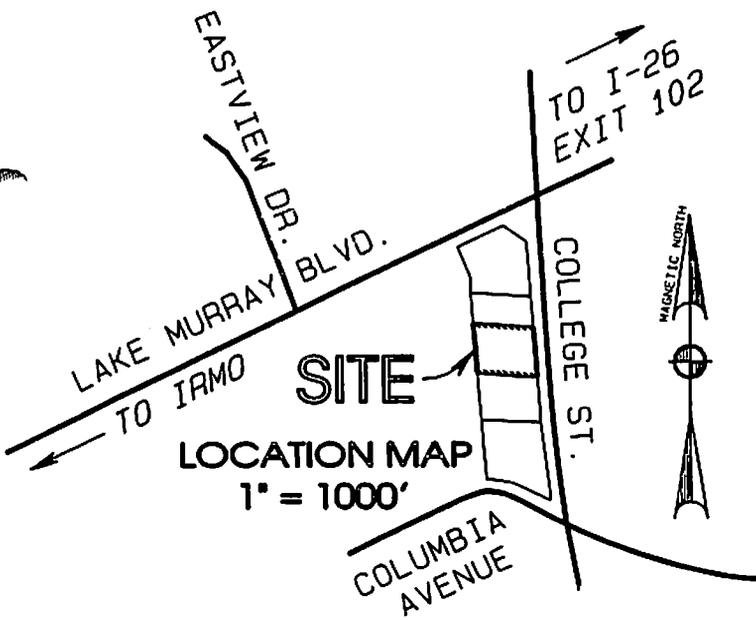
BY: 
Robert L. Doolittle
ITS: Trustee

Aari Clayton




NOTES & REFERENCES:

1. THE PURPOSE OF THIS EXHIBIT IS TO SHOW THE PORTION OF THE OFFSITE SEWER EASEMENT TO BE OBTAINED FROM N/F DAWKINS AUDREY ET AL.

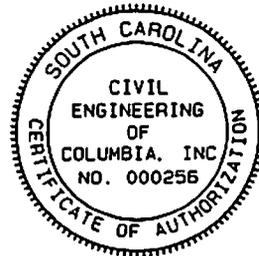


**EASEMENT EXHIBIT FOR
DAWKINS, AUDREY ET AL
PROJECT NAME: SEWER SERVICE
TO LEXINGTON COUNTY TMS
001925-03-011, 012, AND 013**

IN THE TOWN OF IRMO, LEXINGTON COUNTY, SC



SCALE IN FEET



SHEET 1 OF 1

NO.	DATE	REVISION DESCRIPTION	BY
	9-19-2007		
DATE:		JOB NUMBER	
DRAWN: C. S.		06101	
SCALE: 1" = 40'			

PREPARED FOR
CITY OF COLUMBIA DEPARTMENT
OF UTILITIES AND ENGINEERING



CIVIL ENGINEERING OF COLUMBIA
CONSULTING ENGINEERING SURVEYING AND PLANNING
3608 FERNANDINA ROAD COLUMBIA, SOUTH CAROLINA 29210
TELEPHONE (803) 798-2820 FAX (803) 798-2826