

1443 [PHASE I TO PHASE III & COMMERCIAL]

Rec 256

STATE OF ALABAMA )

SHELBY COUNTY )

SANITARY SEWER EASEMENT

THIS EASEMENT made as of this 15<sup>th</sup> day of October, 1987 by and among HEATHERBROOKE INVESTORS, LTD., an Alabama limited partnership (the "Grantor"), COLONIAL PROPERTIES, INC., an Alabama corporation (the "Grantee"), FIRST ALABAMA BANK as Trustee (the "First Mortgagee"), and AMSOUTH BANK N.A., a national banking association (the "Second Mortgagee").

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W I T N E S S E T H:

WHEREAS, the Grantor is the owner of that certain real estate situated in Shelby County, Alabama described in Exhibit "A" attached hereto and incorporated herein ("Premises A"); and

WHEREAS, the Grantee is the owner of that certain real estate situated in Shelby County, Alabama described in Exhibit "B" attached hereto and incorporated herein ("Premises B"); and

WHEREAS, in connection with the development, construction, improvement and operation of Premises B and in order to provide sanitary sewer service to Premises B, the Grantee has requested that the Grantor grant to the Grantee a sanitary sewer easement over and through Premises A; and

Land Title

WHEREAS, the Grantor is willing to grant to the Grantee a sanitary sewer easement over a portion of Premises A in accordance with the terms and provisions hereinafter set forth; and

WHEREAS, the First Mortgagee and the Second Mortgagee are willing to subordinate their respective mortgage liens on Premises A to the sewer easement being hereby granted.

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor, the Grantee, the First Mortgagee and the Second Mortgagee covenant and agree for themselves, their successors and assigns, as follows:

1. GRANT OF SEWER EASEMENT. The Grantor does hereby grant, bargain, sell and convey unto the Grantee a non-exclusive easement and right-of-way for sanitary sewers over, under, through and across the following-described real property situated, lying and being in Shelby County, Alabama, to-wit:

Commence at the Southwest corner of the Northwest 1/4 of the Northeast 1/4 of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, and run in an Easterly direction along the South line of said 1/4-1/4 section a distance of 549.48 feet to a point; thence turn a deflection angle of 91°22'10" to the left and run in a Northerly direction a distance of 55.02 feet to the point of beginning; thence turn a deflection angle of 88°50'58" to the left and run in a Westerly direction a distance of 32.22 feet to a point; thence turn a deflection angle of 39°07'08" to the right and run in a Northwesterly direction a distance of 39.52 feet to a point; thence turn a

deflection angle of 100°53'38" to the left and run in a Southwesterly direction a distance of 90.26 feet to the point of ending; the easement lines 5 feet right and left of either side of the herein described centerline are to be lengthened or shortened as required to intersect with the property line at the points of beginning and ending.

ALSO

Commence at the Southwest corner of the Northwest 1/4 of the Northeast 1/4 of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, and run in an Easterly direction along the South line of said 1/4-1/4 section a distance of 442.80 feet to a point; thence turn a deflection angle of 61°59'39" to the left and run in a Northeasterly direction a distance of 90.26 feet to the point of beginning; thence turn a deflection angle of 5°55'16" to the left and run in a Northeasterly direction a distance of 342.00 feet to the point of ending, said point being at the center of a sanitary sewer pumping station; the easement lines 5 feet right and left of either side of the herein described centerline are to be lengthened or shortened as required to intersect with the pumping station easement lines at the point of ending.

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for the purpose of constructing, connecting or tying into a sanitary sewer service to be constructed across the above-described property, together with all rights and privileges necessary or convenient for the reasonable enjoyment or use thereof, including the right to enter upon the above-described land and Premises A for the purpose of constructing, maintaining, repairing and removing the sewers.

TO HAVE AND TO HOLD the easement and right-of-way unto the Grantee, its successors and assigns, forever.

2. MAINTENANCE OF EASEMENT PREMISES: Grantor and Grantee, for themselves and their respective successors and assigns, do hereby agree as follows:

(a) All costs and expenses incurred for the maintenance of the sewer located within the Easement Premises and for all work performed in and to the Easement Premises related to the maintenance of the sewer located thereon shall be borne by the Grantor and the Grantee in proportion to the gallons per day allocated to completed improvements located on their respective properties that are served by the sewer located within the Easement Premises (or proportionately in accordance with such other comparable index as may be established from time to time by the utility company or government agency then supplying sewer service to Premises A and B). By way of example only, if completed improvements on Premises A served by the sewer within the Easement Premises have a sewer allocation of 10,000 gallons per day, and the completed improvements on Premises B served by said sewer have an allocation of 15,000 gallons per day, forty percent (40%) of the maintenance expenses shall be paid by the Grantor and the balance of such expenses shall be paid by the Grantee. For purposes of this Section 2, the term "completed improvements" shall mean improvements for which a certificate of occupancy or comparable certification has been issued or which are otherwise suitable for occupancy for residential or commercial purposes. The number of such completed improvements shall be determined on December 31 of each year for the purpose of making the

calculations and allocations prescribed by this Section 2 for the calendar year concluding on that date. By March 31 of each year, Grantor and Grantee shall provide to each other an accounting of their respective expenses as described hereinabove incurred during the immediately preceding calendar year. Within thirty (30) days from its receipt of such accounting, Grantor shall pay to Grantee or Grantee shall pay to Grantor, as the case may be, its proportionate share of such expense as is necessary to satisfy their pro rata obligations as required by this Section 2. In the event either party defaults under the terms of this paragraph (a), the defaulting party shall be liable to the nondefaulting party for its proportionate share of such expense, plus interest on such amount at the rate of 15% per annum from the date such funds are expended by the nondefaulting party, and all costs, including attorneys' fees, incurred by the nondefaulting party in enforcing the terms of this paragraph (a).

(b) The Grantor does reserve the right to (i) build roads, roadways and parking lots over said right-of-way, (ii) add fill dirt and other landscaping materials over the right-of-way and any sewers constructed therein, and (iii) relocate the Sewer Easement at Grantor's expense if the Sewer Easement interferes with Grantor's use of its property; and Grantor shall further have the right to use Grantor's property in any other

manner not inconsistent with the Grantee's use of the Sewer Easement; provided, however, that such relocation or use does not interfere with the continuous provision of sewer service to Premises B; and

(c) The Grantor, its successors and assigns, shall have the right to connect to the sewer without payment to the Grantee of any connection fee.

(d) Nothing in this Agreement is intended to govern expenses incurred by any party to the Water Works Board for the City of Birmingham or similar governing body for use of the sewer within the Easement Premises.

(e) The easement hereby granted is herein sometimes referred to as the "Sewer Easement".

(f) Neither the Grantor nor the Grantee hereby assume any obligation or duty whatsoever concerning the maintenance or repair of the lift station and/or the force main located on Premises A which are owned by and have heretofore been dedicated to the Birmingham Water Works Board.

(g) Notwithstanding Grantor's obligation to pay maintenance expenses as described in paragraph (a) above, Grantor shall have no obligation to pay, in whole or in part, for any construction costs attributable to the construction of new sewer service within the Easement Premises incurred by any party after the date of this Agreement, unless otherwise specifically provided herein.

3. COVENANT RUNNING WITH LAND. The Sewer Easement and this Agreement shall be an easement, restriction and covenant running with the land and shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, executors, successors and assigns including, without limitation, all subsequent owners of Premises A and Premises B and all persons claiming under them.

4. SUBORDINATION BY FIRST MORTGAGEE. By joining in the execution of this agreement, the First Mortgagee, for itself and its successors and assigns, does hereby subordinate its mortgage recorded at Real Volume 054, page 498 in the Office of the Judge of Probate for Shelby County, Alabama and transferred at Real Volume 054, page 524 in the said probate office (the "First Mortgagee"), to the Sewer Easement so that the First Mortgage and all extensions, modifications and renewals thereof, now or hereafter additionally securing the indebtedness secured by the First Mortgage shall be subordinated to the same extent as if this Agreement had been executed, delivered and recorded prior to the execution, delivery and recordation of the First Mortgage. Notwithstanding the foregoing, no such subordination shall extend to any costs, charges, or liens described hereinabove; and, in the event said Mortgagee or any purchaser at a foreclosure sale ("Successor") becomes the owner of the Property, such

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Successor shall not be liable for any such costs, charges, or liens theretofore existing.

5. SUBORDINATION BY SECOND MORTGAGEE. By joining in the execution of this Agreement, the Second Mortgagee, for itself and its successors and assigns, does hereby subordinate its mortgage recorded at Real Volume 054, page 565 in the Office of the Judge of Probate for Shelby County, Alabama (the "Second Mortgage") to the Sewer Easement so that the Second Mortgage, and all extensions, modifications, and renewals thereof, now or hereafter additionally securing the indebtedness secured by the Second Mortgage shall be subordinated to the same extent as if this Agreement had been executed, delivered and recorded prior to the execution, delivery and recordation of the Second Mortgage. Notwithstanding the foregoing, no such subordination shall extend to any costs, charges, or liens described hereinabove; and, in the event said Mortgagee or any purchaser at a foreclosure sale ("Successor") becomes the owner of the Property, such Successor shall not be liable for any such costs, charges, or liens theretofore existing.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first set forth above.



HEATHERBROOKE INVESTORS, LTD., an Alabama limited partnership

By: COLONIAL PROPERTIES MANAGEMENT ASSOCIATION, its general partner

WITNESS:

ATTEST:

By: 

Its: \_\_\_\_\_

By: 

THOMAS H. LOWDER

Its Managing Partner

COLONIAL PROPERTIES, INC., an Alabama corporation, as a general partner

ATTEST:

By: 

Its: Asst. Secretary

By: 

THOMAS H. LOWDER

Its President

AMSOUTH BANK N.A., a national banking association

ATTEST:

By: 

Its: ASSISTANT VICE PRESIDENT

By: Mary B Voarhes

Its: Vice President

FIRST ALABAMA BANK

ATTEST:

By: 

Its: Assistant Vice President and Corporate Trust Officer

By: 

Its: Vice President Trust Comptroller and Corporate Trust Officer

STATE OF ALABAMA )  
JEFFERSON COUNTY )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that THOMAS H. LOWDER, whose name as Managing Partner of COLONIAL PROPERTIES MANAGEMENT ASSOCIATION as general partner of HEATHERBROOKE INVESTORS, LTD., is signed to the foregoing Easement, and who is known to me, acknowledged before me on this day, that, being informed of the contents thereof, he, as such partner and with full authority, executed the same voluntarily for and as the act of said partnership.

Given under my hand and official seal, this the 1st  
day of October, 1987.

Diane Henninger  
NOTARY PUBLIC

My Commission Expires: 12-5-88

STATE OF ALABAMA )  
JEFFERSON COUNTY )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that THOMAS H. LOWDER, whose name as President of COLONIAL PROPERTIES INC., a corporation, is signed to the foregoing Easement, and who is known to me, acknowledged before me on this day, that, being informed of the contents thereof, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this the 1st  
day of October, 1987.

Diane Henninger  
NOTARY PUBLIC

My Commission Expires: 12-5-88

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STATE OF ALABAMA )  
JEFFERSON COUNTY )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Mary B. Voorhees, whose name as Vice President of AMSOUTH BANK N.A., a corporation, is signed to the foregoing Easement, and who is known to me, acknowledged before me on this day, that, being informed of the contents thereof, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this the 1st  
day of October, 1987.

Lisa Ann Wartsfield  
NOTARY PUBLIC

My Commission Expires: 4-18-90

STATE OF ALABAMA     )  
MONTGOMERY COUNTY    )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that WALTER L. DARBY, JR., whose name as Vice President Trust Comptroller of FIRST ALABAMA BANK, a corporation, is and Corporate Trust Officer signed to the foregoing Easement, and who is known to me, acknowledged before me on this day, that, being informed of the contents thereof, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this the 28th day of September, 1987.

Bonnie Lynn Adams  
NOTARY PUBLIC

My Commission Expires: 4/29/91

THIS INSTRUMENT WAS PREPARED BY: W. CLARK WATSON, LEITMAN, SIEGAL, PAYNE & CAMPBELL, P.C., 425 First Alabama Bank Building, Birmingham, Alabama 35203.

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EXHIBIT "A"

PREMISES A

(Phase I)

Parcel One:

Beginning at the Southwest corner of the NW1/4 of the NE1/4, Section 36, Township 18 South, Range 2 West, run North along the West boundary of said quarter-quarter a distance of 83.35 feet; thence right 45°06' a distance of 63.10 feet; thence left 49°11'30" a distance of 170.55 feet; thence right 24°46' a distance of 588.26 feet; thence left 36°03' a distance of 156.52 feet; thence right 37°27' a distance of 135.37 feet; thence right 89°18'30" a distance of 119.33 feet; thence left 80°18' along a traverse line which approximates the water's edge of Lake Dixie, said water's edge being the true property line, a distance of 204.08 feet; thence right 80°48' and continuing along said traverse line a distance of 265.33 feet; thence left 17°25' a distance of 77.06 feet; thence right 5°11' a distance of 65.07 feet; thence right 51°03' a distance of 94.44 feet; thence right 43°56' a distance of 132.54 feet; thence right 18°31' a distance of 230.34 feet; thence right 6°55' a distance of 142.56 feet; thence left 85°30' a distance of 251.21 feet, which ends the traverse line approximating the water's edge of Lake Dixie, the remaining being the description of the exact property line of the land herein described, thence right 46°22' a distance of 420.00 feet; thence right 91°07' a distance of 271.66 feet thence left 88°53' a distance of 60.01 feet; thence right 91°07' a distance of 548.37 feet to the point of beginning.

AND:

Beginning at the SE corner of the NE 1/4 of the NW 1/4, Section 36, Township 18 South, Range 2 West, run North along the East boundary of said 1/4-1/4 a distance of 83.35 feet; thence right 45°06' a distance of 63.10 feet; thence left 49°11'30" a distance of 170.55 feet; thence left 155°14' along the centerline of a road easement having a width of 30 feet on each side of the center line, a distance of 61.00 feet to the point of tangency of a curve to the left; thence left along the arc of the curve having a radius of 880.67 feet, a distance of 199.15 feet through an angle of 12°57'23"; thence continue along the projected tangent to the aforementioned curve a distance of 47.12 feet to the South boundary of said

1/4-1/4 Section; thence left 95°39'01" along said South boundary a distance of 44.10 feet to the point of beginning.

Parcel Two:

A non-exclusive easement for ingress and egress and the installation of utilities, 60 feet in width being 30-feet on each side of centerline described as follows:

From the SE corner of the NE 1/4 of the NW 1/4, Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, run West along the South boundary of said 1/4-1/4 a distance of 44.10 feet to the point of beginning; thence 30 feet each side of a line described as: From the said 1/4-1/4 line, turn an angle of the right of 95°39'07" and go 47.13 feet; thence right along the arc of a curve with a radius of 280.67 feet, a distance of 199.15 feet; thence along the tangent line to said curve a distance of 570.51 feet; thence along a curve to the left with a radius of 242.04 feet a distance of 152.29 feet; thence, along the arc of a curve to the right with a radius of 232.35 feet a distance of 42.38 feet, said point being the end of this easement. Said easement being originally created by instrument recorded in Real Record 13, page 426 in the Probate Office of Shelby County, Alabama.

Parcel Three:

From the NW corner of the NW 1/4 of the NE 1/4, Section 36, Township 18 South, Range 2 West, run South along the West boundary of said 1/4-1/4 a distance of 370.01 feet; thence left 88°01'30" a distance of 212.71 feet to the point of beginning, said point on the centerline of a road, said centerline being a curve to the right with a radius of 232.35 feet; thence turn left 97°53'56" to the tangent of said curve and follow the arc of the curve a distance of 109.49 feet to the point of tangency of said curve; thence continue along the projection of said tangent a distance of 56.61 feet. Said easement being originally created by instrument recorded in Real Record 028, page 673 in the Probate Office of Shelby County, Alabama.

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EXHIBIT "B"

PREMISES B

(Phase III)

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Begin at the Northeast corner of the Southwest 1/4 of the Northeast 1/4 of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, and from the East line of said 1/4-1/4 section turn an angle of 50°21'41" to the right and run in a Southwesterly direction a distance of 447.65 feet to a point; thence turn an interior angle of 107°32'48" and run to the right in a Northwesterly direction a distance of 581.40 feet to a point; thence turn an interior angle of 30°08'54" and run to the right in an Easterly direction a distance of 64.47 feet to a point; thence turn an interior angle of 271°22'10" and run to the left in a Northerly direction a distance of 60.02 feet to a point; thence turn an interior angle of 88°50'58" and run to the right in an Easterly direction a distance of 270.67 feet to a point; thence turn an interior angle of 271°07'03" and run to the left in a Northerly direction a distance of 190.00 feet to a point; thence turn an interior angle of 76°29'45" and run to the right in a Southeasterly direction a distance of 343.73 feet to a point; thence turn an interior angle of 106°22'30" and run to the right in a Southerly direction a distance of 140.00 feet to a point; thence turn an interior angle of 270°00'00" and run to the left in an Easterly direction a distance of 60.00 feet to a point; thence turn an interior angle of 156°43'56" and run to the right in a Southeasterly direction a distance of 104.15 feet to the point of beginning; containing 4.92 acres, more or less.

ALSO

(Commercial Property)

Commence at the Northeast corner of the southwest 1/4 of the Northeast 1/4 of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, and from the East line of said 1/4-1/4 section turn an angle of 50°21'41" to the right and run in a Southwesterly direction a distance of 447.65 feet to the point of beginning; thence continue in a Southwesterly direction along the projection of the last described course a distance of 382.12 feet to a point; thence turn an interior angle of 179°41'42" and run to the right in a Southwesterly direction a distance of 499.51 feet to a point; thence turn an interior angle of 102°11'45" and run to the right in a Northwesterly direction a distance of 633.75 feet to a point on the Easterly

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right-of-way line of Inverness Parkway East; thence turn an interior angle of  $92^{\circ}59'31''$  and run to the right in a Northeasterly direction along the Easterly right-of-way line of Inverness Parkway East a distance of 4.06 feet to the PC of a curve; thence continue in a northeasterly direction along the Easterly right-of-way line of Inverness Parkway East and along the arc of a curve to the left having a central angle of  $16^{\circ}25'00''$  and a radius of 281.92 feet a distance of 80.78 feet to the PT of said curve; thence continue in a Northeasterly direction along the Easterly right-of-way line Inverness Parkway East and along the projection of the tangent to the last described curve a distance of 78.32 feet to the PC of a curve; thence continue in a Northeasterly direction along the Easterly right-of-way line of Inverness Parkway East and along the arc of a curve to the right having a central angle of  $8^{\circ}48'00''$  and a radius of 424.95 feet a distance of 65.27 feet to the PT of said curve; thence continue in a Northeasterly direction along the Easterly right-of-way line of Inverness Parkway East and along the projection of the tangent to the last described curve a distance of 62.07 feet to the PC of a curve; thence continue in a northeasterly direction along the Easterly right-of-way line of Inverness Parkway East and along the arc of a curve to the left having a central angle of  $5^{\circ}45'59''$  and a radius of 610.00 feet a distance of 61.39 feet to the PT of said curve; thence turn an interior angle of  $96^{\circ}53'17''$  (angle measured from tangent) and run to the right in a Southeasterly direction a distance of 237.12 feet to a point; thence turn an interior angle of  $283^{\circ}03'48''$  and run to the left in a Northerly direction a distance of 237.50 feet to a point; thence turn an interior angle of  $89^{\circ}59'09''$  and run to the right in an Easterly direction a distance of 121.88 feet to a point; thence turn an interior angle of  $179^{\circ}29'42''$  and run to the right in an Easterly direction a distance of 183.15 feet to a point; thence turn an interior angle of  $149^{\circ}51'06''$  and run to the right in a Southeasterly direction a distance of 581.40 feet to the point of beginning; containing 13.21 acres, more or less.

STATE OF ALA. SHELBY CO.  
I CERTIFY THIS  
INSTRUMENT WAS FILED

1987 DEC 21 PM 2:34

*Thomas A. Snowling Jr.*  
JUDGE OF PROBATE

1. Deed Tax \$ 50  
2. Mtg. Tax \_\_\_\_\_  
3. Recording Fee 37.50  
4. Indexing Fee 2.00  
TOTAL 40.00

1. Deed Tax \$ \_\_\_\_\_  
2. Mtg. Tax \_\_\_\_\_  
3. Recording Fee \_\_\_\_\_  
4. Indexing Fee \_\_\_\_\_  
TOTAL \_\_\_\_\_

