

Execution copy  
10/7/93

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT is made and entered into this 12 day of October, 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 ("AmSouth/NationsBank") and BROOK HIGHLAND LIMITED PARTNERSHIP ("Partnership"), a Georgia limited partnership.

Inst # 1993-32515

W I T N E S S E T H :

WHEREAS, AmSouth/NationsBank is the owner of Lot 3, Brook Highland Plaza as shown on that certain map entitled "Brook Highland Plaza" recorded at Map Book 16, Page 102 in the Probate Office of Shelby County, Alabama ("Plat");

WHEREAS, the Partnership is the owner of Lot 1 and Lot 2 as shown on the Plat;

WHEREAS, the Partnership intends to construct a sanitary sewer line ("Sewer Line") over and across portions of Lot 1, 2 and 3, in accordance with those certain Site Development Plans for Brook Highland Limited Partnership, Brook Highland Plaza, City of Birmingham/Shelby County Alabama prepared by Sain Associates printed and issued September 30, 1993 ("Development Plans");

WHEREAS, AmSouth/NationsBank intends to grant the Partnership all easements necessary to allow for the construction and installation of the sanitary sewer line on Lot 3, all in accordance with the terms hereof;

NOW, THEREFORE, for and in consideration of the premises, ten dollars in hand paid by the parties one to the other and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, AmSouth/ NationsBank and the Partnership do hereby agree as follows:

1. Grant of Easements.

(a) AmSouth/NationsBank hereby grants to the Partnership, its successors, assigns, and contractors a temporary ingress and egress easement over Lot 3 to be utilized by the Partnership, its successors, assigns and contractors in connection with the construction of the Sewer Line on Lot 3 and the grading

This Agreement prepared by:  
Jeanna A. Brannon, Esq.  
Morris, Manning & Martin  
1600 Atlanta Financial Center  
3343 Peachtree Road, N.E.  
Atlanta, Georgia 30326  
(404) 233-7000

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Carla J. Little

and seeding work to be done by the Partnership on Lot 3 pursuant to that certain Agreement Regarding Development and Easements dated October 12, 1993, by and between AmSouth/NationsBank and the Partnership (the "Development Agreement"). This ingress/egress easement shall automatically terminate upon completion of construction of the Sewer Line on Lot 3 and of the grading and seeding work on Lot 3.

(b) AmSouth/NationsBank hereby grants to the Partnership, its successors and assigns and contractors a temporary construction easement on, over and across that portion of Lot 3 more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof ("Easement Area") for the construction and installation of a sanitary sewer line. This temporary construction easement shall terminate upon completion of the installation of the Sewer Line.

## 2. Use of Easements.

(a) Partnership shall construct the Sewer Line located in the Easement Area in a good and workmanlike manner and Lot 3 shall be free and clear of all liens of contractors, subcontractors, laborers and materialmen and of all other liens arising in connection with the construction of the Sewer Line.

(b) The construction of the Sewer Line shall be in accordance with all laws, ordinances, codes, rules and regulations of all governmental authorities having jurisdiction over Lot 3, that certain Sewer Service Agreement dated October 14, 1993 by and between The Water Works and Sewer Board of the City of Birmingham ("Board") and the rules and regulations of the Board, as time to time amended, relating to the Sewer Line.

(c) Except as set forth in the Development Agreement, the Partnership shall be responsible for and the Partnership shall hold harmless and indemnify AmSouth/NationsBank against all costs of constructing and installing the Sewer Line and the grading and seeding to be performed pursuant to the Development Agreement.

## 3. Miscellaneous Provisions.

(a) This Agreement shall be binding upon and shall inure to the benefit of the respective successors and assigns of the parties hereto.

(b) The validity of this Agreement and any of its items, or provisions, as well as the rights and duties of the parties to this Agreement shall be governed by the laws of the state of Alabama.

(c) This Agreement may be amended only by the mutual consent of the parties in writing, said writing to be attached to and incorporated into this Agreement.

(d) In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality or unenforceability shall not effect any other provision of this Agreement and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

IN WITNESS WHEREOF, AmSouth/NationsBank and the Partnership have caused this Agreement to be duly executed as of the day and year first above written.

AMSOUTH/NATIONSBANK:

AMSOUTH BANK, N.A., AS ANCILLARY TRUSTEE FOR NATIONSBANK OF NORTH CAROLINA, N.A., AS TRUSTEE FOR THE PUBLIC EMPLOYEES RETIREMENT SYSTEM OF OHIO

By: *John A. Bostwick*  
Vice President  
& TRUST OFFICER

STATE OF Alabama

COUNTY OF Jefferson

I, Debra M. Montgomery, a Notary Public in and for said County in said State, hereby certify that John A. Bostwick, whose name as Vice President of AmSouth Bank, N.A., a national banking association, as Ancillary Trustee for NationsBank of North Carolina, N.A., a national banking association, as Trustee for the Public Employees Retirement System of Ohio, 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 foregoing instrument, he/she, as such officer, and with full authority, executed the same voluntarily for and as the act of said national banking association, acting in its capacity as Ancillary Trustee as aforesaid on the day the same bears date.

Given under my hand and official seal this the 12 day of October, 1993.

*Debra M. Montgomery*  
NOTARY PUBLIC

My Commission Expires:

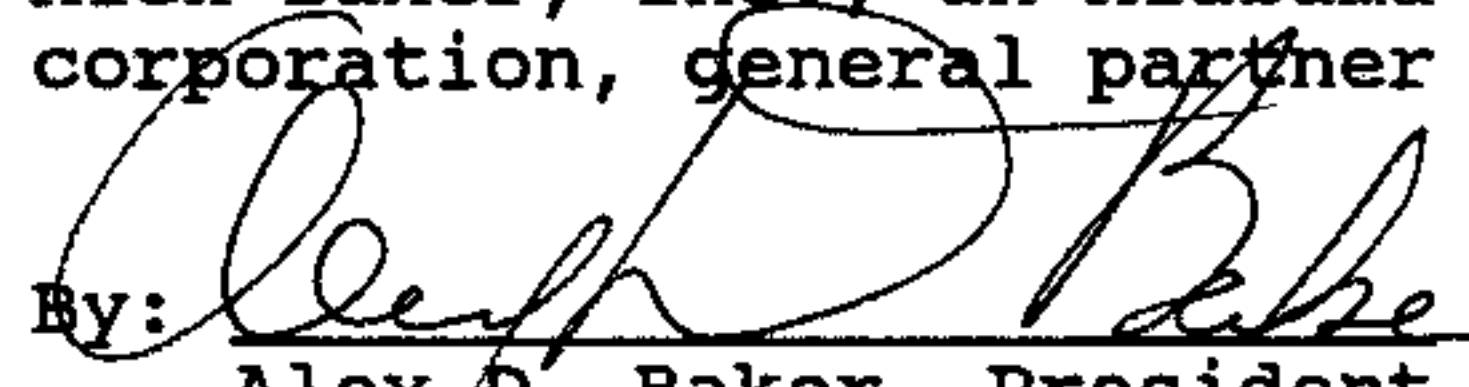
2/94

PARTNERSHIP:

BROOK HIGHLAND LIMITED PARTNERSHIP, a  
Georgia limited partnership:

By: BW 280 Limited Partnership, a  
Georgia limited partnership,  
general partner

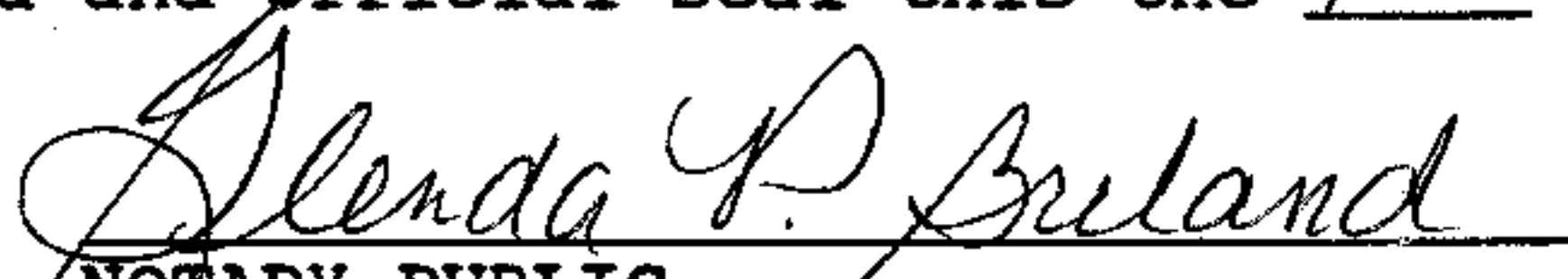
By: Alex Baker, Inc., an Alabama  
corporation, general partner

By:   
Alex D. Baker, President

STATE OF Alabama  
COUNTY OF Tefferson

I, Glenda P. Breland, 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 which is the 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 foregoing instrument, he, as such officer, and  
with full authority, executed the same voluntarily for and as the  
act of said Alex Baker, Inc., in its capacity as general partner  
of BW 280 Limited Partnership, the general partner of Brook  
Highland Limited Partnership, on the day the same bears date.

Given under my hand and official seal this the 13<sup>th</sup> day  
of October, 1993.

  
NOTARY PUBLIC

My Commission Expires:

8/28/95

Exhibit A

ALL THAT TRACT OR PARCEL OF LAND situated in the west half of the Southeast quarter of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, lying within Lot 3 as shown on the map of Brook Highland Plaza, as recorded in Map Book 16, page 102, in the office of the Judge of Probate of Shelby County, Alabama ("Map"), and being more particularly described by metes and bounds as follows:

BEGIN at the northwest corner of Lot 3 of Brook Highland Plaza, as shown on the Map; thence run along the northerly line of Lot 3 North  $88^{\circ}21'20''$  East for a distance of 10.00 feet to a point; thence leave the northerly line of Lot 3 and run South  $01^{\circ}38'40''$  East for a distance of 189.51 feet to a point; thence South  $53^{\circ}05'32''$  East for a distance of 16.67 feet to a point; thence North  $82^{\circ}30'03''$  East for a distance of 137.79 feet to a point; thence South  $07^{\circ}29'57''$  East for a distance of 20.00 feet to a point located on the southerly line of Lot 3; thence run along the southerly line of Lot 3 South  $82^{\circ}30'03''$  West for a distance of 145.95 feet to a point; thence leave the southerly line of Lot 3 and run North  $53^{\circ}05'32''$  West for a distance of 21.69 feet to a point located on the westerly line of Lot 3; thence run along the westerly line of Lot 3 North  $01^{\circ}38'40''$  West for a distance of 207.12 feet to the TRUE POINT OF BEGINNING.

Said tract being more particularly shown as "Proposed 20' San. Sewer Easement #3" on that certain Development Plan, Brook Highland Plaza, prepared for Brook Highland Limited Partnership by Sain Associates, Inc., dated September 22, 1993.

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