

SEWER EASEMENT AGREEMENT

THIS SEWER EASEMENT AGREEMENT ("Agreement") is made and entered into this 12 day of October, 1993, by and between BROOK HIGHLAND LIMITED PARTNERSHIP (the "Partnership"), a Georgia limited partnership and 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").

W I T N E S S E T H :

WHEREAS, the Partnership is the owner of those certain tracts or parcels of land lying in Shelby County, Alabama, and being more particularly described as Lot 1 and Lot 2, Brook Highland Plaza ("Shopping Center Property") as shown on plat recorded at Map Book 16, Page 102, Probate Office for Shelby County, Alabama (the "Map");

WHEREAS, AmSouth/NationsBank is the owner of that certain tract of land lying to the northwest of the Shopping Center and across Brook Highland Parkway and containing approximately 18.9 acres ("Multi-Family Tract");

WHEREAS, the Partnership has agreed to construct a sewer line ("Sewer Line") on a portion of Lot 1 of the Shopping Center Property for use by the Multi-Family Tract to tie into a sewer trunk line maintained or to be maintained by The Water and Sewer Works Board of the City of Birmingham ("Board"); and

WHEREAS, AmSouth/NationsBank has agreed to maintain the Sewer Line in accordance with the terms hereof.

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 (\$10.00) Dollars in hand paid, the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Partnership and AmSouth/NationsBank do hereby agree as follows:

1. Grant of Sewer Easement. The Partnership hereby grants, declares and establishes for the benefit of AmSouth/NationsBank, its successors and assigns, a non-exclusive and perpetual easement on, over and across that portion of the Shopping Center Property more particularly described on

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

Inst # 1993-32518

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Inst # 1993-32518

Carla Little

Exhibit "A" attached hereto and by this reference made a part hereof ("Sewer Easement Area") for the use, repair and maintenance of the Sewer Line located on the Sewer Easement Area.

2. Conditions and Obligations with respect to Easement. The easements granted herein and AmSouth/NationsBank's use thereof are subject to the following terms and conditions:

(a) The Partnership reserves the right to use the Sewer Easement Area for any and all purposes not inconsistent with or in a manner which shall not materially interfere with or obstruct, maintenance and use of the Sewer Line on the Sewer Easement Area, including the right to construct an asphalt parking and roadway thereon and to landscape thereon.

(b) AmSouth/NationsBank, until such time as the an easement or right-of-way conveying the Sewer Line to the Board is accepted by Board, and at AmSouth/NationsBank's sole cost and expense, shall have the obligation and duty to maintain and repair the Sewer Line constructed on the Sewer Easement Area. All maintenance and repair performed in the Sewer Easement Area shall be done in a good and workmanlike manner and the Shopping Center Property shall remain free and clear of all liens of materialmen and mechanics and liens otherwise arising from such work.

In the event AmSouth/NationsBank shall fail to repair and maintain the Sewer Line constructed on the Sewer Easement Area and such failure continues for thirty (30) days after written notice to AmSouth/NationsBank, the Partnership shall have the right, but not the obligation, to perform such repair and/or maintenance. In the event the Partnership shall elect to perform the repair and/or maintenance, AmSouth/NationsBank, within ten (10) days of receipt of written demand therefor, which written notice shall include copies of all invoices relating thereto, shall reimburse the Partnership for all costs and expenses incurred by the Partnership in connection with such repair and/or maintenance. AmSouth/NationsBank's repair and maintenance obligation shall cease upon acceptance by the Board of an easement over the Sewer Easement Area as described below. In no event shall the Partnership be responsible for the maintenance or repair of the Sewer Line.

3. Dedication of Improvements. Upon request by AmSouth/NationsBank, the Partnership shall execute and deliver to the Board an easement and a bill of sale, in the form prescribed by the Board (provided such form is satisfactory to the Partnership), conveying to the Board a perpetual easement on, over

and across the Sewer Easement Area for the use, maintenance and repair of the Sewer Line. Upon acceptance and recordation of such easement and bill of sale, this Agreement automatically shall terminate.

4. Easement for Benefit of Multi-Family Tract. The easement created herein is solely for the benefit of the Multi-Family Tract and the owners, mortgagees and successors-in-title thereof, subject to and in accordance with the terms and conditions hereof and no third party beneficiary rights are created or inferred. AmSouth/NationsBank agrees not to grant to any third party, other than a mortgagee or successor-in-title to any portion of the Multi-Family Tract, any interest in the easement created and granted herein.

5. Successors and Assigns. The easement granted herein shall be non-exclusive, run and be appurtenant to the Multi-Family Tract, and, except as hereinafter set forth, shall run with title to and burden the Shopping Center Property forever and be binding upon and inure to the benefit of and be enforceable by the heirs, legal representatives, successors and assigns of the Partnership and AmSouth/NationsBank. All obligations of the Partnership and AmSouth/NationsBank hereunder shall be binding upon their respective successors-in-title and assigns; provided the covenants and obligations herein are only personal to and enforceable against the Partnership and AmSouth/NationsBank or their successors-in-title, as the case may be, owning title to the respective properties at the time any liability or claim arising under this Agreement shall have accrued; it being intended that upon the conveyance of title by a party, the party conveying title shall thereupon be released of any liability hereunder as to the property conveyed for any breach of this Agreement or claim arising under this Agreement accruing after the date of such conveyance.

6. Indemnity. AmSouth/NationsBank hereby indemnifies, holds harmless and agrees to defend by counsel acceptable to the Partnership, the Partnership from all claims, causes of action, damages, expenses, costs, liens and other liabilities which arise from or in connection with AmSouth/NationsBank's use of the rights granted in this Agreement, including but not limited to the use of the Sewer Line and any maintenance and repair performed to the Sewer Line constructed on the Sewer Easement Area.

7. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Partnership and AmSouth/NationsBank relating to the subject matter hereof and may not be amended, waived or discharged, except by instrument in writing executed by the party against which enforcement of such amendment, waiver or discharge is sought.

8. Severability. The invalidity of any one of the covenants, agreements, conditions or provisions of this Agreement or any one of the covenants, agreements, conditions or provisions of this Agreement or any portion thereof shall not affect the remaining portions thereof or any part thereof and this Agreement shall be construed as if such covenant, agreement, condition or provision had not been inserted herein.

9. Notice. All notices shall be in writing and shall be deemed to have been properly given on the earlier of (i) when delivered in person, (ii) when deposited in the United States mail with return receipt requested, to the appropriate party at the address set out below, or (iii) when deposited with Federal Express, Express Mail or other overnight delivery service for next day delivery, addressed to the appropriate party at the address set out below.

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
c/o NationsBank of North Carolina, N.A.
Real Estate Investment Services,
Investment Division, Trust Department
NationsBank Plaza
101 South Tryon Street
NC1-002-11-07
Charlotte, North Carolina 28255-0131

PARTNERSHIP:

Brook Highland Limited Partnership
1900 International Drive, Suite 303
Birmingham, Alabama 35243
Attn: Alex D. Baker

With copy to:

Brook Highland Limited Partnership
1900 International Drive, Suite 303
Birmingham, Alabama 35243
Attn: W. Ernest Moss, Esq.

Either party or the parties' successors, assigns or successors-in-title by written notice in accordance with this Agreement may change the above addresses for notices effective ten (10) days after notice shall be given to the other party effecting a change of address.

9. This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.

IN WITNESS WHEREOF, AmSouth/NationsBank and the Partnership have executed under seal this Sewer Easement Agreement 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

Alaboma

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:

1994

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 JEFFERSON

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, as general partner 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
Alex Baker, Inc., in its capacity as general partner of BW 280
Limited Partnership in its capacity as general partner of Brook
Highland Limited Partnership, on the day the same bears date.

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


NOTARY PUBLIC

My Commission Expires:

8/28/95

Exhibit A

ALL THAT TRACT OR PARCEL OF LAND situated within the Southwest Quarter of the Northwest Quarter of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, lying within Lot 1 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, and being more particularly described by metes and bounds as follows:

Commence at the northwest corner of the Southeast Quarter of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama; thence run North 00°38'38" West for a distance of 227.08 feet to a point; thence South 89°39'39" West for a distance of 42.93 feet to a point; thence South 88°02'53" West for a distance of 20.00 feet to a point; thence South 01°57'07" East for a distance of 211.24 feet to the TRUE POINT OF BEGINNING; FROM THE TRUE POINT OF BEGINNING AS THUS ESTABLISHED, thence South 01°57'07" East for a distance of 10.26 feet to a point; thence South 88°02'49" West for a distance of 2.50 feet to a point; thence South 00°28'09" East for a distance of 9.60 feet to a point; thence South 89°31'51" West for a distance of 206.70 feet to a point; thence South 63°29'00" West for a distance of 688.46 feet to a point; thence North 26°31'00" West for a distance of 20.00 feet to a point; thence North 63°29'00" East for a distance of 693.08 feet to a point; thence North 89°31'51" East for a distance of 213.56 feet to the TRUE POINT OF BEGINNING.

Said tract being more particularly shown as "Proposed San. Sewer Easement #2" 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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