

STATE OF ALABAMA

RIGHT OF FIRST REFUSAL
AGREEMENT

COUNTY OF SHELBY

THIS RIGHT OF FIRST REFUSAL AGREEMENT (this "Agreement") is made and entered into this 20th day of July, 1992, 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**, hereinafter referred to as the "Owner," and **BROOK HILLS BAPTIST CHURCH, INC.**, an Alabama corporation, hereinafter referred to as the "Church";

WITNESSETH:

WHEREAS, Owner and the Church desire that Owner grant to the Church a right of first refusal relative to certain real property more particularly described in Paragraph 1 below upon and subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the above premises and the first refusal right hereinbelow granted, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Owner and the Church hereby covenant and agree as follows:

1. Property Description. Owner does hereby grant and convey to the Church a right of first refusal to purchase from Owner, upon the terms and conditions hereinafter set forth, all (but not less than all) of that certain tract of land (the "Property") more particularly described on the legal description attached hereto as Exhibit A and incorporated herein by reference, together with all improvements, shrubbery, plantings, fixtures and appurtenances thereon.

2. Right of First Refusal.

(a) In the event Owner desires during the term of this Agreement to enter into a contract to sell and convey Owner's fee simple interest in all or any portion of the Property to a prospective purchaser pursuant to a "bona fide" offer or proposal to purchase by said prospective purchaser, Owner shall first offer in writing to sell all of the Property to the Church. As used herein, the term "bona fide" offer or proposal means a written offer or proposal (which may be in the form of a non-binding "letter of intent" or similar document) made in good faith and which identifies the portion (or all, as the case may be) of the Property encompassed by the offer or proposal and specifies the proposed purchase price (on a per acre basis), the closing date, the obligations of the proposed purchaser to deposit earnest money and the time or times when such deposit of earnest money is due, the type of deed, and all other material economic terms and conditions relating to the contemplated transaction. Owner shall give the Church a copy of the prospective purchaser's written offer or proposal containing the above-described information. The Church shall have ten (10) business days after notice of such offer or proposal is received within which to accept or reject Owner's offer to sell all (but not less than all) of the Property to the Church. Any such acceptance or rejection by the Church of Owner's offer to sell all of the Property shall

Caballero Title

be in writing; and if the Church fails to notify Owner in writing of the Church's acceptance of the offer within the ten (10) business day period, then the offer shall be deemed conclusively rejected by the Church. If the Church elects to purchase the Property, Owner and the Church shall proceed diligently and in good faith to finalize and execute a land sales agreement relative to such transaction within twenty-one (21) days after the expiration of the foregoing ten (10) business day period. In such case, the purchase price for all of the Property shall be equal to the per acre purchase price in the third party offer or proposal multiplied by the number of gross acres of land within the boundaries of the Property. In addition, the closing date (unless the Church and Owner mutually agree otherwise), the amount and timing of any earnest money to be deposited and all other material economic terms and conditions of the transaction shall be identical to those set forth in the offer or proposal from the prospective purchaser. Provided, however, and notwithstanding the foregoing to the contrary, in connection with the conveyance of the Property to the Church, Owner shall be entitled to encumber the Property with use restrictions having a duration of thirty (30) years, all in accordance with the provisions set forth in paragraph 18 of that certain Land Sales Agreement between Owner and the Church dated as of April 13, 1992 (relating to an approximately 35.66-acre tract of land adjacent to the Property). If Owner's offer to sell the Property to the Church is not accepted by the Church during said ten (10) business day period, then the Church's rights under this Agreement shall abate and become unenforceable (i) so long as Owner's negotiations with the prospective purchaser are viable and on-going and, (ii) if Owner enters into a contract with the prospective purchaser, so long as the contract between Owner and the prospective purchaser is a validly existing contract (i.e., so long as such contract has not been terminated or has not expired). Provided, however, if the one-year term of this Agreement has not expired upon the earlier to occur of (a) the conclusion of negotiations and discussions between Owner and the prospective purchaser without a contract having been executed by such parties and (b) the termination or expiration of the contract between Owner and the prospective purchaser (presuming such a contract is actually executed), then the Church's rights under this Agreement shall be reinstated for the duration of the one-year term of this Agreement (subject to being abated by other offers or proposals from prospective purchasers, as described above).

(b) The Church's rights under this Agreement shall not be triggered or activated by the development of all or any portion of the Property by Owner for its own account or in connection with any build-to-suit lease arrangement, provided the fee simple ownership of the Property (or the relevant portion thereof) shall remain in Owner's name or in the name of an entity related to or affiliated with Owner during the one-year term of this Agreement.

3. Assignment of the Church's Interest. The Church shall not be entitled to assign the Church's right, title and interest in and to this Agreement.

4. Notices. All notices, demands and requests which may be given or which are required to be given hereunder by either party to the other must be in writing. All such notices, demands and requests shall be sent by registered mail, return receipt requested, postage prepaid, or by overnight courier service (e.g., Federal Express) or by personal delivery, and addressed as follows, or to such other address as a party may specify by duly given notice.

IF TO OWNER: 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
One NationsBank Plaza (T11-7)
Charlotte, North Carolina 28255

Attention: Mr. Floyd T. Boyce

With copy to: Kennedy Covington Lobdell & Hickman
3300 NationsBank Plaza
Charlotte, North Carolina 28280

Attention: Walter D. Fisher, Jr., Esquire

IF TO CHURCH: Brook Hills Baptist Church, Inc.
P.O. Box 38053 (Mail Deliveries -- Zip Code 35238-0543)
505 Meadows on The Lake (Overnight Service Deliveries -- Zip Code 35242)
Birmingham, Alabama

Notices, demands and requests by Owner or the Church when given in the manner aforesaid through the mail will be deemed sufficiently served or given for all purposes hereunder three (3) days after the date such notice, demand or request is properly deposited with the United States Postal Service, or if sent by overnight courier service, on the first business day after same is deposited with the overnight courier service with instructions to deliver the next business day, or if delivered in person, on the date of personal delivery. Each party shall notify the other of any change in address.

5. Termination. This Agreement and all rights of the Church hereunder shall automatically and immediately become null and void and terminate and expire on the earlier to occur of (i) the date on which Owner and a prospective purchaser close a transaction involving the acquisition by such prospective purchaser of all or a part of the Property [as contemplated in Paragraph 2(a) above] and (ii) midnight on the day immediately preceding the first anniversary of the date of this Agreement (as such date of this Agreement is set forth in the introductory paragraph on the first page above). At any time after the termination and expiration of this Agreement, Owner may (but shall not be required to) deliver to the Church an instrument in recordable form evidencing the termination and expiration of this Agreement and all rights of the Church hereunder; and in such case, the Church shall promptly execute and return such instrument to Owner for recordation in the appropriate public records.

6. Miscellaneous. This Agreement constitutes the entire agreement between the parties hereto and it is understood and agreed that all undertakings, negotiations, representations, promises, inducements and agreements heretofore had between these parties are merged herein [except for the incorporation of the terms and provisions in paragraph 18 of the Land Sales Agreement between Owner and the Church as referenced in Paragraph 2(a) above]. This Agreement may not be changed orally, but only by an agreement in writing signed by both Owner and the Church.

Each party hereto represents and warrants to the other party that the execution of this Agreement and any other documents required or necessary to be executed pursuant to the provisions hereof are valid, binding obligations and are enforceable in accordance with their terms.

This Agreement is intended to be performed in the State of Alabama and shall be construed and enforced in accordance with the laws of said State.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by persons duly empowered to bind the parties to perform their respective obligations hereunder the day and year first above written.

"OWNER":

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

[CORPORATE SEAL]

ATTEST:

Linda S. Lebe
Assistant Secretary
Trust Officer

By: [Signature]
Vice President
Trust Officer

"CHURCH":

BROOK HILLS BAPTIST CHURCH, INC.

By: [Signature]
Title: Trustee

WITNESS:

[Signature]

WITNESS:

[Signature]

By: [Signature]
Title: Trustee

STATE OF ALABAMA

COUNTY OF Shelby

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that John A. Bostwick, whose name as TRUST OFFICER Vice President of AMSOUTH BANK, N.A., a national association, as Ancillary Trustee for NationsBank of North Carolina, N.A., 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 instrument, (s)he, as such officer and with full authority, executed the same voluntarily for and as the act of said association acting in its capacity as Ancillary Trustee as aforesaid.

Given under my hand and official seal, this 20th day of July, 1992.

Carolyn A. Garrison
NOTARY PUBLIC

[NOTARIAL SEAL]

My Commission Expires:

3/20/94

STATE OF ALABAMA

COUNTY OF _____

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Betsy P. Collins, whose name as TRUSTEE of BROOK HILLS BAPTIST CHURCH, 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 the instrument, (s)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 20 day of July, 1992.

Thomas S. Laver
NOTARY PUBLIC

[NOTARIAL SEAL]

My Commission Expires:

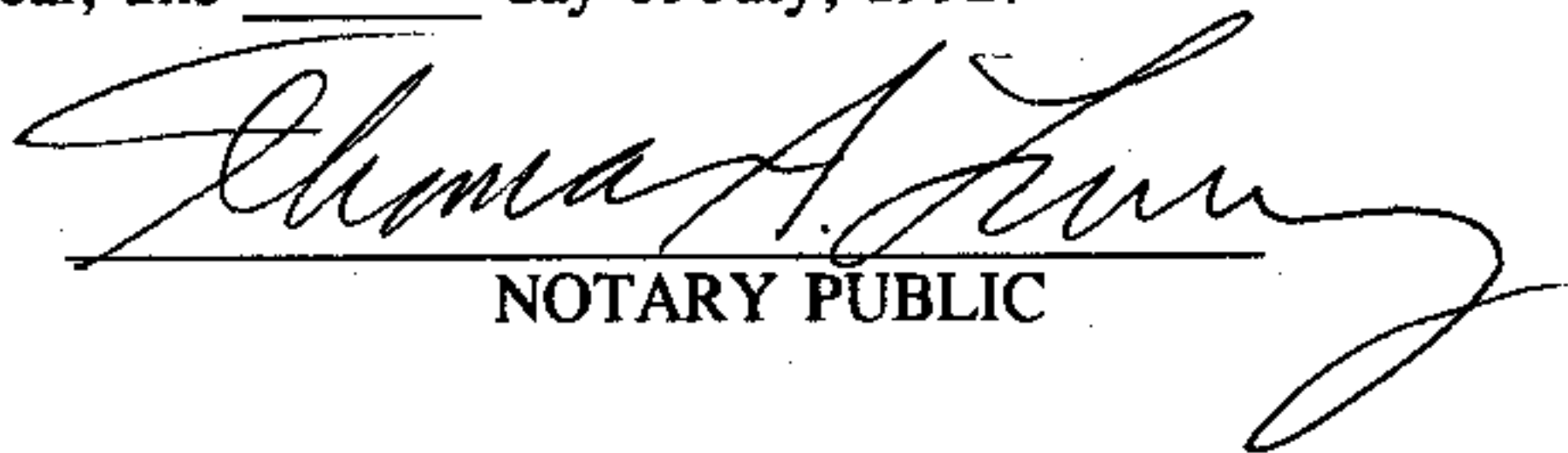
June 10, 1996

STATE OF ALABAMA

COUNTY OF Shelby

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Bob Whitley, whose name as Trustee of BROOK HILLS BAPTIST CHURCH, 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 the instrument, (s)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 20 day of July, 1992.


NOTARY PUBLIC

[NOTARIAL SEAL]

My Commission Expires:

June 10, 1992

EXHIBIT A

Legal Description for Property

A tract or parcel of land containing 31.92 acres, more or less located in the NE 1/4 of the NE 1/4 of Section 31, Township 18 South, Range 1 West, SE 1/4 of the SE 1/4 of Section 30, Township 18 South, Range 1 West, SW 1/4 of the SW 1/4 of Section 29, Township 18 South, Range 1 West, and the NW 1/4 of the NW 1/4 of Section 32, Township 18 South, Range 1 West situated in Shelby County, Alabama.

Commence at the Northwest corner of Section 32, Township 18 South, Range 1 West, thence run South 89° 32' 01" West along the north line of Section 32, Township 18 South, Range 1 West a distance of 20.0 feet, thence run North 00° 08' 50" East a distance of 20.0 feet to the point of beginning, thence run North 89° 32' 01" East a distance of 537.00 feet to a point, thence run North 30° 57' 08" East a distance of 143.26 feet to a point, thence run North 42° 46' 41" East a distance of 185.70 feet to a point, thence run North 47° 37' 04" East a distance of 264.61 feet to a point, thence run North 22° 17' 12" East a distance of 301.78 feet to a point, thence run South 21° 28' 32" East a distance of 65.36 feet to a point, thence run North 29° 33' 44" East a distance of 52.83 feet to a point, thence run North 19° 36' 28" East a distance of 351.86 feet to a point, thence run North 04° 11' 23" East a distance of 167.81 feet to a point, thence run North 13° 31' 38" East a distance of 82.06 feet to a point, thence run North 27° 03' 21" East a distance of 64.86 feet to a point, thence run North 89° 43' 29" East a distance of 83.83 feet to a point, thence run South 00° 02' 29" West a distance of 1330.48 feet to a point, thence run South 89° 21' 29" West a distance of 309.78 feet to a point, thence run South 00° 06' 12" East a distance of 178.65 feet to a point, thence run South 05° 56' 41" West a distance of 400.78 feet to a point, thence run South 06° 13' 08" West a distance of 399.84 feet to a point, thence run South 51° 09' 32" West a distance of 423.13 feet to a point, thence run along the north right of way line of Brook Highland Parkway which is curving to the right with a chord bearing of North 35° 51' 34" West a distance of 231.68 feet to the point of tangency of said curve thence run along said right of way North 22° 45' 20" West a distance of 223.89 feet to a point of curvature, thence along said right of way curving to the left with a chord bearing of North 41° 04' 19" West a distance of 398.71 feet to the point of tangency of said curve, thence run along said right of way South 30° 36' 42" West a distance of 12.00 feet, thence run along said right of way North 59° 23' 18" West a distance of 158.53 feet to a point on said right of way, thence run North 00° 08' 50" East a distance of 483.74 feet to the point of beginning.

The above described parcel is traversed by a 20.00 foot sanitary sewer easement, running northward from Brook Highland Parkway, which is shown on the accompanying drawing.

The above parcel description was prepared from a boundary survey of the Church at Brook Hills by Mr. H. Kenneth White, Reg. L.S. #11176, filename 521-92 dated April 21, 1992 and a survey of The Meadows Commercial Phase II by Mr. Laurence D. Weygand, P.E. and L.S. Reg. #10373, drawing dated October 20, 1987.

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Legal Description for Property

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07/21/1992-14566
09:00 AM CERTIFIED

SHELBY COUNTY JUDGE OF PROBATE
008 MCD 26.00