

STATE OF ALABAMA)
SHELBY COUNTY)

* 500.00

Lot 3

SEWER EASEMENT

In consideration of ten dollars (\$10.00) and other valuable consideration paid to AMSOUTH BANK OF ALABAMA (formerly AmSouth Bank, N.A.), AS ANCILLARY TRUSTEE FOR NATIONSBANK, N.A. (CAROLINAS), AS TRUSTEE FOR THE PUBLIC EMPLOYEES RETIREMENT SYSTEM OF OHIO (hereinafter called "the Grantor") by The Water Works and Sewer Board of the City of Birmingham, an Alabama public corporation organized under and by virtue of the laws of the State of Alabama, (hereinafter called "the Board"), the receipt and sufficiency of which the Grantor hereby acknowledges, the Grantor does hereby grant, bargain, sell and convey unto the Board, its successors and assigns, a perpetual easement over, across, under and through the hereinafter described real estate for the purposes of, at such times and from time to time in the future as the Board may elect, laying, constructing, installing, maintaining, operating, renewing, repairing, changing the size of, relocating, removing and/or replacing sanitary sewer pipelines and water pipelines and such appurtenances, appliances, fixtures and equipment, whether above or beneath the surface of the ground, deemed by the Board to be necessary or useful in connection with the collection and treatment of sewage and the transportation, distribution and sale of water (hereinafter collectively called "Pipelines"), together with all rights and privileges necessary or convenient for the full enjoyment or use of the rights herein granted, including, but not limited to, the free right of ingress

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and egress over the hereinafter described real estate, together with the right, from time to time, in connection with the enjoyment of the privileges herein conveyed, to cut and keep clear all trees, brush, undergrowth and other obstructions, whether located upon or near said easement, to the extent necessary to permit the full enjoyment of the rights and privileges herein granted, and the protection of the Pipelines, and together with the right, from time to time, in connection with the enjoyment of the privileges herein conveyed, to cut and remove or otherwise disturb paving or other road covering to the extent necessary to permit the full enjoyment of the rights and privileges granted to the Board hereunder; said real estate being more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof.

The rights and privileges herein granted and accepted upon the following conditions and subject to the following stipulations:

1. The Grantor hereby covenants with the Board that the Grantor is lawfully seized in fee simple of the above described real estate, that it is free from all encumbrances except as set forth below and that the Grantor has a good right to grant the easement and right of way granted hereby as aforesaid and that the Grantor will warrant against the claims of all persons claiming by, through or under the Grantor, subject to:

- a. General and special taxes or assessments for 1993 and subsequent years not yet due and payable.

- b. Easement(s) to D & D Water Renovation Systems, Inc. as shown by instrument recorded in Real 107, page 968 in Probate Office, and as shown on Map Book 16, page 102 in Probate Office of Shelby County, Alabama ("Probate Office").
- c. Rights of Alabama State Land Company and its successors and assigns in and to the mineral rights within and underlying the property as more particularly set out in Deed Book 28, Page 581 in Probate Office.
- d. Declaration of Covenants, Conditions, and Restrictions by AmSouth Bank, N.A., as Ancillary Trustee for NCNB National Bank of North Carolina, N.A., as Trustee from the Public Employees Retirement System of Ohio, recorded in Real 307, Page 950 in Probate Office.
- e. Declaration of Easements and Restrictive Covenants (Brook Highland Development - 1.35 acre Out Parcel) by AmSouth Bank, N.A., as Ancillary Trustee for NCNB National Bank of North Carolina, N.A., as Trustee for the Public Employees Retirement System of Ohio, dated August 29, 1990 and recorded in Real 307, Page 985 in Probate Office.
- f. Transmission Line Permit to Alabama Power Company recorded in Deed Book 112, Page 134 in Probate Office.
- g. Subdivision plat of Brook Highland Plaza recorded in Map Book 16, Page 102 discloses the following:
 - (i) 10 foot utility easements along interior boundary lines and 20 foot utility and maintenance easements

along exterior boundary lines, being easements established in instrument referred to in Item (d) above.

- (ii) Sanitary sewer easement crossing the Property, being the same easement referred to in Item (b) above.
 - (iii) Covenant of Restrictions as set out on said plat.
 - h. Easement Agreement 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 and Brook Highland Limited Partnership, recorded in Probate Office.
 - i. Instrument recorded in Real 358, Page 220, Probate Office.
 - j. All other matters of records in Probate Office which are approved by the Board, which approval shall not be unreasonably withheld or delayed.
2. The Grantor agrees not to construct, cause to be constructed, or permit to be constructed, on the above described real estate any lake or pond or any building, fence, wall or structure of any kind; provided nothing herein shall prohibit Grantor from constructing on the easement area paving or other road covering, gutters, curbing or landscaping.
3. No delay of the Board in the use of the easement and rights hereby granted or in laying or installing Pipelines in or along said easement shall result in the loss, limitation or abandonment of any right, title, interest, right of way, easement or estate granted hereby.

4. This instrument states the entire agreement between the Grantor and the Board and merges in this instrument all statements, representations and covenants heretofore made and any agreements not included in this instrument are void and of no force and effect. This instrument may be modified only by a written instrument signed by the Grantor and the Board.

5. By the acceptance of this instrument, the Board agrees, at its sole cost, to maintain the Pipelines in good operating condition and to repair and replace the Pipelines, as necessary, at all times in the future, so long as the Pipelines are being used by the Board. The Board agrees to repair at its sole cost, any damage caused to the easement areas by it or its contractors and subcontractors, including damage to any pavement, gutters, curbing, landscaping and other permitted improvements within the easement areas. If the Board damages the easement areas, the Board agrees to restore same to substantially the same condition existing at the time of the damage as soon as reasonably practicable under the circumstances.

6. This instrument shall inure to the benefit of, and be binding upon, the Grantor and the Board and their respective successors and assigns.

To have and to hold unto the Board, its successors and assigns forever.

In witness whereof, the Grantor has caused this instrument to be duly executed by its duly authorized officer, on this 3rd day of February, 1995.

AMSOUTH BANK OF ALABAMA (formerly AmSouth Bank, N.A.), AS ANCILLARY TRUSTEE FOR NATIONSBANK, N.A. (CAROLINAS), AS TRUSTEE FOR THE PUBLIC EMPLOYEES RETIREMENT SYSTEM OF OHIO

ATTEST:

[Signature]
Vice President

By: [Signature], Vice President and Trust Officer

STATE OF Alabama

COUNTY OF Jefferson

I, Carolyn A. Harrison, a Notary Public in and for said County in said State, hereby certify that J. Reese Murley III, whose name as Vice President and Trust Officer of AmSouth Bank of Alabama (formerly AmSouth Bank, N.A.), an Alabama banking corporation, as Ancillary Trustee for NationsBank, N.A. (Carolinas), 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 3rd day of February, 1995.

Carolyn A. Harrison
NOTARY PUBLIC

[NOTARIAL SEAL]

My Commission Expires:

March 25, 1998

This instrument prepared by:
K. Mark Parnell
GORHAM & WALDREP, P.C.
Suite 700
2101 Sixth Avenue North
Birmingham, Alabama 35203

EXHIBIT "A"

The following description is of a twenty foot easement crossing Lot 3 Brook Highland Plaza as recorded in Map Book 16, Page 102 in the Office of the Judge of Probate of Shelby County, Alabama; more particularly described as follows:

Commencing and Beginning at the Northwest corner of Lot 3; thence N 88°21'20" E, 10.41 feet; thence S 01°52'02" E, 189.88 feet; thence S 54°30'37" E, 14.04 feet; thence N 85°33'54" E, 30.20 feet, being twenty feet Northerly of and parallel to the Northerly Right-of-Way of U.S. Highway 280; thence N 82°30'03" E, 90.98 feet to a point being twenty feet Northerly of U.S. Highway 280 and on the Westerly side of an easement recorded in Book 301, Page 623; thence S 18°55'07" W, 22.33 feet along said recorded easement to the Northerly Right-of-Way of U.S. Highway 280; thence S 82°30'03" W, 81.05 feet along said Right-of-Way; thence S 85°33'54" W, 38.57 feet; thence N 54°30'37" W, 20.09 feet to the Westerly line of Lot 3; thence N 01°38'40" W, 206.53 feet along said Westerly line to the Point of Beginning.

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