

768A

INSTRUMENT PREPARED BY:
K. Mark Parnell
GORHAM, WALDREP, STEWART,
KENDRICK & BRYANT, P.C.
2101 6th Avenue North
Suite 700
Birmingham, AL 35203

=====

TEMPORARY CONSTRUCTION EASEMENT

STATE OF ALABAMA)
SHELBY COUNTY)

In consideration of the sum of \$100.00 Dollars
(\$) and other valuable consideration in hand paid to
Crow Wood Springs Associates, LTD., a corporation,
(hereinafter referred to as the "Grantor"), the receipt of
which the Grantor hereby acknowledges, the Grantor does
hereby grant, bargain, sell and convey unto The Water Works
and Sewer Board of The City of Birmingham, a public
corporation organized under and by virtue of the laws of the
State of Alabama (hereinafter called the "Board"), a right-
of-way granting unto the Board the full and absolute
privilege to enter upon, over, across, or under and through
the hereinafter described real estate for the purposes of
constructing, installing, sloping fill, removing and/or
replacing a sanitary sewer lift station and 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,
transportation and treatment of sewage (hereinafter
collectively referred to as the "lift station"), 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 and
egress over the hereinafter described real estate, together
with the rights, 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 the right-of-way, to the extent necessary to
permit the full enjoyment of the rights and privileges herein
granted, and the protection of the Lift Station.

Furthermore, the right-of-way granted hereby shall be
temporary, the duration of which shall be for the period of
construction of said Lift Station and for thirty (30) days
thereafter, and in no event to exceed a period of one and
one-half years (1-1/2), said time period to begin with the
commencement of said construction upon the parcel of land of
the Board, same being situated in Shelby County, Alabama.
The property which shall constitute the said Temporary
Construction Easement is described as follows:

Situated in the North 1/2 of Northeast 1/4 of
Section 35, Township 18 South, Range 2 West, Shelby
County, Alabama and being more particularly
described as follows:

Commence at the Northwest corner of said north 1/2
and run easterly approximately 1691.00 feet along
the northerly line of said north 1/2 to a point on
the southwesterly right-of-way line of Old U.S.
Highway 280; thence turn 42°36'48" right and run
southeasterly 25.00 feet along said right-of-way
line to a point, said point being the Point of
Beginning of the easement herein described.

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✓ Gorham, Waldrep

Thence from said Point of Beginning turn 98°49'50" right and run southwesterly 80.00 feet to a point, thence turn 32°45'47" right and run southwesterly 40.00 feet to a point; thence turn 33°58'06" right and run northwesterly 40.00 feet to a point; thence turn 137°33'00" right and run 142.00 feet northeasterly to the Point of Beginning.

Said Temporary Construction Easement contains 2,782.71 square feet or 0.0639 acres more or less and more particularly shown by the map attached hereto as Exhibit "A". (hereinafter referred to as "Real Estate" and "Temporary Construction Easement")

The rights and privileges herein granted are given, 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 and that the Grantor has a good right to grant the Temporary Construction Easement granted hereby as aforesaid and that the Grantor will warrant against the claims of all persons.
2. No delay of the Board in the use of the Temporary Construction Easement and the right hereby granted or the constructing of the Lift Station shall result in the loss, limitation or abandonment of any right, title, interest, right-of-way, easement or estate granted hereby.
3. By the acceptance of this instrument, 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 improvements within the Temporary Construction Easement area. If the Board damages the Temporary Construction Easement area, it agrees to restore same to substantially the same condition existing at the time of the damage as soon as reasonably practical under the circumstances.
4. The Grantor reserves the absolute right to use the real estate subject to the Temporary Construction Easement for any purposes not inconsistent or in conflict with the rights and privileges herein granted to the Board.
5. This agreement 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 are of no force and effect. This instrument may be modified only by written instrument signed by the Grantor and the Board.
6. This instrument shall innure 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 based upon the terms, conditions, and for the use and purposes heretofore said.

IN WITNESS WHEREOF, the Grantor has executed this instrument on the 21 day of May, 1990.

Crow Wood Springs Associates, LTD.
~~a corporation~~

By: Crow-Tenckler Partners, Inc.
Its: By: Harlan A. Tenckler
President

STATE OF Georgia)
COUNTY OF Dekalb)

I, the undersigned, a Notary Public in and for said State and in said County, certify that Harlan A. Tenckler ~~President~~ of Crow Wood Springs Associates, LTD., a corporation, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day, that being informed of the contents of the conveyance, the same was executed voluntarily on the same date.

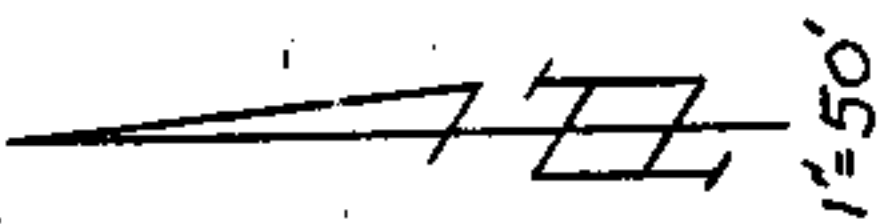
GIVEN under my hand and official seal on this the 31 day of May, 1990.

Harlan A. Tenckler
Notary Public
My Comm. Exp. Expires June 12, 1991

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EXHIBIT "A"

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R/W Old U.S. Hwy.

1691.00'

NW Corner
NW 1/4 - NE 1/4
S 35-18s-2w

280
S.P.O.B.
98°49'50"

25.00'
8.00'
142.00'
40.00'
32°45'41"
33°38'00"
137°33'00"

Proposed Temporary
Construction Esm't.

CONSENT AND SUBORDINATION

The OTR, an Ohio general partnership ("Lender"), is the holder and owner of that certain Mortgage, Assignment of Rents and Security Agreement, dated October 7, 1986, recorded in the Probate Office of Shelby County, Alabama in Real Property Record 094, Page 620, as assigned to Lender on June 28, 1988, by Assignment and Estoppel Certificate, recorded in the Probate Office of Shelby County, Alabama in Real Property Record 191. Page 709, and other security documents (hereinafter collectively referred to as the "Security Documents") securing a loan pertaining to and covering that portion of Grantor's Property as described in the foregoing Temporary Construction Easement, and by virtue of these documents, Lender expressly agrees to, joins in and subordinates its interest in such portion of Grantor's Property to the Temporary Construction Easement to which this instrument is attached. In the event of a foreclosure of Lender's Security Documents (or any of them) or if for any reason Lender comes into ownership or possession of the Grantor's Property or any portion thereof, Lender agrees to abide by comply with and fulfill the obligations of Grantor thereto. Lender acknowledges and agrees that its Security Documents are expressly subordinate to and inferior to the Temporary Construction Easement.

This Consent and Subordination is executed on May 31, 1990.

LENDER:

OTR, an Ohio general partnership

By:

Stephen A. Mitchell
Stephen A. Mitchell, a general partner

NO TAX COLLECTED

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

90 JUN 12 AM 10:57

JUDGE OF PROBATE

1. Deed Tax	-----
2. Int. Tax	-----
3. L. Tax	12.50
4. L. Tax	3.00
5. L. Tax	1.00
6. L. Tax	1.00
Total	17.50

May 9, 1990

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