

STATE OF ALABAMA)

COUNTY OF SHELBY)

UTILITY EASEMENT AGREEMENT

THIS UTILITY EASEMENT AGREEMENT is made and entered into as of the 23rd day of August, 1993 by and among DAVID F. BYERS, as Debtor-in-Possession and in his capacity as Trustee of the Estate of David F. Byers, Case No. 89-11039, pending before the United States Bankruptcy Court, Northern District of Alabama, Southern Division, and DAVID F. BYERS and wife, MARY ANN BYERS (hereinafter collectively referred to as "Grantor") in favor of DANIEL OAK MOUNTAIN LIMITED PARTNERSHIP, an Alabama limited partnership ("Grantee").

R E C I T A L S:

Grantor desires to grant to Grantee a permanent, non-exclusive easement and right-of-way over and upon that certain real property owned by Grantor which is more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Sewer Easement Property") for the purpose of installing underground sewer lines and related appurtenances thereto.

Grantor further desires to grant to Grantee a temporary non-exclusive easement and right-of-way over, across and upon that certain real property owned by Grantor which is more particularly described in Exhibit B attached hereto and incorporated herein by reference (the "Temporary Power Line Easement Property") for the purpose of installing temporary overhead power lines and related appurtenances thereto.

NOW, THEREFORE, in consideration of the premises, the mutual covenants and conditions hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Grantor, Grantor hereby agrees as follows:

1. Permanent Sewer Easement.

(a) Subject to the relocation rights reserved by Grantor pursuant to Paragraph 1(c) below, Grantor does hereby GRANT, BARGAIN, SELL AND CONVEY to Grantee a permanent, non-exclusive easement and right-of-way (the "Permanent Sewer Easement") under, over, through, across and upon the Sewer Easement Property for the purpose of (i) constructing, installing, maintaining and replacing sewer taps, trunk lines, pipes, lines, drains, conduits, lift

stations and related equipment, improvements and facilities for the carrying, transmission and discharge of sewage (collectively, "Sewer Lines") and (ii) providing Grantee, its successors and assigns, with ingress and egress over, across, through and upon the Sewer Easement Property in connection with the installation, maintenance, repair and replacement of the Sewer Lines.

(b) Subject to the relocation rights reserved by Grantor pursuant to Paragraph 1(c) below, the Permanent Sewer Easement granted herein shall include all rights and privileges necessary or convenient for the full use and enjoyment thereof by Grantee and shall include the right to cut, remove and keep clear all trees, undergrowth and obstructions on the Sewer Easement Property in connection with the construction, installation, maintenance, repair and replacement of the Sewer Lines; provided, however, that Grantee shall, at Grantee's sole cost and expense, seed with grass any portion of Sewer Easement Property disturbed by the exercise of any of the easement rights herein. Subject to the relocation rights reserved by Grantor pursuant to Paragraph 1(c) below, the Permanent Sewer Easement granted herein to Grantee shall be non-exclusive, permanent and perpetual and shall be a covenant running with the land and shall inure to the benefit of and be binding upon Grantor and Grantee and their respective heirs, executors, administrators, personal representatives, successors and assigns, forever.

(c) Grantor reserves the right, for themselves and their respective heirs, executors, administrators, personal representatives, successors and assigns, at any time and from time to time, to relocate the Sewer Lines and the Permanent Sewer Easement to any other real property owned by Grantor subject to the following terms and conditions: (i) such relocation shall be at the sole cost and expense of Grantor, (ii) such relocation shall be undertaken by Grantor only after the plans for such relocation (including the location of the real property upon which the Sewer Lines will be relocated) have been approved by the applicable governmental authorities or such other entity providing sanitary sewer service through the Sewer Lines, (iii) such relocation shall be undertaken by Grantor in a good and workmanlike manner and in accordance with all rules, regulations and requirements of all applicable governmental agencies and/or any other entities having jurisdiction over the transmission of sanitary sewage through the Sewer Lines, (iv) any such relocation by Grantor shall not disrupt or interfere with any sanitary sewer service utilizing the existing Sewer Lines, and (v) Grantor shall grant to Grantee, its successors and assigns, a permanent, perpetual and non-exclusive easement over and across that part of the Grantor's real property

upon which the Sewer Lines have been relocated, which easement shall be on terms substantially similar to the terms and provisions set forth in this Agreement.

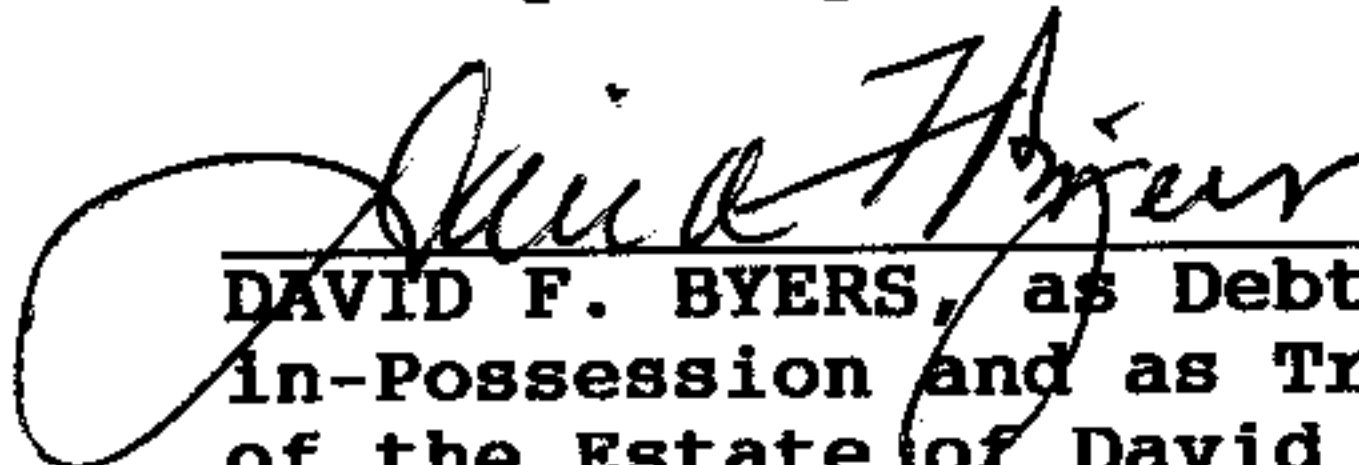
2. Temporary Power Line Easement.

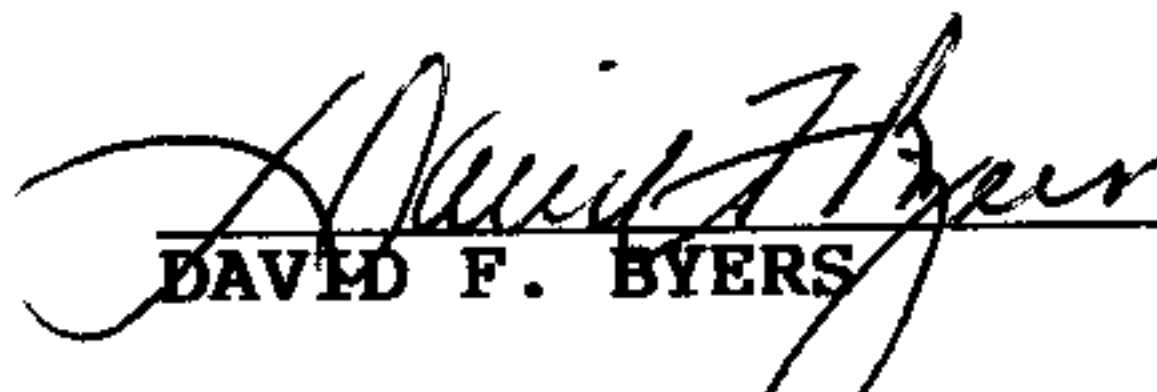
(a) Grantor does hereby GRANT, BARGAIN, SELL AND CONVEY to Grantee a temporary, non-exclusive easement and right-of-way (the "Temporary Power Line Easement") under, over, through, across and upon the Temporary Power Line Easement Property for the purpose of (i) constructing, installing, maintaining and replacing overhead electrical power lines and related equipment, improvements and facilities for the transmission of electricity and (ii) providing Grantee, its successors and assigns, with ingress and egress over, across, through and upon the Temporary Power Line Easement Property in connection with the installation, maintenance, repair and replacement of electrical power lines and related improvements thereon.


(b) The Temporary Power Line Easement granted herein shall include all rights and privileges necessary and convenient for the full use and enjoyment thereof by Grantee and shall include the right to cut, remove and keep clear all trees, undergrowth and obstructions on the Temporary Power Line Easement Property in connection with the construction, installation, maintenance, repair and replacement of electrical power lines and related improvements thereto. The Temporary Power Line Easement granted herein shall cease and terminate at such time as Grantee installs permanent, underground power for that portion of its development situated directly adjacent to the Temporary Power Line Easement Property.

3. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and may be amended or modified only upon the written consent of the record title owner of (a) the Sewer Easement Property and Grantee, its successors and assigns, with respect to any amendment to or modification of the Permanent Sewer Easement and (b) the Temporary Power Line Easement Property and Grantee, its successors and assigns, with respect to any amendment to or modification of the Temporary Power Line Easement.

IN WITNESS WHEREOF, Grantor has executed this Sewer Line Easement Agreement as of the day and year first above written.


DAVID F. BYERS, as Debtor-
in-Possession and as Trustee
of the Estate of David F.
Byers, Case No. 89-11039,
pending before the United
States Bankruptcy Court,
Northern District of Alabama,
Southern Division


DAVID F. BYERS


MARY ANN BYERS

STATE OF ALABAMA)

COUNTY OF Jefferson

I, the undersigned, as Notary Public, in and for said County in said State, hereby certified that David F. Byers, whose name as Debtor-in-Possession and as Trustee of the Estate of David F. Byers, Case. No. 89-11039, pending before the United States Bankruptcy Court, Northern District of Alabama, Southern Division, is signed to the foregoing instrument and who is known to me, acknowledged before me on this date that, being informed of the contents of this instrument, he, in such capacity, executed the same voluntarily on the day the same bears date.

Given under my hand an official seal this the 20th
day of August, 1993.


Notary Public

My Commission Expires:

NOTARY PUBLIC STATE OF ALABAMA AT LARGE.
MY COMMISSION EXPIRES: July 22, 1997.
BONDED THRU NOTARY PUBLIC UNDERWRITERS.

STATE OF ALABAMA)

COUNTY OF Jefferson

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that David F. Byers and wife, Mary Ann Byers whose names are signed to the foregoing instrument and who are known to me, acknowledge before me on this day, that being informed of the contents of said instrument, they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 20th day of August, 1993.

Rebecca T. Carter
Notary Public

My Commission Expires:

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: July 22, 1997.
BONDED THRU NOTARY PUBLIC UNDERWRITERS

EXHIBIT A

SEWER LINE EASEMENT: (EASEMENT 1):

An easement for a sanitary sewer force main situated in the Northwest quarter of the Southeast quarter of Section 28, Township 18 South, Range 1 West, Shelby County, Alabama, lying 10.00 feet either side of a line being more particularly described as follows:

Commence at the Northwest corner of said Quarter-Quarter Section, thence run South 89 degrees 01 minutes 47 seconds East along the North line of said Quarter-Quarter Section for a distance of 198.18 feet to an iron pin found; thence run South 89 degrees 06 minutes 26 seconds East for a distance of 171.58 feet to a point; thence run South 33 degrees 54 minutes 07 seconds East for a distance of 38.26 feet to the point of beginning of said Easement 1; thence run South 78 degrees 02 minutes 43 seconds West for a distance of 16.21 feet to a point; thence run South 85 degrees 11 minutes 46 seconds West for a distance of 59.26 feet to a point; thence run South 69 degrees 22 minutes 51 seconds West for a distance of 67.64 feet to a point; thence run South 57 degrees 26 minutes 22 seconds West for a distance of 53.38 feet to a point; thence run South 38 degrees 34 minutes 08 seconds West for a distance of 70.97 feet to a point; thence run South 23 degrees 04 minutes 36 seconds West for a distance of 85.51 feet to a point; thence run South 12 degrees 45 minutes 12 seconds West for a distance of 23.92 feet to a point; thence run South 19 degrees 32 minutes 40 seconds West for a distance of 78.51 feet to a point; thence run South 12 degrees 03 minutes 30 seconds West for a distance of 99.96 feet to a point; thence run South 5 degrees 55 minutes 06 seconds West for a distance of 70.25 feet to a point; thence run South 8 degrees 14 minutes 05 seconds West for a distance of 50.04 feet to the end of said (Easement 1).

ACCORDING TO THE SURVEY OF K.B. WEYGAND & ASSOCIATES, P.C. DATED JULY 9, 1993.

EXHIBIT B

POWER LINE EASEMENT (EASEMENT II):

An easement for a power line situated in South half of Section 28, Township 18 South, Range 1 West, Shelby County, Alabama, lying 10.00 feet either side of a line being more particularly described as follows:

Commence at the Northwest corner of the Northwest Quarter of the Southeast Quarter of said Section 28, thence run South 89 degrees 01 minutes 47 seconds East along the North line of said Quarter-Quarter Section for a distance of 198.18 feet to an iron pin found; thence run South 89 degrees 06 minutes 26 seconds East for a distance of 171.58 feet to a point; thence run South 33 degrees 54 minutes 07 seconds East for a distance of 22.55 feet to the point of beginning; thence run North 88 degrees 00 minutes 44 seconds West for a distance of 118.65 feet to a power pole; thence run North 88 degrees 16 minutes 26 seconds West for a distance of 180.50 feet to a power pole; thence run North 85 degrees 11 minutes 24 seconds West for a distance of 145.41 feet to a power pole; thence run South 9 degrees 23 minutes 24 seconds East for a distance of 277.90 feet to a power pole; thence run South 83 degrees 43 minutes 52 seconds West for a distance of 226.39 feet to a power pole; thence run South 83 degrees 50 minutes 47 seconds West for a distance of 221.23 feet to a power pole; thence run South 36 degrees 57 minutes 29 seconds West for a distance of 212.56 feet to a power pole; thence run South 37 degrees 15 minutes 30 seconds West for a distance of 214.18 feet to a power pole; thence run North 73 degrees 34 minutes 12 seconds West for a distance of 24.34 feet to the end of said Easement II.

ACCORDING TO THE SURVEY OF K.B. WEYGAND & ASSOCIATES, P.C. DATED JULY 9, 1993.

Inst # 1993-25946

08/27/1993-25946
11:05 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
007 MCD 24.50