

STATE OF ALABAMA )

COUNTY OF SHELBY )

## **EASEMENT AGREEMENT**

THIS EASEMENT AGREEMENT (this "Agreement") is made and entered into as of the ~~6th~~ day of May, 1997, by ROY W. GILBERT and wife, JUDITH L. GILBERT (collectively, "Grantors"), in favor of DANIEL OAK MOUNTAIN LIMITED PARTNERSHIP an Alabama limited partnership ("Grantee").

### **RECITALS:**

Grantors are the owners of that certain real property (the "Grantor's Property") situated in Shelby County, Alabama which is more particularly described in Exhibit A attached hereto and incorporated herein by reference.

Grantee is the owner of certain real property (the "Grantee's Property") situated adjacent to Grantors' Property.

Grantors desire to grant to Grantee a permanent, perpetual and non-exclusive easement over a portion of the Grantors' Property as hereinafter provided for the benefit of Grantee and its successors and assigns.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

#### **1. Grant of Easement.**

(a) Subject to the terms and conditions of Paragraph 1(b) below, Grantors do hereby grant, bargain, sell, convey and assign unto Grantee, its successors and assigns, forever, a permanent, perpetual and non-exclusive easement over, across, through, upon and under that portion of the Grantor's Property (the "Easement Property") which is more particularly described in Exhibit B attached hereto and incorporated herein by reference for the purposes of (i) providing pedestrian and vehicular travel and transportation over and across the Easement Property to and from the Grantee's Property and (ii) installing, constructing, erecting, replacing, relocating, maintaining and operating thereon any street, roads and roadways, whether public or private (collectively, the "Roads"), and underground Utilities, as herein defined, in connection with the development, use, ownership or operation of any of the Grantee's Property. As used herein, the term "Utilities" shall mean and refer to all public or privately owned or operated utilities, cable television and security systems, including, without limitation, electrical, gas, telephone, cable television, water, security, sanitary sewer, storm drainage, and storm sewers, and all lines, pipes, conduits, equipment, machinery and other apparatus

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and appurtenances necessary or required to provide any of the foregoing utility or other services. Grantee shall be solely responsible for the payment of all costs and expenses incurred with respect to the installation and construction of all Roads and Utilities by Grantee on or within the Easement Property.

(b) Notwithstanding anything provided herein to the contrary, prior to the installation of any Roads or any Utilities on the Easement Property, Grantee shall submit to Grantors for their approval, which approval shall not be unreasonably withheld or delayed, copies of all plans for the installation or construction of any Roads or Utilities on the Easement Property and, to the extent required by Grantors, Grantors and Grantee shall modify and amend this Agreement in order to more properly set forth the legal description of the Easement Property and the location of any and all Roads and Utilities constructed thereon.

(c) The easements granted pursuant to this Paragraph 1 shall be used by Grantor, Grantee and their respective heirs, successors and assigns; are appurtenant to and shall serve both the Grantor's Property and the Grantee's Property; shall be and are covenants running with the land; and shall be binding upon and inure to the benefit of Grantors and Grantee and their respective heirs, successors and assigns.

## **2. Miscellaneous.**

(a) This Agreement constitutes the entire agreement between the parties hereto and may be amended and modified only upon the written consent of the then owners of the Grantors' Property and Grantee.

(b) The paragraph headings and captions used herein are for convenience of reference only and shall in no way define, limit, describe or restrict the scope or intent of this Agreement or in any way affect the terms and provisions hereof.


(c) Whenever the context requires or permits, the use of the masculine gender shall be deemed to include the feminine, the singular shall include the plural and vice versa.


(d) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(e) If any provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each provision shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, Grantors have executed this Agreement as of the day and year first above written.

**GRANTORS:**

  
\_\_\_\_\_  
Roy W. Gilbert, Jr.

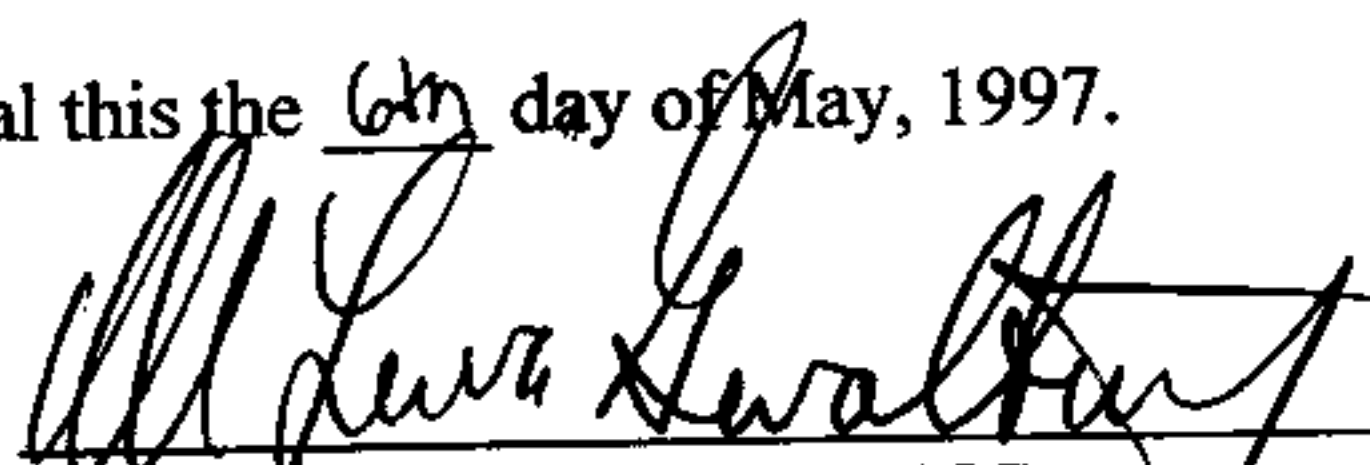
  
\_\_\_\_\_  
Judith L. Gilbert

STATE OF ALABAMA     )

COUNTY OF SHELBY     )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Roy W. Gilbert, Jr. and wife, Judith L. Gilbert, as signed to the foregoing instrument, and who are known to me, acknowledged 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 6th day of May, 1997.

  
\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: 1-27-2001

This instrument prepared by and upon recording should be returned to:

Stephen R. Monk, Esq.  
Bradley Arant Rose & White LLP  
2001 Park Place North, Suite 1400  
Birmingham, Alabama 35203



## **EXHIBIT A**

### **Legal Description of Grantor's Property**

The NE1/4 of NE 1/4 of Section 28, Township 18 South, Range 1 West, and the SE 1/4 of SE1/4 of Section 21, Township 18 South, Range 1 West, Shelby County, Alabama, LESS AND EXCEPT the following described parcels of land:

(1) Begin at the Northwest corner of said SE1/4 of SE 1/4; thence 348.39 ft. south along the west line of said SE 1/4 of SE1/4 to top of ridge; thence Northwesterly 410.1 ft., more or less to a point on the North line of said SE1/4 of SE1/4, said point being 211.93 ft., east of the point of beginning as measured along said North line, thence 211.93 ft. westerly along the North line of said SE 1/4 of SE 1/4 to the Northwest corner of said SE1/4 of SE1/4 which is the point of beginning to the excepted area herein described.

(2) Part of the SE1/4 of SE1/4 of Section 21 and the NE1/4 of NE1/4 of Section 28, all in Township 18 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

Beginning at the southeast corner of said NE1/4 of NE1/4 of Section 28, run in a Northerly direction along the east line of said 1/4 - 1/4 Section for a distance of 1322.75 ft., more or less, to the southeast corner of the SE1/4 of SE1/4 of said Section 21; thence turn an angle to the right of 0 Deg. 35' and run in a northerly direction along the east line of said SE1/4 of SE 1/4 for a distance of 97.91 ft.; thence turn an angle to the left of 79 deg. 23' 10" and run in a northwesterly direction for a distance of 103.60 ft.; thence turn an angle to the right of 38 deg. 07' 40" and run in a northwesterly direction for a distance of 308.71 ft.; thence turn an angle to the left of 101 deg. 09' 05" and run in a southwesterly direction for a distance of 818.93 ft.; thence turn an angle to the left of 28 deg. 18' 57" and run in a southwesterly direction for a distance of 1049.84 ft., more or less, to a point on the south line of said NE1/4 of NE1/4 of Section 28, Township 18 South, Range 1 West; thence turn an angle to the left of 100 deg. 02' 43" and run in an easterly direction for a distance of 987.72 ft., more or less to the point of beginning.

(3) Starting at the northwest corner of SE1/4 of SE1/4 of Section 21, Township 18 South, Range 1 West, go south along the western line of said 1/4 - 1/4 Section for a distance of 348.39 ft. to the point of beginning; thence continue South along said westerly line of said 1/4 - 1/4 section for a distance of 335 feet, more or less to the point where said west line of said 1/4 - 1/4 section intersects with the county road, thence turn to the left and go northeasterly along and parallel with the western edge of said county road to the point where said western edge of said county road intersects with the north line of said 1/4 - 1/4 section; thence turn west and go along said north line of said 1/4 - 1/4 section to a point that is 211.93 ft. east of the northwest corner of said 1/4 - 1/4 Section; then turn to the left and go in a southwesterly direction 410.1 ft. to the point of beginning.

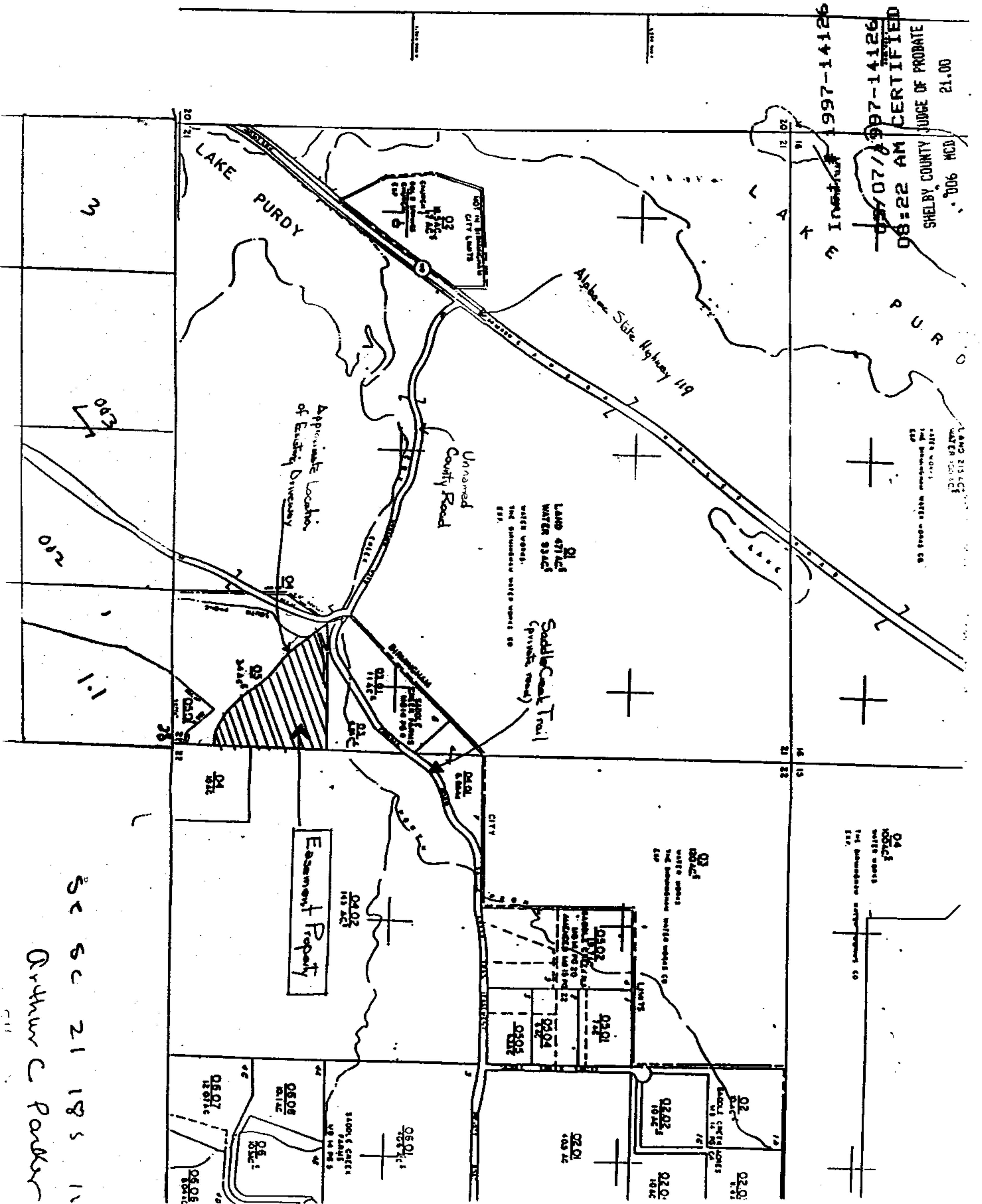
## **EXHIBIT B**

### **Legal Description of Easement Property**

That portion of the Grantors' Property (as defined in Exhibit A hereto) lying east of the existing driveway (or roadway) situated on the Grantors' Property (as defined in Exhibit A) which runs from that certain unnamed Shelby County roadway which intersects with Saddle Creek Trail, a private roadway, to the common boundary of the Grantors' Property (as defined in Exhibit A hereto) and certain real property situated directly adjacent to the Grantors' Property (as defined in Exhibit A hereto) owned by Walter D. Dickson.

The Easement Property is also shown on Exhibit C attached hereto and incorporated herein by reference.

# EXHIBIT C



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 Arthur C Parker