

STATE OF ALABAMA)

COUNTY OF SHELBY)

UTILITY EASEMENT AGREEMENT

THIS UTILITY EASEMENT AGREEMENT (this "Agreement") is made and entered into as of the 23 day of March, 1998 by and among DANIEL OAK MOUNTAIN LIMITED PARTNERSHIP, an Alabama limited partnership ("Grantor"), and SHELBY COUNTY, ALABAMA, a political subdivision of the State of Alabama ("Grantee").

RECITALS:

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

Grantee has heretofore constructed and installed an underground sanitary sewer force main line and other sewer lines (collectively, the "Force Main") within the Easement Property. Grantor and Grantee desire, by execution of this Agreement, to (a) provide for the grant by Grantor and the acceptance by Grantee of a permanent, perpetual and non-exclusive easement over and upon the Easement Property for the purposes set forth below and (b) acknowledge the existence and location of the Force Main.

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

1. **Grant of Utility Easement Rights.**

(a) Subject to the provisions of Paragraph 1(b) below, Grantor does hereby grant, bargain, sell and convey unto Grantee, its successors and assigns, forever, a permanent, perpetual and non-exclusive easement over, across, through, upon and under the Easement Property for the purposes of installing, erecting, replacing, relocating, maintaining and operating underground utilities thereon, including, without limitation, the Force Main and any other publicly or privately owned and operated electrical, gas, telephone, cable television, water, sanitary sewer and storm sewer lines, pipes, conduits, drains, equipment, machinery and other apparatus and appurtenances (collectively, the "Utilities").

(b) The easement granted herein by Grantor to Grantee shall be used by Grantee subject to the following terms and conditions:

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(i) The Easement Property shall be utilized by Grantee solely for the purposes of installing, maintaining, operating, repairing and replacing underground Utilities thereon. In no event shall any above-ground improvements be constructed, installed, placed, erected or maintained by Grantee on any of the Easement Property; and

(ii) The easement granted herein by Grantor to Grantee shall include the right of Grantee to cut, remove and keep clear, to the extent reasonably necessary, all trees, undergrowth and plant life located on or within the Easement Property; provided, however, that Grantor, its successors and assigns, shall (1) have the right to construct, install, maintain, repair and use any portion of the Easement Property for landscaping and paving for surface parking only (whether such paving be asphalt or concrete) and for any necessary curbing and gutters incident to such surface parking (collectively, the "Approved Improvements") and (2) not, in the grading, excavation or use of the Easement Property, damage any of the underground Utilities situated on the Easement Property. Except for the Approved Improvements, neither Grantor nor any of its successors and assigns shall construct any other improvements on any portion of the Easement Property.

(c) All provisions contained herein notwithstanding, Grantor, its successors and assigns, shall not conduct any activity over, in or along the Easement Property which will or could damage or threaten the structural integrity of any of Grantee's sewer lines, mains or utility installations.

(d) The easement granted pursuant to Paragraph 1(a) above shall be and is a permanent, perpetual and non-exclusive easement which 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 successors and assigns, forever.

(e) Grantee does hereby represent and warrant to Grantor that the Force Main is located within the boundaries of the Easement Property and Grantor does hereby consent to the construction, installation and operation by Grantee of the Force Main within the Easement Property.

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

**DANIEL OAK MOUNTAIN LIMITED
PARTNERSHIP**, an Alabama limited partnership

By: DANIEL REALTY INVESTMENT
CORPORATION - OAK MOUNTAIN,
an Alabama corporation, Its General
Partner

By: *Charles Carls*
Its: SA V.P.

ATTEST:

SHELBY COUNTY, ALABAMA
a political subdivision of the State of Alabama

By: *Kim Walton*
Its: *Adrian Arst*

By: *Don Armstrong*
Chairman, Shelby County Commission

STATE OF ALABAMA)
 :
COUNTY OF SHELBY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that *Charles Carls*, whose name as *SA V.P.* of Daniel Realty Investment Corporation- Oak Mountain, an Alabama corporation, as General Partner of Daniel Oak Mountain Limited Partnership, an Alabama limited partnership, 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 said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of such corporation, in its capacity as General Partner as aforesaid.

Given under my hand and official seal, this the *24th* day of *March*, 1998.

[NOTARIAL SEAL]

June B. Allen
Notary Public
My Commission Expires: *Oct. 23, 2000*

STATE OF ALABAMA)

SHELBY COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Don Armstrong, whose name as Chairman of the Shelby County Commission, on behalf of Shelby County, Alabama, a political subdivision of the State of Alabama, acknowledged before me that, being informed of the contents of said instrument, _____, as such officer and with full authority executed the same voluntarily for and as the act of the Shelby County Commission, on behalf of Shelby County, Alabama.

Given under my hand and official seal this 23 day of March, 1998.

Melinda K. Walter
Notary Public
My commission expires: 10/21/2000

[NOTARIAL SEAL]

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

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

EXHIBIT A

LEGAL DESCRIPTION

A 30' Easement For Sanitary Sewers from the North Right-of-Way Line of Village Street to the Southeasterly Right-of-Way Line of Hugh Daniel Drive.

Commence at the Northeast Corner of the Northwest Quarter of the Northeast Quarter of Section 5, Township 19 South, Range 1 West in Shelby County, Alabama, and run in a southerly direction along the east line thereof for a distance of 207.59 feet, more or less, to a point on a curve, curving to the left in a northwesterly to westerly direction and being on the north right-of-way line of Village Street as shown on the map of Greystone Commercial, Map Book 20, Page 57 in the Office of the Judge of Probate, Shelby County, Alabama; thence turn an angle to the right of 99 degrees 55 minutes 27 seconds to the tangent of said curve and run in a northwesterly direction along said curved right-of-way line of Village Street for a distance of 10.15 feet to the POINT OF BEGINNING of the centerline of a 30' wide sanitary sewer easement herein described; thence leaving said right-of-way line turn 75 degrees 21 minutes 27 seconds from the tangent of said curve and run in a northerly direction along the centerline of said 30' easement for a distance of 127.51 feet to a point of curve, having a radius of 175.00 feet, a central angle of 56 degrees 02 minutes 59 seconds and curving to the left in a northerly to northwesterly direction; thence run along said curve for an arc distance of 171.19 feet to the end of said curve; thence continue in a northwesterly direction, tangent to the end of said curve for a distance of 302.84 feet to a centerline P.I. of said easement; thence turn an angle to the right of 04 degrees 43 minutes 42 seconds and continue in a northwesterly direction along the centerline of said 30' easement for a distance of 92.83 feet to a centerline P.I. of said easement; thence turn an angle to the right of 11 degrees 13 minutes 34 seconds and continue in a northwesterly direction along the centerline of said 30' easement for a distance of 44.77 feet, more or less, to a point on the southwesterly right-of-way line of Hugh Daniel Drive. Said point being the centerline end of said 30' wide sanitary sewer easement for Shelby County.

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