

STATE OF ALABAMA)
COUNTY OF SHELBY)

10/13/1998-39832
09:52 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
009 CRH 26.50

DECLARATION OF RESTRICTIONS AND EASEMENT AGREEMENT

THIS DECLARATION OF RESTRICTIONS AND EASEMENT AGREEMENT (this "Agreement") is made and entered into as of the 27th day of August, 1998 by and between DANIEL REALTY COMPANY, an Alabama general partnership ("Grantor"), and THE WATER WORKS AND SEWER BOARD OF THE CITY OF BIRMINGHAM, a public corporation ("Grantee").

RECITALS:

Contemporaneously herewith, Grantor has transferred and conveyed to Grantee that certain real property (the "Lift Station Property") situated in the City of Hoover, Shelby County, Alabama which is more particularly described in Exhibit A attached hereto and incorporated herein by reference.

Grantor desires to grant to Grantee a permanent, perpetual and non-exclusive easement for the installation of underground sanitary sewer lines under that certain real property (the "Easement Property") owned by Grantor which is more particularly described in Exhibit B attached hereto and incorporated herein by reference.

Grantor and Grantee desire to establish certain use restrictions which shall be binding on the Lift Station Property and the Easement Property.

NOW, THEREFORE, in consideration of the premises and the mutual covenants, promises and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. **Use Restrictions.**

(a) Grantee covenants and agrees that the Lift Station Property shall be used solely for the construction, operation, maintenance and replacement thereon of a sanitary sewer lift station (the "Lift Station"), an emergency generator, the Sewer Lines, as hereinafter defined, and any related ancillary equipment and for no other use or purpose whatsoever.

(b) Grantee covenants and agrees that the Lift Station shall at all times be constructed, operated, maintained and repaired by Grantee in a good and workmanlike manner and in compliance with all applicable federal, state, county and local governmental or quasi-governmental rules, regulations, statutes, ordinances, requirements, permits and legislation including, without limitation, all rules and regulations of the Army Corps of Engineers and the Alabama Department of Environmental Management (collectively, the "Governmental Requirements").

(c) Grantee covenants and agrees, at Grantee's sole cost and expense, to construct, install and maintain black-vinyl chain link fencing at least eight (8) feet in height with vertical slats for screening purposes around the Lift Station located on the Lift Station Property. Such fencing shall be completed by Grantee no later than the date on which the Lift Station becomes operational and shall at all times be maintained by Grantee in good repair and condition.

(d) Grantee covenants and agrees, at its sole cost and expense, to minimize, to the greatest extent practicable, any noise generated from the Lift Station or any emergency generator constructed as part of the Lift Station.

(e) Grantee acknowledges and agrees that the Lift Station Property does not have access to any public or private roadways. Grantee, at its sole cost and expense, has or will obtain a temporary access easement from the Hoover City Board of Education over and upon a portion of that certain real property owned by the Hoover City Board of Education situated between the Lift Station Property and Hugh Daniel Drive (the "Temporary Access Easement Property"), the location of which shall be subject to approval by Grantor, which approval shall not be unreasonably withheld or delayed. Grantee, at its sole cost and expense, shall construct an access road (the "Access Road") over, across and upon the Temporary Access Easement Property, which Access Road shall be a gravel roadbed utilizing "pea" gravel as the top coat of the Access Road and shall provide access only to and from Hugh Daniel Drive and the Lift Station Property. Furthermore, Grantee shall, at its sole cost and expense, construct, install and maintain a gate in the wooded portion of the Temporary Access Easement Property, which gate (the "Access Gate") shall be painted brown and maintained in good repair and condition at all times. The actual location of the Access Road and the Access Gate shall be subject to Grantor's prior written approval, which approval shall not be unreasonably withheld or delayed. All plans and specifications for the construction of the Access Road, including, specifically, any proposed curb cut and concrete apron proposed to be constructed by Grantee on or adjacent to Hugh Daniel Drive, shall be submitted to Grantor for its review and approval, which approval shall not be unreasonably withheld or delayed. The Access Road and the Access Gate shall be constructed and completed by Grantee in a good and workmanlike manner in accordance with all applicable Governmental Requirements on or before the date on which the Lift Station becomes operational and shall at all times be maintained by Grantee in good repair and condition and in accordance with all applicable Governmental Requirements.

(f) Grantee shall, at its sole cost and expense, minimize, to the greatest extent practicable, any odor which may be emitted by the Lift Station or from any of the Sewer Lines, as hereinafter defined, situated on the Lift Station Property or the Easement Property.

(g) Promptly following completion of construction of the Lift Station, the Access Road and the Sewer Lines, as hereinafter defined, and at all times thereafter, Grantee shall, at its sole cost and expense, restore all areas of the Lift Station Property, the Temporary Access Easement Property and the Easement Property, as hereinafter defined, which may have been damaged or otherwise affected by the construction work in or around the Lift Station Property, the Temporary Easement Property or the Easement Property, as hereinafter defined, including, specifically, restoring and replacing any and all landscaping, trees, shrubbery and grass damaged or destroyed by Grantee, its employees, agents, contractors, licensees or invitees in the construction, installation, operation, maintenance or repair of the Lift Station, the Access Road, the Access Gate, the Sewer Lines, as hereinafter defined, or in the use of the Temporary Access Easement Property.

(h) If, at any time after the date hereof, access to the Lift Station Property can be provided by some other means other than by the Temporary Access Easement Property, then Grantee shall, at its sole cost and expense vacate, abandon and otherwise relinquish all rights in and to the Temporary Access Easement Property and shall restore the Temporary Access Easement Property to its original state and condition, including, specifically, the removal of the Access Road and Access Gate and the replacement of any and all trees, shrubbery, and plant life damaged, destroyed or removed in connection with the construction or operation of the Access Road on the Temporary Access Easement Property. Grantor agrees to grant to Grantee reasonable access easements over, across, through and upon those portions of the real

property owned by Grantor situated directly adjacent to the Lift Station Property, in order to provide reasonable access to the Lift Station Property, which easements shall be evidenced by written easement agreements to be executed by Grantor and Grantee which shall be recorded in the Office of the Judge of Probate of Shelby County, Alabama.

(i) The Lift Station Property and the Easement Property, as hereinafter defined, shall be used by Grantee subject to all (i) easements, restrictions, reservations, rights-of-way and other matters of record and (ii) that certain unrecorded Agreement by and between Taylor Properties, L.L.C. and Greystone Ridge Homeowners Development Protection Committee dated June 14, 1995 by and between Taylor Properties L.L.C. and Greystone Ridge Homeowners Developmental Protection Committee, an unincorporated association, a copy of which has heretofore been provided to Grantee; provided, however, that Grantor does not object to the use of the Temporary Access Property by Grantee for access to Hugh Daniel Drive notwithstanding the restriction of access from Hugh Daniel Drive set forth in Paragraph 3(c) of the preceding agreement.

(j) Grantee, for itself and its successors and assigns, does hereby covenant and agree that, without the prior written consent of the fee owner of the Easement Property (i) no portion of the Easement Property may be utilized for access purposes to and from the Lift Station Property and U.S. Highway 280 and (ii) the "Access Easement for Lot 2C", as shown on the School House Property Subdivision Resurvey Number 1, as recorded in Map Book 24, Page 39 in the Office of the Judge of Probate of Shelby County, Alabama, will not be utilized by Grantee or any of Grantee's successors or assigns to obtain access to and from the Lift Station Property and U.S. Highway 280.

2. **Operation of Lift Station.** Grantee covenants and agrees that the Lift Station and the Sewer Lines, as hereinafter defined, shall at all times be constructed, operated, maintained, repaired and replaced in accordance with all Governmental Requirements. Grantee, by execution hereof, does hereby indemnify, agree to defend and hold Grantor, Daniel Oak Mountain Limited Partnership, an Alabama limited partnership ("Developer"), which is the developer of the Greystone Planned Unit Development (the "PUD Property"), and their respective officers, directors, partners, shareholders, agents, employees, successors and assigns, harmless from and against any and all liability, loss, costs, expense, fines and any other sums (including reasonable attorneys' fees and court costs) suffered, paid or incurred by any of them as a result of the violation by Grantee of any of the Governmental Requirements, including, specifically, any and all storm water drainage and runoff requirements and regulations applicable to the Lift Station Property or the Temporary Access Easement Property.

3. **Grant of Sewer Line Easement.**

(a) Subject to the terms and conditions of Paragraph 3(b) below, Grantor does hereby grant to Grantee a permanent, perpetual and non-exclusive easement (the "Easement") over, through, across, under and upon the Easement Property for the purposes of Grantee's construction, installation, maintenance, repair and replacement of underground sewer taps, trunk lines, pipes, lines, drains, conduits and related equipment and improvements (collectively, the "Sewer Lines") for the carrying, transmission and discharge of sewage to and from the Lift Station to the sanitary sewer lines of Grantee situated within the right-of-way of U.S. Highway 280.

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

(i) The Easement and the Easement Property shall be utilized by Grantee solely for the purpose of installing, maintaining, operating, repairing and

replacing underground Sewer Lines under the Easement Property. In no event shall any above-ground improvements be constructed, installed, placed, erected or maintained by Grantee on any of the Easement Property;

(ii) The Easement 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 in connection with the construction, maintenance, operation, repair and replacement of Sewer Lines thereon; provided, however, that Grantor, its successors and assigns, in their sole discretion, shall have the right to utilize and allow others to utilize any of the Easement Property for the installation and operation of utilities thereon, for the construction of parking lots and roadways thereon and the construction, maintenance, repair and use of any other improvements thereon (other than buildings or other permanent, vertical structures) which Grantor, its successors and assigns, may deem necessary or appropriate in connection with the ownership, development and use of the real property owned by Grantor situated adjacent to the Easement Property; provided further, that any other uses (other than those authorized above) of the Easement Property shall not interfere with Grantee's use of the Easement Property;

(iii) Grantee acknowledges and agrees that the Easement granted by Grantee is subject to all of the terms and conditions of that certain Covenant and Agreement for Water Services dated April 24, 1989 between Dantract, Inc., Grantor and Shelby County, Alabama recorded in Real Volume 235, Page 574 in the Office of the Judge of Probate of Shelby County, Alabama, including, without limitation, the provisions therein which provide that only water lines which distribute water sold or obtained from Shelby County, Alabama may be installed on the Easement Property; and

(iv) The Easement shall be 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.

4. **Default.** In the event either Grantor or Grantee violates any of the terms or provisions of this Agreement or fails to perform any of its respective obligations hereunder (collectively, a "**Default**") and such Default continues for more than thirty (30) days following the giving of written notice of such Default, then the non-defaulting party may, at its option, either (a) take all action which the non-defaulting party, in its sole discretion, deems necessary or required to remedy or cure such Default, in which event all amounts expended by the non-defaulting party shall bear interest at the Applicable Rate, as hereinafter defined, from and after the date any such cost or expense is paid by the non-defaulting party and shall be due and payable by the defaulting party to the non-defaulting party on demand or (b) exercise all other rights and remedies available to the non-defaulting party at law or in equity. In either such event, however, the non-defaulting party shall be entitled to recover from the defaulting party any and all costs and expenses incurred by the non-defaulting party in exercising any of its rights and remedies set forth in this Paragraph 4, including, without limitation, attorneys' fees and court costs. As used herein, the term "**Applicable Rate**" shall mean simple interest at a rate equal to the lesser of 18% per annum or the highest rate which may be charged by applicable law.

5. **Miscellaneous.**

(a) This Agreement embodies the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and undertakings of the parties relating to any of the subject matter of this Agreement. This Agreement may be amended or supplemented only by an instrument in writing executed by the then owner of the Easement Property and the then owner of the Lift Station Property.

(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 all present and future owners of the Easement Property and the Lift Station Property 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 of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(f) This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.

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

GRANTOR:

DANIEL REALTY COMPANY, an Alabama
general partnership

By: **DANIEL EQUITY PARTNERS LIMITED**
PARTNERSHIP, a Virginia corporation
Its Managing Partner

By: **DANIEL EQUITY CORPORATION I**,
a Virginia corporation, its General Partner

By: 

Its: Sr VICE PRES.

GRANTEE:

**THE WATER WORKS AND SEWER BOARD OF
THE CITY OF BIRMINGHAM**, a public
corporation

By: [Signature]

Its: General Manager and Chief Operating
Officer

STATE OF ALABAMA)
 :
JEFFERSON COUNTY)

I, the undersigned, a notary public in and for said County in said State, hereby certify that
Gene B. Hanson, whose name as General Manager of THE WATER
WORKS AND SEWER BOARD OF THE CITY OF BIRMINGHAM, a public corporation, 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 said corporation.

Given under my hand and official seal this 27th day of August, 1998.

[Signature]
Notary Public

[NOTARIAL SEAL]

My commission expires: 5-31-02

NOTARY PUBLIC STATE OF ALABAMA AT LARGE.
MY COMMISSION EXPIRES: May 31, 2002.
BONDED THRU NOTARY PUBLIC UNDERWRITERS.

STATE OF ALABAMA)

SHELBY COUNTY)

I, the undersigned, a notary public in and for such County, in such State, hereby certify that Charles T. Carls, Jr., whose name as Sr. Vice President of Daniel Equity Corporation, I, a Virginia corporation, as general partner of Daniel Equity Partners Limited Partnership, a Virginia limited partnership, as Managing Partner of DANIEL REALTY COMPANY, an Alabama general 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 said corporation acting in its capacity as general partner as aforesaid.

Given under my hand and official seal this 27th day of August, 1998.

Carol Williams
Notary Public
My Commission Expires: 9/25/98

[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 OF
LIFT STATION PROPERTY**

Lot 2C, according to the School House Property Subdivision Resurvey
Number 1, as recorded in Map Book 24, Page 39 in the Office of the Judge
of Probate of Shelby County, Alabama.

EXHIBIT B

**LEGAL DESCRIPTION OF
EASEMENT PROPERTY**

A part of Lot 1C, according to the School House Properties Subdivision Resurvey Number 1, as recorded in Map Book 24, Page 39, in the Probate Office of Shelby County, Alabama, being more particularly described as follows:

Commence at the Southeast corner of Lot 1C, School House Properties Subdivision Resurvey Number 1, as recorded in Map Book 24, Page 39, in the Probate Office of Shelby County, Alabama and run in a Southwesterly direction along the Southeasterly line of said Lot 1C a distance of 84.00 feet to the POINT OF BEGINNING; thence continue in a Southwesterly direction a distance of 145.32 feet to a point on the Northeasterly right-of-way line of U.S. Highway #280, said point being on a curve to the left having a radius of 2944.79 feet and a central angle of $8^{\circ}09'39''$; thence $66^{\circ}18'23''$ to the right (angle measured to tangent) in a Northwesterly direction along the Northeasterly right-of-way line of said highway and the Southwesterly line of said Lot 1C and along the arc of said curve a distance of 419.44 feet to the Westernmost corner of said Lot 1C; thence $88^{\circ}15'58''$ to the right (angle measured to tangent) in a Northeasterly direction along the Northwesterly line of said Lot 1C a distance of 20.01 feet to a point on a line lying 20.00 feet Northeasterly of and parallel to the Northeasterly right-of-way line of said highway, said point being on a curve to the right having a radius of 2964.79 feet and a central angle of $7^{\circ}42'29''$; thence $91^{\circ}43'20''$ to the right (angle measured to tangent) in a Southeasterly direction along a line lying 20.00 feet Northeasterly of and parallel to the Northeasterly right-of-way line of said highway and along the arc of said curve a distance of 398.86 feet to a point; thence $65^{\circ}50'33''$ to the left (angle measured to tangent) in a Northeasterly direction a distance of 136.75 feet to a point; thence $90^{\circ}00'$ to the right in a Southeasterly direction a distance of 30.00 feet to the POINT OF BEGINNING.

Containing 12,413 square feet or 0.285 acres.

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