

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS (this "Declaration") is made and entered into as of the 21st day of March, 2002 by DANIEL REALTY COMPANY, an Alabama general partnership ("Developer").

RECITALS:

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

Developer desires to enter into this Declaration in order to set forth use restrictions with respect to the Property and the other matters set forth herein, which restrictions and other matters set forth in this Declaration shall be binding on the owner of the Property and all successors and assigns of such owner (collectively, an "Owner").

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer does hereby declare that all of the Property shall be held, developed, improved, transferred, sold, conveyed, leased, occupied and used subject to the following covenants, conditions, restrictions and regulations, which shall be binding upon and inure to the benefit of all parties acquiring or having any right, title or any interest in any portion of the Property and their respective successors and assigns, forever.

1. Use Restrictions. The Property shall be used solely for (a) attached and detached single-family dwellings, duplexes and accessory structures; (b) public elementary or high schools or parochial or private schools having a curriculum compatible to a public school, but not providing residential accommodations; (c) child day-care centers; (d) churches, museums, libraries and art galleries; (e) open spaces; (f) residential information offices and community buildings; (g) recreational facilities operated on a non-profit basis; (h) golf courses, swimming pools, tennis courts, parks, including playgrounds, tot-lots, ball fields and picnic areas; and (i) home occupations (in connection with a primary use as a residential dwelling) (collectively, the "Approved Uses"). In no event shall the Property be used for any other use or purpose whatsoever other than the Approved Uses.

2. Underground Utilities.

(a) All utility lines, pipes, conduit, wiring and other apparatus for electrical, gas, telephone, water, sanitary sewer, cable television, security and any other utility service for any portion of the Property shall be installed and maintained below ground; provided, however, that overhead or above-ground wires, poles, pipes and other above-ground machinery and equipment may be utilized for temporary electrical service to any portion of the Property during the construction of any buildings or other improvements thereon.

(b) All electrical, gas, telephone and cable television meters, transformers and junction boxes, if any, for any improvements located on the Property shall be located, to the greatest extent possible, so as not to be visible from any roadways adjacent to the Property. All such meters

and electrical transformers and junction boxes shall be screened, to the greatest extent possible, by landscaping or other improvements from view from any roadways adjacent to the Property.

3. **Soil Erosion and Drainage.** The Owner of the Property at the time any development or construction activities are commenced with respect to the Property shall provide and maintain on the Property adequate soil erosion measures and drainage facilities to accommodate any stormwater runoff resulting from the construction of any buildings, structures or other improvements on the Property or the commencement of grading or excavation activities on the Property (collectively, the "**Improvements**"). Such Owner shall also insure that the Property and all Improvements thereto are at all times maintained in strict compliance with (a) all soil erosion protection requirements of all applicable federal, state, county and local governmental agencies, authorities, bureaus, departments, divisions or regulatory authorities thereof (collectively, the "**Governmental Authorities**"), (b) all stormwater drainage and runoff requirements and regulations of all applicable Governmental Authorities and (c) all other statutes, ordinances, codes, laws, permits, legislation, rules, regulations, requirements and rulings of any of the Governmental Authorities. The Owner of the Property, by acceptance of a deed to the Property and the commencement of any development or construction activities on the Property, shall and does hereby indemnify, defend and agree to hold Developer and its agents, employees, partners, officers, directors, shareholders and representatives, harmless from and against any and all fines, penalties, costs and expenses, including court costs and reasonable attorneys' fees, and any and all other amounts or sums suffered, paid or incurred by Developer or any of its agents, employees, partners, officers, directors, shareholders and representatives in connection with any action, suit or proceeding (including the settlement of any suit or proceeding) to which any such person may be made a party by reason of the breach by such Owner (or such Owner's contractors, sub-contractors, guests, agents, employees or invitees) of any of the terms and provisions of this **Paragraph 3.**

4. **Set-Back Requirements.** Any buildings to be constructed on the Property shall be located a minimum of fifty (50) feet from the front, rear and side property lines of the Property. Any parking areas or parking lots on the Property shall be located a minimum of ten (10) feet from the property lines of the Property.

5. **Satellite Dish and Antennae.** No satellite dishes shall be allowed on the Property other than dishes no more than two (2) feet in diameter. Any such satellite dish shall, to the greatest extent possible, be located so as not to be visible from any street or roadway adjacent to the Property. Any radio, telephone (including cellular) or telecommunication antennae, receivers, aerials or other similar devices, attached or installed on the Property or any Improvements thereto shall, to the greatest extent possible, be located so as not to be visible from any street or roadway adjacent to the Property. No radio or television signals or any other form of electromagnetic radiation or transmission shall be permitted to originate from the Property or any Improvements thereto which may interfere with the reception of radio or television signals within any other real property situated adjacent to or in close proximity with the Property.

6. **Service Areas.** Any Improvements to be constructed on the Property shall contain and include a service area of adequate size and location to facilitate trash removal and for the loading and unloading of materials and otherwise handling deliveries. Such service areas shall be paved, be accessible to a public or private street within the Property, be located at the side or rear

of any Improvements, be enclosed on at least three (3) sides and be screened from view from any street or roadway adjacent to the Property by either walls, fencing or landscaping.

7. **Trash, Rubbish and Nuisances.**

(a) No trash, garbage, rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of the Property nor shall any nuisance or odors be permitted to exist or operate upon or arise from any Improvements to the Property which would render any portion of the Property unsanitary, unsightly, offensive or detrimental to persons using, occupying or owning any other real property situated adjacent to or in close proximity with the Property. Each Owner of the Property shall refrain from any act or use of the Property or any Improvements thereto which could cause disorderly, unsightly or unkept conditions, or result in the violation of any law, statute, ordinance, rule, regulation or requirement of any of the Governmental Authorities. Notwithstanding the foregoing, exterior speakers, whistles, bells and other similar sound devices may be utilized during school hours on or within the Property or any Improvements thereto as well as security and fire alarm devices used exclusively for those purposes.

(b) Except during construction of any Improvements on the Property, no outdoor burning of trash, garbage, leaves, wood, shrubbery or other materials shall be permitted on any portion of the Property.

8. **Above-Ground Tanks.** No exposed above-ground tanks for the storage of fuel, water or any other substances shall be located on any portion of the Property. Only public sewage systems shall be utilized for the discharge of sewage from any portion of the Property or any Improvements thereto.

9. **Approval of Plans and Specifications.**

(a) No Improvements of any nature shall be made to the Property unless plans and specifications therefor have been submitted to and approved by Developer, which approval will not be unreasonably withheld or delayed. Such plans and specifications shall include, without limitation, plans, drawings and specifications for all Improvements to the Property, a landscaping plan for the Property, a lighting plan for the Property and a signage plan for any exterior signage to be placed on the Property or on the exterior of any building or other structures located on the Property. Furthermore, such plans and specifications shall also include a certification by an independent professional engineer that the proposed Improvements to the Property reflected in the plans and specifications will satisfy the standards for drainage established in Paragraph 3 above.

(b) Any revisions, modification or changes in any of the plans, drawings or specifications previously approved by Developer must be approved by Developer in the same manner as specified above.

(c) If any Improvements of any nature are initiated, installed, maintained, altered, replaced or relocated on the Property without the prior written approval of Developer or if Developer should determine that any approved plans and specifications for any such Improvements are not being complied with, then in either event, the Owner of the Property shall be deemed to have

violated this Declaration and the Developer shall have the right to exercise any of the rights and remedies set forth Paragraph 13 below.

10. **Inspection.** Developer and any agent, employee or representative thereof may at any reasonable time and from time to time during the construction of any Improvements on the Property enter upon and inspect any of the Property in order to determine whether the approved plans and specifications therefore are being complied with. Any such entry shall not be deemed to be a trespass or any other wrongful act by Developer.

11. **Subsurface Conditions.** The Property may be located in an area which includes underground mines, tunnels, sinkholes and subsurface conditions which may result in sinkholes or other types of ground subsidence. The approval of plans and specifications by Developer for any Improvements to the Property shall not be construed in any respect as a representation or warranty by Developer that the surface or subsurface conditions of the Property are suitable for the construction of the Improvements contemplated by such plans and specifications. It shall be the sole responsibility of each Owner to determine the suitability and adequacy of the surface and subsurface conditions of the Property for the construction of any contemplated Improvements thereon.

12. **Limitation of Liability.** Notwithstanding anything provided herein to the contrary, (a) neither Developer nor any agent, employee, representative, member, shareholder, partner, officer or director of Developer shall have any liability of any nature whatsoever for, and (b) each Owner, by acceptance of a deed to any portion of the Property, does hereby irrevocably and unconditionally waive and release Developer and each agent, employee, representative, member, shareholder, partner, officer and director thereof from, any and all damage, loss, action, cause of action, liability, expense or prejudice suffered, claimed, paid or incurred by such Owner on account of (i) any defects in any plans and specifications submitted, reviewed or approved in accordance with the provisions of Paragraph 9 above, (ii) any defects, structural or otherwise, in any work done according to such plans and specifications, (iii) the failure of Developer to approve or the disapproval of any plans, drawings, specifications or other data submitted by any Owner for approval pursuant to the provisions of Paragraph 9 above, (iv) the construction or performance of any work related to such plans, drawings and specifications, (v) bodily injuries (including death) to such Owner or the respective family members, guests, employees, servants, agents, invitees or licensees of any such Owner, or any damage to any Improvements or the personal property of any Owner or the respective family members, guests, employees, servants, agents, invitees or licensees of such Owner or any of their respective successors and assigns, which may be caused by, or arise as a result of, any defect, structural or otherwise, in any Improvements or the plans and specifications therefore, or any past, present or future soil and/or subsurface conditions, known or unknown (including, without limitation, sinkholes, underground mines, tunnels and water channels and limestone formations on or under any portion of the Property) and (vi) any other loss, claim, damage, liability or expense, including court costs and attorneys' fees, suffered, paid or incurred by any Owner arising out of or in connection with the use and occupancy of any portion of the Property or any Improvements situated thereon.

13. **Enforcement and Remedies.** In the event any of the provisions of this Declaration are breached or are not otherwise being complied with in all respects by any Owner or the agents, employees, contractors or invitees of any Owner, then Developer shall have the right, at

its option, to (a) enjoin any further construction of Improvements on the Property and require the removal or correction of any work in place which does not comply with the plans and specifications approved by Developer and/or (b) through its designated agents, employees, representatives and independent contractors, enter upon the Property and take all action necessary to extinguish such violation or breach. All costs and expenses incurred by Developer in enforcing any of the provisions of this Declaration including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved in the correction of nonconforming work, the completion of uncompleted work or in any judicial proceeding, together with any other costs or expenses incurred by Developer in causing any Owner or such Owner's agents, employees, contractors or invitees to comply with the terms and provisions of this Declaration, shall be paid by such Owner on demand, and if such costs and expenses are not paid by such Owner on demand, then all unpaid amounts due and owing to Developer as a result of any breach by such Owner of any of the terms and provisions of this Declaration shall bear interest at the rate of eighteen percent (18%) per annum from and after the date written demand for payment is given to such Owner until such time as all amounts due and owing to Developer have been paid in full. The rights and remedies set forth in this Paragraph 13 shall not be exclusive of any other rights or remedies available to Developer either at law or in equity.

14. **Damage or Destruction to Property and Improvements.** In the event of any fire or other casualty which damages or destroys any portion of the Property or any Improvements thereto, then the Owner of such damaged portion of the Property and any Improvements thereon shall, at such Owner's option, either (a) promptly repair and otherwise restore the Property or the Improvements thereto to the condition to which the same existed immediately prior to such fire or other casualty or (b) clear away any Improvements damaged or destroyed by such fire or other casualty or rendered unusable by such fire or casualty and leave the Property and any remaining Improvements which continue to be usable in a clean, orderly, safe and sightly condition. In the event any Owner elects to rebuild following any such fire or other casualty, then such restoration or repair shall be subject to compliance with all of the terms and provisions set forth in Paragraph 9 above and all then applicable rules, regulations, statutes and ordinances of the Governmental Authorities.

15. **Condemnation of Property and Improvements.** In the event that all or any portion of the Property or any Improvements thereto is taken as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof, then, to the extent practicable, the Owner of the Property so taken shall promptly repair, reconstruct, rebuild and otherwise restore the remaining portions of the Property and all Improvements thereto as nearly as practicable to the condition to which the same existed immediately prior to such taking; provided, however, that any such restoration shall be subject to all of the terms and conditions set forth in Paragraph 9 above and all then applicable rules, regulations, statutes and ordinances of the Governmental Authorities. In the event the restoration of such Lot is impracticable or would otherwise violate any of the terms and provisions of this Declaration, then such Owner shall promptly clear away any remaining Improvements damaged or destroyed by such taking or rendered unusable by such taking and shall leave the Property and any remaining Improvements which continue to be usable in a clean, orderly, safe and sightly condition.

16. **Term.** The terms, covenants, conditions and restrictions set forth in this Declaration shall run with and bind all of the Property, shall inure to the benefit of all Owners and

their respective heirs, executors, personal representatives, administrators, successors and assigns, and shall be and remain in effect for a period of ninety-nine (99) years from and after the date hereof.

17. **Amendments.** The terms and provisions of this Declaration may be amended only upon the prior written consent of both the then Owner of the Property and Developer.

18. **Miscellaneous.**

(a) The prevailing party in any legal action shall be entitled to recover from the non-prevailing party in such action all costs and expenses incurred by the prevailing party in such action, including, without limitation, attorneys fees and court costs.

(b) If any provision of this Declaration or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Declaration 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 hereof shall be valid and enforceable to the fullest extent permitted by law.

(c) The captions and headings contained in this Declaration are for convenience of reference only and shall not be used in the construction or interpretation of any provisions of this Declaration. The table of contents, cover page and any index to this Declaration are for convenience of reference only and shall not define or limit any of the terms and provisions hereof.

(d) All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, shall include all other genders. The use of the singular tense shall include the plural and the use of the plural shall include the singular.

(e) The terms and provisions of this Declaration shall be binding upon each Owner of the Property and their respective heirs, executors, administrators, personal representatives, successors and assigns, and shall inure to the benefit of Developer, each Owner and their respective heirs, executors, administrators, personal representatives, successors and assigns.

(f) In the event of any conflict or ambiguity in the terms and provisions of this Declaration, the general rules of construction against one party as a result of that party having drafted this Declaration are hereby waived by each Owner and, to the fullest extent allowed by law, no conflicts or ambiguities shall be resolved in favor or to the advantage of one party as opposed to another in interpreting any ambiguity or conflict contained herein. In the event of any conflict, ambiguity or inconsistency between this Declaration and any statutes, ordinances, code provisions, rules, regulations or requirements of any Governmental Authorities, then the more restrictive provisions set forth in either this Declaration or the applicable statute, ordinance, code, provision, rule, regulation or requirement shall at all times control.

(g) No restriction or provision hereof is intended to be or shall be construed as a condition subsequent or a possibility of reverter in favor of Developer nor shall any provision be deemed to vest any reversionary interest in Developer.

(h) The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication so as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date hereof. This Declaration shall be construed under and in accordance with the laws of the State of Alabama.

(i) Each Owner hereby waives any right to seek or obtain judicial partition of any portion of the Property.

(j) Developer shall have the right, in its sole and absolute discretion, to assign any and all of the rights, powers, reservations, easements and duties contained herein to any person or entity who shall thereupon have the same rights, powers, reservations, easements and duties as Developer hereunder. Notwithstanding anything provided herein to the contrary, no sale, transfer, conveyance, lease, pledge, encumbrance or other hypothecation of the Property by Developer to a third party shall constitute or be deemed to constitute a transfer of any of the rights reserved herein to Developer unless express reference is made in such instrument of conveyance to the specific rights created in this Declaration which Developer has transferred to any such third party.

(k) Each Owner covenants and agrees to execute, sign and deliver, or cause to be executed, signed and delivered and to otherwise do or make, or cause to be done and made, any and all agreements, instruments, papers, deeds, acts or things, supplemental, confirmatory or otherwise, which may be reasonably requested by Developer for the purpose of or in connection with clarifying, amending or otherwise consummating any of the transactions and matters herein.

(l) All rights, remedies and privileges granted to Developer pursuant to the terms and provisions of this Declaration shall be deemed to be cumulative and the exercise of any one or more of such rights, remedies or privileges shall not be deemed to constitute an election of remedies nor shall it preclude Developer from pursuing such other and/or additional rights, remedies or privileges as may be available to Developer at law or in equity. The failure by Developer at any time to enforce any covenant or restriction set forth herein shall in no event be deemed a waiver of the right thereafter to enforce such covenant or restriction.

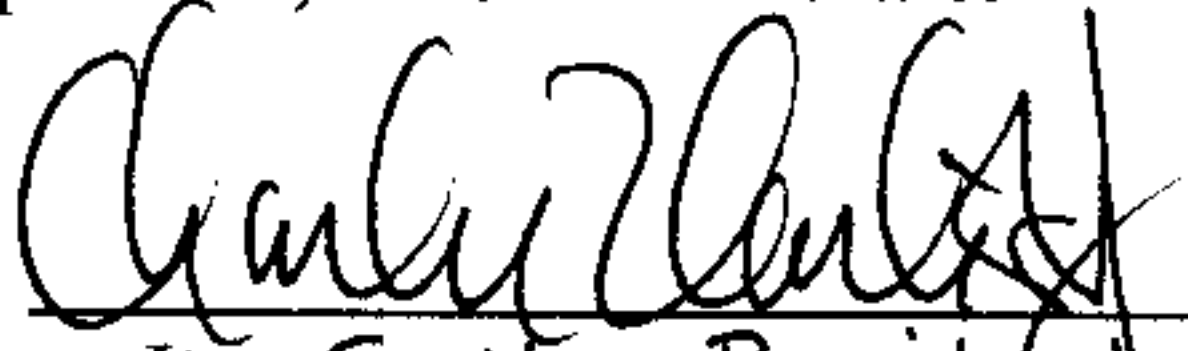
(m) If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of George Herbert Walker Bush, former President of the United States.

IN WITNESS WHEREOF, Developer has executed this Declaration as of the day and year first above written.

DANIEL REALTY COMPANY, an Alabama general partnership

By: Daniel Equity Partners Limited Partnership, a Virginia limited partnership, Its Managing Partner


By: Daniel Equity Corporation I, a Virginia corporation, Its General Partner

By: 
Its: Sr. Vice President

STATE OF ALABAMA)
 :
COUNTY OF SHELBY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Charles T. Carlisle, 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 in its capacity as general partner as aforesaid.

Given under my hand and official seal this the 21st day of March, 2002.


Notary Public
My Commission Expires: 7-14-04

[NOTARIAL SEAL]

This instrument prepared and after recordation return to:

Stephen R. Monk
Bradley Arant Rose & White LLP
2001 Park Place, Suite 1400
Birmingham, Alabama 35203-2736
(205) 521-8429

EXHIBIT A

Legal Description of Property

A parcel of land situated in the SE 1/4 of the SE 1/4 of Section 23, Township 19 South, Range 3 West, Jefferson County, Alabama, and the SW 1/4 of the SW 1/4 of Section 24, the NW 1/4 of the NW 1/4 of Section 25, and the NE 1/4 of the NE 1/4 of Section 26, all in Township 19 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest corner of Section 24, Township 19 South, Range 3 West; thence in an Easterly direction along the South line of said section a distance of 416.85 feet to the POINT OF BEGINNING; thence continue along the last stated course a distance of 26.73 feet to a point on the Southwesterly Right-of-Way line of Old Montgomery Highway; thence $61^{\circ}03'15''$ to the right in a Southeasterly direction along said right-of-way line a distance of 671.75 feet to a point; thence 90° to the right in a Southwesterly direction (leaving said right-of-way line) a distance of 78.30 feet to the P.C. (Point of Curve) of a curve to the left having a radius of 750.00 feet and a central angle of $21^{\circ}03'11''$; thence in a Southwesterly direction along the arc of said curve a distance of 275.58 feet to the P.T. (Point of Tangent) of said curve; thence tangent to said curve in a Southwesterly direction a distance of 83.54 feet to a point; thence 90° to the right in a Northwesterly direction a distance of 133.58 feet to a point; thence $86^{\circ}19'06''$ to the left in a Southwesterly direction a distance of 42.41 feet to a point; thence $9^{\circ}56'24''$ to the left in a Southwesterly direction a distance of 129.97 feet to a point; thence $25^{\circ}30'35''$ to the right in a Southwesterly direction a distance of 151.42 feet to a point; thence $21^{\circ}32'21''$ to the right in a Southwesterly direction a distance of 34.15 feet to a point; thence $64^{\circ}19'39''$ to the right in a Northwesterly direction a distance of 992.32 feet to a point; thence $112^{\circ}07'00''$ to the right in a Northeasterly direction a distance of 82.97 feet to a point; thence $19^{\circ}41'28''$ to the left in a Northeasterly direction a distance of 827.58 feet to a point on the Southwesterly Right-of-Way line of Old Montgomery Highway; thence $93^{\circ}30'34''$ to the right in a Southeasterly direction along said right-of-way line a distance of 30.44 feet to a point; thence 90° to the left in a Northeasterly direction along said right-of-way line a distance of 35.00 feet to a point; thence 90° to the right in a Southeasterly direction along said right-of-way line a distance of 262.16 feet to a point; thence $71^{\circ}22'02''$ to the right in a Southwesterly direction (leaving said right-of-way line) a distance of 51.07 feet to the Point of Beginning.

Inst # 2002-13487

03/21/2002-13487
04:15 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
009 MSB 38.00