

STATE OF ALABAMA
COUNTY OF SHELBY

**MORTGAGE
AND SECURITY AGREEMENT**

THIS MORTGAGE AND SECURITY AGREEMENT, made this 22nd day of December, 1986, between DANIEL MEADOWS II, L.P., a Virginia limited partnership (hereinafter called the "Borrower"), as mortgagor whose address is 10 Inverness Parkway, P. O. Box 43250, Birmingham, Alabama 35243, and SOUTHTRUST BANK OF ALABAMA, NATIONAL ASSOCIATION, a national banking association (hereinafter called the "Lender"), mortgagee, whose address is P. O. Box 2554, Birmingham, Alabama 35290, Attention Real Estate Loan Department.

W I T N E S S E T H:

WHEREAS, Borrower is justly indebted to Lender in the principal sum of Seven Million Two Hundred Thousand and No/100 Dollars (\$7,200,000.00), as evidenced by a certain Promissory Note of even date herewith, payable to Lender in installments with interest thereon (said Promissory Note, as the same may hereafter be renewed, extended or modified, being herein called the "Note"), and as a condition to advancing such moneys to Borrower, Lender has required that Borrower grant to Lender a first mortgage on the real and personal property hereinafter described.

NOW, THEREFORE, in consideration of the indebtedness above mentioned, and of the benefits to be derived from the construction of improvements to be financed with proceeds of the loan to Borrower, and to secure the prompt payment of the Note, with the interest thereon, and any extensions or renewals of same, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth, and the fees, charges and expenses agreed to be paid by Borrower herein or in the Construction Loan Agreement hereinafter described, Borrower has bargained and sold and does hereby grant, bargain, sell, alien and convey unto the Lender, its successors and assigns, the following (which together with any additional such property hereafter acquired by the Borrower and subject to the lien of this mortgage, as the same may be from time to time constituted is hereinafter sometimes referred to as the "Mortgaged Property") to-wit:

(a) That certain tract or parcel of land particularly described in Exhibit A attached hereto and made a part hereof (the "Land").

Jack A.

(b) All buildings, structures, and improvements of every nature whatsoever now or hereafter situated on the Land, and all fixtures, machinery, equipment, furniture and furnishings and personal property of every nature whatsoever now or hereafter owned by the Borrower and located in, on, or exclusively used in connection with or with the operation of the Land, buildings, structures or other improvements, including all extensions, additions, improvements, betterments, renewals and replacements to any of the foregoing.

(c) All building materials, equipment, fixtures, fittings and personal property of every kind or character now owned or hereafter acquired by the Borrower for the purpose of being exclusively used in connection with the improvements located or to be located on the Land whether such materials, equipment, fixtures, fittings and personal property are actually located on or adjacent to said Land, and whether in storage or otherwise, wheresoever the same may be located, including, but without limitation, all lumber and lumber products, bricks, building stones and building blocks, sand and cement, roofing material, paint, doors, windows, hardware, nails, wires and wiring, plumbing and plumbing fixtures, heating and air conditioning equipment and appliances, electrical and gas equipment and appliances, pipes and piping, ornamental and decorative fixtures, furniture, ranges, refrigerators, dishwashers, disposals, and in general all building materials and equipment of every kind and character exclusively used in connection with said improvements.

TOGETHER with all of the right, title and interest of Borrower in all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever, in any way belonging, relating or appertaining to the Land hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Borrower, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of the Borrower of, in and to the same, including but not limited to:

(a) All rents, profits, issues and revenues of the Mortgaged Property from time to time accruing, whether under leases or tenancies now existing or hereafter created, reserving to Borrower, however, so long as no Event of Default has occurred hereunder, the right to receive and retain the rents, issues and profits thereof; and

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(b) All judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Mortgaged Property or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Mortgaged Property or any part thereof, or to any rights appurtenant thereto, including any award for change of grade or streets over or across the Land. Lender is hereby authorized on behalf and in the name of Borrower to execute and deliver valid acquittances for, and appeal from, any such judgments or awards. Lender may apply to all such sums or any part thereof so received, after the payment of all its expenses, including costs and attorney's fees, on the indebtedness secured hereby in such manner as it elects, or at its option, the entire amount or any part thereof so received may be released.

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto the Lender, its successors and assigns forever, subject however to the terms and conditions herein:

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Borrower shall pay or cause to be paid to the Lender the principal and interest payable in respect to the Note, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Borrower, and if Borrower shall keep, perform and observe, and shall cause to be kept, performed and observed, all and singular the covenants and promises in the Note, and in this mortgage expressed to be kept, performed, and observed by and on its part, all without fraud or delay, then this mortgage, and all the properties, interest and rights hereby granted, bargained, and sold shall cease, terminate and be void, but shall otherwise remain in full force and effect.

AND the Borrower covenants and agrees with the Lender, and Borrower represents and warrants to the Lender as follows:

ARTICLE I

1.01. Performance of Note and Mortgage. The Borrower will perform, observe and comply with all provisions hereof and of the Note secured hereby and will duly and punctually pay to the Lender the sum of money expressed in the Note with interest thereon and all other sums required to be paid by the Borrower pursuant to the provisions of this mortgage, all without any deductions or credit for taxes or other similar charges paid by the Borrower.

1.02. Warranty of Title. The Borrower is lawfully seized of an indefeasible estate in fee simple in the Land and other

property hereby mortgaged and has good and absolute title to all existing personal property hereby mortgaged and has good right, full power and lawful authority to sell, convey and mortgage the same in the manner and form aforesaid; that, except as otherwise set forth on Exhibit A hereto, the same is free and clear of all liens, charges, and encumbrances whatsoever, including, as to the personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature, and that Borrower shall and will warrant and forever defend the title of Borrower thereto unto the Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

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1.03. **Monthly Tax Deposits.** If required by the Lender after an Event of Default, the Borrower will pay to the Lender on the first day of each month together with and in addition to the regular installment of principal and interest, until the Note is fully paid, an amount equal to one-twelfth (1/12) of the yearly taxes and assessments as estimated by the Lender to be sufficient to enable the Lender to pay, at least thirty (30) days before they become due, all taxes, assessments, and other similar charges against the Mortgaged Property or any part thereof. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of the Lender, and no interest shall be payable in respect thereof. Upon demand of the Lender, the Borrower agrees to deliver to the Lender such additional moneys as are necessary to make up any deficiencies in the amounts necessary to enable the Lender to pay such taxes, assessments and similar charges. Upon the occurrence of an Event of Default, the Lender may apply to the reduction of the sums secured hereby, in such manner as the Lender shall determine, any amount under this Paragraph 1.03 of Article I remaining to the Borrower's credit.

1.04. **Other Taxes, Utilities and Liens.**

(a) The Borrower will pay or cause to be paid promptly, when and as due, and will promptly exhibit to the Lender receipts for the payment of, all taxes, assessments, water rates, dues, charges, fines and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon the interest of the Lender in the Mortgaged Property (other than any of the same for which provision has been made in Section 1.03 hereof), as well as all income taxes, assessments and other governmental charges lawfully levied and imposed by the United States of America or any state, county, municipality, borough or other taxing authority upon the Borrower

or in respect of the Mortgaged Property or any part thereof, or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property prior to or equal to the lien of this mortgage for any amounts secured hereby or would have priority or equality with this mortgage in distribution of the proceeds of any foreclosure sale of the Mortgaged Property or any part thereof.

(b) The Borrower will promptly pay all charges by utility companies, whether public or private, for electricity, gas, water, sewer or other utilities.

(c) The Borrower shall promptly pay and will not suffer any mechanic's, laborer's, statutory or other lien which might or could be prior to or equal to the lien of this mortgage to be created or to remain outstanding upon any of the Mortgaged Property.

(d) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes so as to affect adversely the Lender and Borrower shall have failed to pay such additional tax within ten (10) days after receipt of written notice from Lender, then the entire balance of the principal sum secured by this mortgage and all interest accrued thereon shall without further notice become due and payable forthwith at the option of the Lender.

1.05. Insurance. The Borrower will (except to the extent monthly deposits for the payment of the same are made by Borrower to Lender as hereinafter provided in this Section 1.05) procure for, deliver to, and maintain for the benefit of, the Lender during the life of this mortgage, insurance policies (or duplicate originals or certified copies thereof), in such amounts as the Lender shall reasonably require, insuring the Mortgaged Property against fire, extended coverage, war damage (if available), and such other insurable hazards, casualties and contingencies as the Lender may reasonably require. The form of such policies and the companies issuing them shall be reasonably acceptable to the Lender. All policies shall contain a New York standard, non-contributory mortgagee endorsement making losses payable to the Lender. At least fifteen (15) days prior to the expiration date of all such policies, renewals thereof satisfactory to the Lender shall be delivered to the Lender. The Borrower shall deliver to the Lender receipts evidencing the payment of all such insurance policies and renewals. In the event of the foreclosure of this

mortgage or any other transfer of title to the Mortgaged Property in extinguishment of the indebtedness secured hereby, all right, title and interest of the Borrower in and to all insurance policies then in force shall pass to the purchaser or grantee.

The Lender is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies on the Mortgaged Property, and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses, directly to the Lender, instead of to the Borrower and Lender jointly. After deducting from said insurance proceeds any expenses incurred by it in the collection or handling of said fund, the Lender may apply the net proceeds, at its option, either toward restoring the improvements, or as a credit on any portion of the mortgage indebtedness selected by it, whether then matured or to mature in the future, or at the option of the Lender, such sums either wholly or in part may be paid over to the Borrower to be used to repair such buildings or to build new buildings in their place or for any other purpose or object satisfactory to the Lender without affecting the lien of the mortgage for the full amount secured hereby before such payment took place. Lender shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

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If required by the Lender after an Event of Default, the Borrower will pay to the Lender on the first day of each month, together with and in addition to the regular installment of principal and interest and monthly tax deposit (as required by Section 1.03 hereof) until the Note is fully paid, an amount equal to one-twelfth (1/12) of the yearly premiums for insurance. Such amount shall be used by Lender to pay such insurance premiums when due. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of the Lender, and no interest shall be payable in respect thereof. Upon demand of the Lender, the Borrower agrees to deliver to the Lender such additional moneys as are necessary to make up any deficiencies in the amounts necessary to enable the Lender to pay such insurance premiums. Upon the occurrence of an Event of Default the Lender may apply to the reduction of the sums secured hereby, in such manner as the Lender shall determine, any amount paid in accordance herewith remaining to the Borrower's credit.

1.06. Condemnation. If all or any part of the Mortgaged Property on which there have been or are to be constructed parking, improvements, or access roads, shall be damaged or taken through condemnation (which term when used in this mortgage shall

include any damage or taking by any governmental authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire indebtedness secured hereby shall at the option of the Lender become immediately due and payable. The Lender shall be entitled to all compensation, awards, and other payments or relief therefor and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or the Borrower's name, any action or proceedings relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by the Borrower to the Lender, who, after deducting therefrom all its expenses, including attorney's fees, may release any moneys so received by it without affecting the lien of this mortgage or may apply the same in such manner as the Lender shall determine to the reduction of the sums secured hereby, and any balance of such moneys then remaining shall be paid to the Borrower. The Borrower agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as the Lender may require.

1.07. Care of the Property.

106 PAGE 763 (a) The Borrower will preserve and maintain the Mortgaged Property in good condition and repair, and will not commit or suffer any waste and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof.

106 (b) Except as otherwise provided herein, no buildings, fixtures, personal property, or other part of the Mortgaged Property shall be removed, demolished or substantially altered without the prior written consent of the Lender. The Borrower may sell or otherwise dispose of, free from the lien of this mortgage, furniture, furnishings, equipment, tools, appliances, machinery, fixtures or appurtenances, subject to the lien hereof, which may become worn out, undesirable, obsolete, disused or unnecessary for use in the operation of the Mortgaged Property, not exceeding in value at the time of disposition thereof One Thousand Dollars (\$1,000.00) for any single transaction, or a total of Five Thousand Dollars (\$5,000.00) in any one year, upon replacing the same by, or substituting for the same, other furniture, furnishings, equipment, tools, appliances, machinery, fixtures, or appurtenances not necessary of the same character, but of at least equal value to the Borrower and costing not less than the amount realized from the property sold or otherwise disposed of, which shall forthwith become, without further action, subject to the lien of this mortgage.

(c) If the Mortgaged Property or any part thereof is damaged by fire or any other cause, the Borrower will give immediate written notice of the same to the Lender.

(d) The Lender is hereby authorized to enter upon and inspect the Mortgaged Property at any time during normal business hours.

(e) The Borrower will promptly comply with or cause to be complied with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Borrower or the Mortgaged Property or any part thereof.

(f) If all or any part of the Mortgaged Property shall be damaged by fire or other casualty, the Borrower will promptly restore the Mortgaged Property to the equivalent of its original condition, regardless of whether or not there shall be any insurance proceeds therefor. If a part of the Mortgaged Property shall be physically damaged through condemnation, the Borrower will promptly restore, repair or alter the remaining property in a manner satisfactory to the Lender. Notwithstanding anything provided in this mortgage to the contrary, upon any casualty or any taking by means of condemnation, and application by Lender of the insurance proceeds or the condemnation award to the reduction of the indebtedness secured hereby, Borrower shall be obligated only to remove any debris from the Mortgaged Property and take such actions as are necessary to make the undamaged or non-taken portion of the Mortgaged Property into a functional economic unit, insofar as is practicable under the circumstances. In the event the Lender requires restoration of the Mortgaged Property as a result of any casualty or taking by means of condemnation, the Lender shall make the insurance proceeds or condemnation award available to Borrower under such procedures as Lender shall determine to assure that the proceeds are properly applied to restoration of the Mortgaged Property to substantially its condition prior to such damage, and Lender, in such event, shall not have the right to require application of the insurance proceeds or condemnation award to the indebtedness secured hereby except to the extent of any surplus over the amount required for restoration or unless Borrower fails to commence restoration or comply with Lender's procedures therefor.

1.08. Further Assurances; After Acquired Property. At any time, and from time to time, upon request by the Lender, the Borrower will make, execute and deliver or cause to be made, executed and delivered, to the Lender and, where appropriate, to cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such

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offices and places as shall be deemed desirable by the Lender any and all such other and further mortgages, instruments of further assurance, certificates and other documents as may, in the reasonable opinion of the Lender, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve the obligation of the Borrower under the Note and of the Borrower under this mortgage, and the lien of this mortgage as a first and prior lien upon all of the Mortgaged Property, whether now owned, or hereafter acquired by the Borrower. Upon any failure by the Borrower so to do, the Lender may make, execute, and record any and all such mortgages, instruments, certificates, and documents for and in the name of the Borrower and the Borrower hereby irrevocably appoints the Lender the agent and attorney-in-fact of the Borrower so to do. The lien hereof will automatically attach, without further act, to all after acquired property attached to and/or used in the operation of the Mortgaged Property or any part thereof.

1.09. **Leases Affecting Mortgaged Property.** The Borrower will comply with and observe its obligations as landlord under all leases affecting the Mortgaged Property or any part thereof. If requested by Lender, Borrower will furnish Lender with executed copies of all leases now or hereafter created on said premises; and all leases now or hereafter entered into will be in a standard form which shall be subject to the reasonable approval of Lender. Borrower will not accept payment of rent more than one (1) month in advance without the express written consent of Lender. If requested by the Lender, the Borrower will assign to the Lender as additional security any and all such leases whether now existing or hereafter created, including, without limitation, all rents, royalties, issues and profits of the premises from time to time accruing, and will not cancel, surrender or modify any lease except in the ordinary course of business.

1.10. **Expenses.** The Borrower will pay or reimburse the Lender for all reasonable attorney's fees, costs and expenses incurred by the Lender in any proceeding involving the estate of a decedent or an insolvent, or in any action, proceeding or dispute of any kind in which the Lender is made a party, or any condemnation action involving the Mortgaged Property or, after the occurrence of an Event of Default or if Borrower contests its obligations hereunder or under the Note or Construction Loan Agreement, and Lender appears as party plaintiff or defendant against Borrower in an action affecting the Note, this mortgage, Borrower or the Mortgaged Property, including but not limited to the foreclosure of this mortgage; or any action to protect the security hereof; and any such amounts paid by the Lender shall bear interest at a rate equal to two percent (2%) in excess of

the interest rate then borne by the Note, shall be payable upon demand, and shall be secured by the lien of this mortgage.

1.11. **Performance by Lender of Defaults by Borrower.** If Borrower fails to pay any tax, lien, assessment or charge levied or assessed against the Mortgaged Property; in the payment of any utility charge, whether public or private; in the payment of any insurance premium; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any covenant, condition or term of this mortgage, then, after the expiration of any applicable cure period and Borrower's failure to cure, the Lender, at its option, may perform or observe the same, and all payments made for costs or incurred by the Lender in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by the Borrower to the Lender with interest thereon at a rate equal to two percent (2%) in excess of the rate then borne by the Note; provided, however, that Lender shall not be obligated to withhold payment or performance during any cure period unless any pending or threatened sale or execution upon any part of the Mortgaged Property is effectively stayed during such period; provided further that Borrower shall have the right to contest any such tax, lien, assessment or charge in the manner hereinafter provided. During such contest, Borrower shall not be deemed in default hereunder if (i) prior to the delinquency of the tax, lien, assessment or charge, Borrower deposits with Lender cash or other security, in form reasonably satisfactory to the Lender, adequate to cover the payment of such lien or obligation, whether matured or contingent, of Borrower or Lender therefor, together with interest, costs and penalties thereon, and (ii) Borrower promptly causes to be paid any amounts adjudged to be due, together with all costs, penalties and interest thereon, before such judgment becomes final or any writ or order is issued under which the Mortgaged Property could be sold pursuant to such judgment. The Lender shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium; of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. The Lender is hereby empowered to enter and to authorize others to enter upon the premises or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to the Borrower or any person in possession holding under the Borrower.

1.12. **Books and Records.** The Borrower shall keep and maintain at all times full, true and accurate books of accounts and records, adequate to reflect correctly the results of the operation of the Mortgaged Property. The Borrower will furnish to the

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Lender within ninety (90) days after the end of the Borrower's fiscal year, a balance sheet and a statement of income and expenses, both in reasonable detail and form satisfactory to Lender and certified by the Borrower (or an officer or general partner thereof), or if required by the Lender, a Certified Public Accountant satisfactory to the Lender, and a rent schedule of the Mortgaged Property, certified by the Borrower (or an officer or general partner thereof), showing the name of each tenant, and for each tenant, the unit occupied, the lease expiration date and the rent paid.

1.13. **Estoppel Affidavits.** The Borrower and, prior to an Event of Default, Lender, within ten (10) days after written request from the other party, shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Note and whether or not to such party's knowledge any offsets or defenses exist against such principal and interest.

ARTICLE II

2.01. **Event of Default.** The term Event of Default, wherever used in the mortgage, shall mean any one or more of the following events:

(a) Failure by the Borrower to pay as and when due and payable under the Note or this mortgage any installments of principal, interest or escrow deposits which failure continues for five (5) days after written notice thereof is given by Lender to Borrower; or

(b) Failure by the Borrower to duly observe any other covenant, condition or agreement of this mortgage which failure is not cured within thirty (30) days after written notice thereof is given by Lender to Borrower, or the occurrence of an Event of Default under the Note, the Construction Loan Agreement or any other document or instrument evidencing or securing the indebtedness secured hereby; or

(c) The Borrower's adjudication as a bankrupt or insolvent; or the filing by the Borrower of any voluntary petition in bankruptcy or a petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the Borrower's seeking or consenting to or acquiescence in the appointment of any trustee, receiver or liquidator of the

Borrower or of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof, or the making of any general assignment for the benefit of creditors; or the admission in writing of its inability to pay its debts generally as they become due; or

(d) The entry by a court of competent jurisdiction, of an order, judgment, or decree approving a petition filed against the Borrower seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency, or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof, or the appointment of any trustee, receiver or liquidator of the Borrower or of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof without the consent or acquiescence of the Borrower which appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive); or

(e) The sale or other transfer of all or any part of or interest in the Mortgaged Property, without the prior written consent of the Lender, which consent may be granted or refused by the Lender in its sole discretion, except such transfers as may be otherwise permitted in Section 3.07 below; or

(f) The creation or suffering to exist by the Borrower of any lien or encumbrance on the Mortgaged Property, other than the lien of this mortgage and the lien for ad valorem taxes not then delinquent, without the prior written consent of the Lender, which consent may be granted or refused by the Lender in its sole discretion; or

(g) The sale or other transfer by any partner (or any partner, shareholder or venturer of any entity which is itself a partner in the Borrower) of any interest in the Borrower (or any such entity) without the prior written consent of the Lender, which consent may be granted or refused by the Lender in its sole discretion, except as may be otherwise permitted in Section 3.07 below.

2.02. **Acceleration of Maturity.** If an Event of Default shall have occurred and be continuing beyond any applicable cure period, then the entire principal amount of the indebtedness secured hereby with interest accrued thereon shall, at the option of the Lender, become due and payable without notice or demand,

part of the Lender to exercise such option when entitled to do so shall not be considered as a waiver of such right.

2.03. Right of Lender to Enter and Take Possession.

(a) If an Event of Default shall have occurred and be continuing beyond any applicable cure period, the Borrower, upon demand of the Lender, shall forthwith surrender to the Lender the actual possession, and if and to the extent permitted by law, the Lender may enter and take possession, of all the Mortgaged Property, and may exclude the Borrower and its agents and employees wholly therefrom.

(b) Upon every such entering upon or taking of possession, the Lender may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Mortgaged Property insured; (iii) manage and operate the Mortgaged Property and exercise all the rights and powers of the Borrower in its name or otherwise, with respect to the same; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted the Lender, all as the Lender from time to time may determine to be to its best advantage; and the Lender may collect and receive all the income, revenues, rents, issues and profits of the same including those past due as well as those accruing thereafter, and, after deducting (A) all expenses of taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes); (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions; (C) the cost of such insurance; (D) such taxes, assessments and other charges prior to the lien of this mortgage as the Lender may determine to pay; (E) other proper charges upon the Mortgaged Property or any part thereof; and (F) the reasonable compensation, expenses and disbursements of the attorneys and agent of the Lender; shall apply the remainder of the moneys so received by the Lender to the payment of accrued interest, to the payment of tax and insurance deposits required in Sections 1.03 and 1.05 hereof, and to the payment of overdue installments of principal, all in such order and priority as the Lender may determine.

(c) Whenever all such Events of Default have been cured and satisfied, the Lender may, at its option, surrender possession of the Mortgaged Property to the Borrower and its suc-

cessors or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing beyond any applicable cure period.

2.04. Receiver.

(a) If an Event of Default shall have occurred and be continuing beyond any applicable cure period, the Lender, upon application to a court of competent jurisdiction, shall be entitled, without notice and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect the rents, profits, issues, and revenues thereof.

(b) The Borrower will pay to the Lender upon demand all expenses, including receiver's fees, attorney's fees, costs and agent's compensation, incurred pursuant to the provisions contained in this Section 2.04; and all such expenses shall be secured by this mortgage.

2.05. Lender's Power of Enforcement. If an Event of Default shall have occurred and be continuing beyond any applicable cure period, the Lender may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (a) to enforce payment of the Note or the performance of any term thereof or any other right, (b) to foreclose this mortgage and to sell, as an entirety or in separate lots or parcels, the Mortgaged Property, as provided by law, and (c) to pursue any other remedy available to it, all as the Lender shall deem most effectual for such purposes. The Lender shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as the Lender may determine.

2.06. Power of Sale. If an Event of Default shall have occurred and be continuing beyond any applicable cure period, Lender may sell the Mortgaged Property at public outcry to the highest bidder for cash in front of the Court House door in the county where said property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county, and, upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the premises so purchased. Lender may bid at said sale and purchase said premises, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Mortgaged Property maybe offered for sale

and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Lender may elect.

2.07. **Application of Foreclosure Proceeds.** The proceeds of any foreclosure sale pursuant to Section 2.06 shall be applied as follows:

(a) First, to the expenses of making the sale, including a reasonable attorney's fee for such services as may be necessary in the collection of said indebtedness or the foreclosure of this mortgage;

(b) Second, to the repayment of any money, with interest thereon at a rate equal to two percent (2%) in excess of the rate borne by the Note, which Lender may have paid, or become liable to pay, under the terms of this mortgage or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided;

(c) Third, to the payment and satisfaction of the indebtedness hereby secured with interest to date of sale; and

(d) Fourth, the balance, if any, shall be paid to the party or parties appearing of record to be the owner of the premises at the time of the sale after deducting any expense of ascertaining who is such owner.

2.08. **Lender's Option on Foreclosure.** At the option of the Lender, this mortgage may be foreclosed as provided by law or in equity, in which event a reasonable attorney's fee shall, among other costs and expense, be allowed and paid out of the proceeds of the sale. In the event Lender exercises its option to foreclose the mortgage in equity, Lender may, at its option, foreclose this mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted to be by the Borrower, a defense to any proceedings instituted by the Lender to collect the sum secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

2.09. **Waiver of Exemption.** Borrower waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this mortgage, and Borrower waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the premises be set off against any part of the indebtedness secured hereby.

2.10. **Suits to Protect the Mortgaged Property.** The Lender shall have power (a) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or any violation of this mortgage, (b) to preserve or protect its interest in the Mortgaged Property and in the income, revenues, rents and profits arising therefrom, and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with, such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of the Lender.

2.11. **Borrower to Pay the Note on Any Default in Payment; Application of Moneys by Lender.** If an Event of Default occurs hereunder, then, upon demand of the Lender, the Borrower will pay to the Lender the whole amount due and payable under the Note; and in case the Borrower shall fail to pay the same forthwith upon such demand, the Lender shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid together with costs, which shall include the reasonable compensation, expenses and disbursements of the Lender's agents and attorneys.

2.12. **Delay or Omission No Waiver.** No delay or omission of the Lender or of any holder of the Note to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such Event of Default, or acquiescence therein; and every right, power and remedy given by this mortgage to the Lender may be exercised from time to time and as often as may be deemed expedient by the Lender.

2.13. **No Waiver of One Default to Affect Another, etc.** No waiver of any Event of Default hereunder shall extend to or shall affect any subsequent or any other then existing Event of Default or shall impair any rights, powers or remedies consequent thereon.

If the Lender (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted herein or in the Note; (d) releases any part of the Mortgaged Property from the lien of this mortgage or otherwise changes any of the terms of the Note or this mortgage; (e) consents to the filing of any map, plat or replat thereof; (f) consents to the granting of any easement thereon; or (g) makes or consents to any agreement subordinating the lien or charge hereof, any such act or omission shall not re-

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lease, discharge, modify, change, or affect the original liability under the Note, this mortgage or otherwise of the Borrower or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor; nor shall any such act or omission preclude the Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Lender shall the lien of this mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, the Lender, at its option, without notice to any person or corporation is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

2.14. **Discontinuance of Proceedings - Position of Parties, Restored.** In case the Lender shall have proceeded to enforce any right or remedy under this mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Lender, then and in every such case the Borrower and the Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Lender shall continue as if no such proceeding has been taken.

2.15. **Remedies Cumulative.** No right, power, or remedy conferred upon or reserved to the Lender by this mortgage is intended to be exclusive of any right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

ARTICLE III

3.01. **Successors and Assigns Included in Parties.** Whenever in this mortgage one of the parties hereto is named or referred to, the heirs, administrators, executors, successors and assigns of such party shall be included, and all covenants and agreements contained in this mortgage by or on behalf of the Borrower or by or on behalf of Lender shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

3.02. **Headings, etc.** The headings of the articles, sections, paragraphs and subdivisions of this mortgage are for convenience of reference only, are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms hereof.

3.03. **Invalid Provisions to Affect No Others.** In case any one or more of the covenants, agreements, terms or provisions contained in this mortgage or in the Note shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms and provisions contained herein and in the Note shall be in no way affected, prejudiced or disturbed thereby.

3.04. **Lien on Personal Property.** To the full extent provided in the granting clauses herein, this mortgage creates a lien on, and grants a security interest in, the fixtures, equipment, inventory and other personal property of the Borrower located on the Mortgaged Property and it shall constitute a security agreement under the Alabama Uniform Commercial Code or other law applicable to the creation of liens on personal property. Borrower covenants and agrees to execute, file and refile such financing statements, continuation statements or other documents as Lender shall require from time to time with respect to such personal property. This mortgage shall constitute a financing statement under the Alabama Uniform Commercial Code. If an Event of Default occurs, the Lender shall have all rights and remedies of a secured party under the Alabama Uniform Commercial Code.

3.05 **Recourse.** Notwithstanding anything to the contrary herein, Lender waives any right to any money judgment against the Borrower and any general or limited partner thereof (except as hereinafter set forth with respect to the obligations of Daniel Realty Company ("DR Company")), whether by an action brought upon the Note or an action brought for a deficiency judgment against the Borrower, or any successor of the Borrower entitled to the Mortgaged Property, and the extent of liability on the part of the Borrower or successor in title is limited to the Mortgaged Property and other security granted to the Lender under this mortgage and other security documents and any instrument now or hereafter further securing the Note, including, without limitation, policies of hazard insurance maintained on the Mortgaged Property and any proceeds thereof and any award of damages on account of any condemnation for public use of or injury to the Mortgaged Property, and any rentals or other income assigned to the Lender, the Lender agreeing to look solely to such Mortgaged Property and security, policies, proceeds, awards, rentals and

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satisfaction of the indebtedness evidenced by the Note in the case of an Event of Default herein or therein, or in any instrument now or hereafter further securing the Note, except that this waiver as to Borrower shall in no event apply if and to the extent that Borrower commits any fraudulent act, misappropriates, wastes or converts any of the collateral securing Borrower's obligations or makes any material misrepresentation herein, in the Construction Loan Agreement or any of the other security documents (as such materiality of any misrepresentation is ultimately determined by a court of competent jurisdiction), nor shall this waiver alter, diminish or impair the obligations of DR Company pursuant to its guaranty of payment and completion dated on or about the date hereof. Furthermore, nothing herein shall affect the indemnity obligation of Borrower or any general partner thereof pursuant to Section 3.09 hereof.

3.06. **Construction Loan Agreement.** This is a construction loan mortgage and the indebtedness secured hereby will be advanced to the Borrower by the Lender from time to time in accordance with a Construction Loan Agreement dated of even date herewith (the "Construction Loan Agreement"). This mortgage secures future advances made pursuant to said Construction Loan Agreement.

3.07 **Permitted Transfers.** Notwithstanding anything provided in this mortgage or any other documents evidencing or securing the Note, the following transfers may be made by Borrower, its successors and assignees, at any time and from time to time without the prior written consent of Lender: (a) the transfer or sale of limited partnership interests in Borrower; (b) the transfer of the general partnership interests of Borrower so long as DR Company remains as the managing partner or the transfer of the partnership interests by Knutstorp, Inc. in DR Company; and (c) the transfer or sale of any interest in the Property and Improvements to DR Company, a partnership of which DR Company is the managing partner, or an entity which is wholly-owned by DR Company. Borrower will promptly give Lender notice of any transfer permitted in (b) or (c).

3.08 **Notice.** All notices provided for under this mortgage or required by applicable law shall be given personally or by mail, addressed to the appropriate party at the address for such

party designated below, or such other address as the party who is to receive such notice may designate in writing and given in the manner set forth in this Section. Notice by mail shall be registered or certified mail, addressed to the party with the proper amount of postage affixed thereto and shall be deemed received when sent in the manner aforesaid. Actual receipt of notice shall not be required to effect notice hereunder.

If to Borrower:

Daniel Realty Corporation
10 Inverness Parkway
P. O. Box 43250
Birmingham, Alabama 35243-0250
Attention: Mr. Stephen R. Monk

If to Lender:

SouthTrust Bank of Alabama,
National Association
P. O. Box 2554
Birmingham, Alabama 35290
Attention: Mr. Andy Morris
Real Estate Loan Department

3.09 Environmental Matters. Borrower represents and warrants to Lender that Borrower has received no notice and has no actual knowledge that either the Land or Borrower is in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority or any remedial obligations under any applicable laws, rules or regulations pertaining to health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") and the Resource Conservation and Recovery Act of 1976 ("RCRA"), and Borrower further represents and warrants that there are no facts, conditions or circumstances known to it which could result in any such investigation or inquiry if such facts, conditions and circumstances, if any, were fully disclosed to the applicable governmental authority. Based solely on the letter dated December 3, 1986, from the Shelby County Planning Commission, a copy of which has been furnished to Lender, Borrower represents and warrants that it has not obtained and is not required to obtain any permits, licenses, or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures or equipment in connection with the Land or improvements constructed or to be constructed by reason of any environmental laws, rules or regulations. Borrower represents and warrants that it has received no notice and has no

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actual knowledge that oil, toxic or hazardous substances or solid wastes have been disposed of or released on the Land and that Borrower will not in its use of the Land knowingly dispose of or release oil, toxic or hazardous substances or solid wastes on the Land (the terms "hazardous substance" and "release" shall have the meanings specified in CERCLA, and the terms "solid waste" and "disposal", "dispose" or "disposed" shall have the meanings specified in RCRA, except that if such acts are amended, to broaden the meanings thereof, the broader meaning shall apply herein). Notwithstanding anything to the contrary herein, Borrower shall indemnify and hold Lender harmless from and against any fines, charges, expenses, fees, attorney fees and costs incurred by Lender in the event the Borrower or the Land (whether or not due to any fault of Borrower) is hereafter determined to be in violation of any environmental laws, rules or regulations applicable thereto and this indemnity shall expressly survive any foreclosure or deed in lieu of foreclosure. This indemnity shall be void from and after the date of payment in full of the indebtedness secured hereby if such indebtedness is paid in full prior to any foreclosure or deed in lieu of foreclosure.

DANIEL MEADOWS II, L.P.,
a Virginia limited partnership

By Daniel Realty Company,
a New York general partnership
Its General Partner

By Daniel Equity Partners, L.P.,
a Virginia limited partnership
Its Managing Partner

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

By:

Its: *[Signature]*
Vice President

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STATE OF ALABAMA

COUNTY OF Jefferson

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Stephen R. Monk whose name as Vice President of Daniel Equity Corporation I, a Virginia corporation, as managing general partner of Daniel Equity Partners, L.P., a Virginia limited partnership, as managing partner of Daniel Realty Company, a general partnership, as general partner of Daniel Meadows II, L.P., a Virginia 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 the 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 managing general partner of Daniel Equity Partners, L.P., in its capacity as managing partner of Daniel Realty Company, in its capacity as general partner of Daniel Meadows II, L.P., as aforesaid.

Given under my hand and official seal, this 22nd day of December, 1986.

Dwight L. Mixson, Jr.
NOTARY PUBLIC

My Commission Expires:
12-2-87



This instrument was prepared by:
Dwight L. Mixson, Jr.
BURR & FORMAN
3000 SouthTrust Tower
Birmingham, Alabama 35203
Telephone: (205) 251-3000

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EXHIBIT A

Part of the SE 1/4 of the NW 1/4 and the SW 1/4 of NE 1/4 of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, and being more particularly described as follows: Lots 6, 8, 10 and 12, Jessica Ingram Property, as recorded in Map Book 3 page 54 in the Office of the Judge of Probate, Shelby County, Alabama, also, an acreage parcel situated in the SE 1/4 of the NW 1/4 of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, and being more particularly described as follows: From the NW corner of Lot 12, Jessica Ingram Property, as recorded in Map Book 3 page 54, in the Office of the Judge of Probate of Shelby County, Alabama, run in a Southerly direction along the West lot line of said Lot 12 for a distance of 30.26 feet to the point of beginning of the parcel herein described; from the point of beginning thus obtained, continue in a Southerly direction along the West lot lines of said Lots 12, 10, 8 and 6, for a distance of 620.60 feet; thence turn an angle to the right of 90 degrees 47 minutes 50 seconds and run in a Westerly direction for a distance of 116.86 feet to a point on the East right of way line of Brook Highland Drive, as shown on the map of "The Meadows Residential Sector One", as recorded in Map Book 9 page 142, in the Office of the Judge of Probate, Shelby County, Alabama, said point being on a curve to the left which has a radius of 605.12 feet, a central angle of 18 degrees 21 minutes 26 seconds and a chord of 193.05 feet which forms an interior angle to the left of 80 degrees 08 minutes 18 seconds with the last described call: run thence along said right of way line in a Northerly direction along the arc of said curve for a distance of 193.88 feet to the end of said curve; run thence in a Northerly direction tangent to said curve for a distance of 324.02 feet to the beginning of a curve to the left, said curve having a radius of 1153.80 feet, a central angle of 2 degrees 37 minutes 02 seconds and chord of 52.70 feet; run thence in a Northerly direction along the arc of said curve for a distance of 52.70 feet; thence turn an interior angle to the left of 126 degrees 06 minutes 26 seconds from the chord of the last described curve and run in a Northeasterly direction for a distance of 89.69 feet to the point of beginning.

LESS AND EXCEPT the following described parcels A & B:

Parcel A

Part of Lot 12, Jessica Ingram Property, as recorded in Map Book 3 page 54 in the Office of the Judge of Probate of Shelby County, Alabama, being more particularly described as follows: Beginning at the NW corner of said Lot 12, run thence in a Southerly direction along the West lot line of said Lot 12 for a distance of 30.26 feet; thence turn an angle to the left of 89 degrees 23 minutes 50 seconds and run in an Easterly direction for a distance of 1236.08 feet to a point on the West right of way line of Shelby County Road No. 495; thence turn an angle to the left of 94 degrees 03 minutes 43 seconds and run in a Northerly direction along said West right of way line for a distance of 36.62 feet to a 2 inch capped pipe; thence turn an angle to the left of 86 degrees 13 minutes 14 seconds and run in a Westerly direction along the North line of said Lot 12 for a distance of 1233.82 feet to the point of beginning.

EXHIBIT A

Parcel B
Part of Lot 6, Jessica Ingram Property, as recorded in Map Book 3 page 54 in the Office of the Judge of Probate of Shelby County, Alabama, being more particularly described as follows: Beginning at the SW corner of said Lot 6, run thence in an Easterly direction along the South line of said Lot 6 for a distance of 1274.54 feet to the West right of way line of Shelby County Road No. 495; thence turn an angle to the left of 94 degrees 15 minutes 23 seconds and run in a Northerly direction along said right of way line for a distance of 10.02 feet; thence turn an angle to the left of 85 degrees 44 minutes 37 seconds and run in a Westerly direction for a distance of 1273.94 feet to the West line of said Lot 6; thence turn an angle to the left of 90 degrees 47 minutes 50 seconds and run in a Southerly direction along the West line of said Lot 6 for a distance of 10.00 feet to the point of beginning.

All being situated in Shelby County, Alabama.

Subject To:

1. Transmission line permits to Alabama Power Company as recorded in Deed Book 112 Page 132 and Deed Book 112 Page 133, in Probate Office of Shelby County, Alabama. (affects W1/2 of NE 1/4 31-18-1W)
2. Transmission line permit to Alabama Power Company as recorded in Real Volume 41 Page 840 in Probate Office of Shelby County, Alabama. (affects SE 1/4 of NW 1/4 31-18-1W)
3. Title to minerals underlying SE 1/4 of NW 1/4 and NE 1/4 Sec. 31 Township 18 Range 1 West, with mining rights and privileges belonging thereto, as reserved in Deed Book 32 Page 183 in Probate Office.
4. Reservation of a 20 foot wide easement for a sanitary sewer as reserved in Real Volume 085 on Page 740 in Probate Office of Shelby County, Alabama.
5. Protective covenants for The Meadows Multi-Family District dated 6th March 1986 and recorded in Real Volume 067 Page 947 and First Supplemental Protective Covenants for The Meadows Multi-Family District dated 8th August 1986 and recorded in Real Volume 085 on Page 742 in Probate Office of Shelby County, Alabama.
6. Current year's taxes.

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1. Deed Tax \$ _____
2. Mtg. Tax 10,800.00
3. Recording Fee 60.00
4. Indexing Fee 1.00
TOTAL 10,861.00

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED

1986 DEC 29 PM 2:48

Thomas A. Ligon, Jr.
JUDGE OF PROBATE