

823

STATE OF ALABAMA)
)
COUNTY OF SHELBY)

MORTGAGE AND SECURITY AGREEMENT

THIS **MORTGAGE AND SECURITY AGREEMENT** made this 23rd day of August, 1989, between Dahiel Meadow Brook 600 Limited Partnership, an Alabama limited partnership ("Mortgagor"), whose address is Meadow Brook Corporate Park, 1200 Corporate Drive, P. O. Box 43250, Birmingham, Alabama 35243-0250 and AmSouth Bank, N.A., a national banking institution ("Mortgagee"), whose address is Post Office Box 11007, Birmingham, Alabama 35288, Attention: Mr. Bob Nesbitt, Commercial Real Estate Department.

W I T N E S S E T H

WHEREAS, Mortgagor is or will become indebted to Mortgagee in the principal sum of Three Million Six Hundred Forty Thousand and No/100 (\$3,640,000.00) Dollars together with interest thereon, as evidenced by that certain promissory note of even date herewith, executed by Mortgagor and delivered to Mortgagee (together with all modifications, amendments, extensions and renewals referred to herein as the "Note") which by reference is made a part hereof to the same extent as though set out in full herein;

NOW, THEREFORE, in order (a) to secure the indebtedness under the Note and the performance and observance by Mortgagor of all covenants and conditions contained in the Note (including any renewal, extension, modification or amendment thereof), in this Mortgage and Security Agreement, in the Construction Loan Agreement of even date herewith, in the Assignment of Leases, Rents and Profits of even date herewith, and all amendments to any of such documents as are hereafter made, and in all other documents and instruments as are executed in connection with the Note or now or hereafter evidence, secure or guarantee performance of the Note, and all amendments thereto; (b) to secure all future advances and re-advances that may subsequently be made to Mortgagor by Mortgagee, evidenced by the aforesaid Note, or any other promissory notes, and all renewals and extensions thereof, and all other indebtedness of Mortgagor to Mortgagee, now or hereafter existing, whether direct or indirect, all charges and expenses of collection incurred by Mortgagee, including court costs, and reasonable attorneys' fees; and (c) to also charge the properties, interests and rights hereinafter described with such payment, performance and observance; and for and in consideration of the sum of One and No/100 (\$1.00) Dollar paid by Mortgagee to Mortgagor this date, and for other valuable consideration, the receipt of which is acknowledged, Mortgagor does hereby grant, bargain, sell, alien, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, deliver, set over, warrant and

BOOK 252 PAGE 716

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confirm unto Mortgagee, its successors and assigns forever all right, title and interest of Mortgagor in and to:

THE PROPERTY

(A) **THE LAND.** All the land described in Exhibit "A" attached hereto and made a part hereof together with all easements, rights, estates, hereditaments and appurtenances relating thereto, now owned or hereafter acquired (the "Land").

(B) **THE IMPROVEMENTS.** TOGETHER WITH all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land (the "Improvements").

(C) **FIXTURES AND PERSONAL PROPERTY.** TOGETHER WITH a security interest in (i) all property and fixtures, equipment and personal property now or hereafter owned by Mortgagor and affixed to or located on the Land which, to the fullest extent permitted by law, shall be deemed fixtures and a part of the Land, (ii) all materials owned by Mortgagor and delivered to the Land for use in any activity, including construction, being conducted thereon; (iii) all contract rights, general intangibles, actions and rights in action now or hereafter owned by Mortgagor and pertaining to the Land, including all rights to insurance proceeds, and (iv) all proceeds, products, replacements, additions, substitutions, renewals and accessions of any of the foregoing. Mortgagor (Debtor) hereby grants to Mortgagee (Secured Party) a security interest in all fixtures, equipment, rights in action and personal property described herein. This Mortgage is a self-operative security agreement with respect to such property, but Mortgagor agrees to execute and deliver on demand such other security agreements, financing statements and other instruments as Mortgagee may reasonably request in order to perfect its security interest or to impose the lien hereof more specifically upon any of such property. Mortgagee agrees to provide, without charge, when reasonably requested, a statement by Mortgagee regarding the obligations secured by this Mortgage and Security Agreement. On demand, Mortgagor will promptly pay all costs and expenses of filing financing statements, continuation statements, partial releases, and termination statements deemed necessary or appropriate by Mortgagee to establish and maintain the validity and priority of the security interest of Mortgagee, or any modification thereof, and all costs and expenses of any filing searches reasonably required by Mortgagee. Mortgagee may exercise any or all of the remedies of a secured party available to it under the Uniform Commercial Code including the right to pursue any deficiency judgments against any guarantor to the extent of its guaranty. Ten (10) days' notice by Mortgagee to Mortgagor shall be deemed to be reasonable notice under any provision of the Uniform Commercial Code requiring such notice; provided, however, that Mortgagee may at its option dispose of the collateral in accordance with Mortgagee's rights and remedies in respect to the

BOOK 252 PAGE 717

real property pursuant to the provisions of this Mortgage and Security Agreement, in lieu of proceeding under the Uniform Commercial Code.

Everything referred to in paragraphs (A), (B) and (C) hereof and any additional property hereafter acquired by Mortgagor and subject to the lien of this Mortgage or intended to be so is herein referred to as the "Property."

TO HAVE AND TO HOLD the Property and all parts thereof unto Mortgagee, its successors and assigns, to its own proper use and benefit forever, subject, however, to the terms and conditions herein:

PROVIDED, HOWEVER, that if Mortgagor shall promptly pay or cause to be paid to Mortgagee the principal and interest payable under the Note together with all other sums secured hereby, at the times and in the manner stipulated therein, herein, and in all other instruments securing the Note, then this Mortgage, and all the properties, interest and rights hereby granted, conveyed and assigned shall cease and be void, but shall otherwise remain in full force and effect.

Mortgagor covenants and agrees with Mortgagee as follows:

ARTICLE I

COVENANTS AND AGREEMENTS OF MORTGAGOR

1.01 Performance of Note and Loan Documents. Mortgagor shall perform, observe and comply with, or cause the performance, observance and compliance with, all provisions hereof, of the Note and of all other Loan Documents (which term shall include, collectively, the Guaranty Agreement of Daniel Realty Company ("Guarantor"), the Construction Loan Agreement, Note, this Mortgage and Security Agreement, the Assignment of Leases, Rents and Profits, and all amendments to any of such documents as are hereafter made, and such other documents and instruments as are executed by Mortgagor or Guarantor in connection with the Note or now or hereafter evidence, secure or guarantee payment of the Note, and all amendments thereto. Mortgagor will promptly pay to Mortgagee the principal with interest, thereon and all other sums required to be paid by Mortgagor under the Note and pursuant to the provisions of this Mortgage and of all other Loan Documents when payment shall become due, all without deduction or credit for taxes or other similar charges paid by Mortgagor.

1.02 Warranty of Title. Mortgagor covenants and warrants that it is seized of an indefeasible estate in fee simple in the Land and all other real property hereby mortgaged, that it has good and absolute title to all existing personal property hereby mortgaged or made subject to the security interest hereby created,

that such titles are not encumbered except as may expressly be provided herein, and that it has good right, full power and lawful authority to convey, mortgage and encumber the same as provided herein. Mortgagor fully warrants the title to the Land, all other real property and all existing personal property hereby mortgaged or made subject to the security interest hereby created and every part thereof, and will forever defend the same against the claims of all persons whomsoever.

1.03 Compliance with Laws. Mortgagor covenants and warrants that all applicable laws, ordinances and regulations affecting the Land permit the use and occupancy of the Improvements as currently contemplated by the Construction Loan Agreement and further covenants and warrants to comply with all laws, ordinances and regulations affecting the Property or the use thereof.

1.04 Taxes and Liens. Mortgagor shall pay or bond promptly, when and as due, and if requested by Mortgagee, Mortgagor shall promptly exhibit to Mortgagee receipts for the payment of all taxes, assessments and other charges imposed by the United States of America or any state, county, municipality, special district or other taxing authority upon or against Mortgagor or in respect of the Property or any part thereof, and any charge which, if unpaid, would become a lien or charge upon the Property prior to or equal to the lien of this Mortgage before they become delinquent and before any interest attaches or any penalty is incurred. Mortgagor shall not permit or suffer for more than thirty (30) days after notice any mechanic's, laborers', materialman's, statutory or other lien upon any of the Property without bonding or otherwise providing security to the reasonable satisfaction of Mortgagee as provided in the Construction Loan Agreement.

1.05 Insurance.

(a) Mortgagor shall at its sole expense obtain for, deliver to, and maintain for the benefit of Mortgagee, during the life of this Mortgage, insurance policies in such amounts as Mortgagee may reasonably require, in no event less than the full insurable value, insuring the Property against fire, extended coverage and such other insurable hazards, casualties and contingencies as Mortgagee may reasonably require, and shall pay promptly, when due, any premiums on such insurance policies and on any renewals thereof. During construction of any improvements upon the Land, Mortgagor shall at its sole expense obtain for, deliver to, and maintain for the benefit of Mortgagee (or cause its general contractor to obtain for, deliver to, and maintain for the benefit of Mortgagee), during any construction period, builder's risk insurance on an all-risk basis with broad form extended coverage on a non-reporting, completed value basis, and public liability insurance and workmen's compensation insurance in such amounts as Mortgagee shall require. The form of such

BOOK 252 PAGE 719

BOOK

policies, the companies issuing them, and the coverages provided shall be reasonably acceptable to Mortgagee. All such policies and renewals thereof (or certified copies thereof) shall be held by Mortgagee, and the builder's risk insurance policy and fire and extended coverage insurance policy and any other policies insuring casualty losses as Mortgagee shall require, shall each contain a noncontributory mortgagee endorsement making losses payable to Mortgagee. At least thirty (30) days prior to the expiration date of all policies, renewals (or pending issuance of a renewal certificate evidencing the same) satisfactory to Mortgagee shall be delivered to Mortgagee. If requested by Mortgagee, Mortgagor shall deliver to Mortgagee receipts evidencing the payment of all premiums on all insurance policies and renewals. In the event of loss, Mortgagor will give immediate written notice to Mortgagee, and Mortgagee may make proof of loss if not made promptly by Mortgagor. In the event of the foreclosure of this Mortgage or any other transfer of title to the Property in extinguishment of the indebtedness and other sums secured hereby, all right, title and interest of Mortgagor in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or grantee. Upon the failure of Mortgagor to obtain and maintain insurance reasonably satisfactory to Mortgagee, Mortgagee may at its own discretion procure and substitute for any and all of the insurance so held as aforesaid, such other policy or policies of insurance, in such amounts as Mortgagee, acting in its sole discretion, may determine; all without prejudice to its right to foreclose hereunder should Mortgagor fail or refuse to keep said premises so insured.

(b) Mortgagor hereby assigns to Mortgagee all proceeds from any insurance policies, and Mortgagee is hereby authorized and empowered in its reasonable discretion, to adjust or compromise any loss under any insurance policies on the 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 Mortgagee alone, and not to Mortgagor and Mortgagee jointly. After deducting from such insurance proceeds any reasonable expenses incurred by Mortgagee in the collection or handling of such funds, Mortgagee, acting in its sole discretion, may: apply the net proceeds (i) to the payment of any sum secured by this Mortgage in such order as Mortgagee may determine or (ii) to the replacement, repair, or restoration of the portion of the Property damaged or destroyed in a manner determined by Mortgagee; or may release said net proceeds to the Mortgagor upon such conditions as Mortgagee shall determine; or may apply said net proceeds for any combination of the foregoing; all without affecting the lien of this Mortgage for the full amount secured hereby before such payment took place. If Mortgagee elects to restore the improvements, any balance of such monies after restoration shall either be applied toward the reduction of indebtedness and other sums secured hereby or shall be paid to Mortgagor, at Mortgagee's

BOOK 252 PAGE 720

option. Mortgagee shall not be responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

(c) Mortgagor shall at its sole expense obtain for, deliver to and maintain for the benefit of Mortgagee, during the life of this Mortgage, liability insurance policies relating to the Property, in such amounts, with such companies and in such form as may be reasonably required by Mortgagee. Mortgagee may require such policies to contain an endorsement, in form satisfactory to Mortgagee, naming Mortgagee as an additional insured thereunder. Mortgagor shall pay promptly, when due, any premiums on such insurance policies and renewals thereof.

1.06 Escrow. Mortgagee may, in its sole discretion, require Mortgagor to deposit with Mortgagee on the first day of each month, in addition to making payments of principal and/or interest as required in the Note, an amount sufficient to enable Mortgagee to pay when due all insurance premiums and real property taxes relating to the Property, which deposits shall be made in installments satisfactory to Mortgagee. Such deposits shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Mortgagee, and interest shall be payable in respect thereof at Mortgagee's typical rates on short-term deposits of such amount with such interest accruing to the benefit of Mortgagor. Upon demand by Mortgagee, Mortgagor shall deliver to Mortgagee such additional monies as are necessary to make up any deficiencies in the amounts necessary to enable Mortgagee to pay such premiums when due. In the event of a default under any of the terms, covenants and conditions in the Note, this Mortgage or any other instrument securing the Note to be kept, performed or observed by Mortgagor, Mortgagee may apply to the reduction of the sums secured hereby, in such manner as Mortgagee shall determine, any amount under this paragraph remaining to Mortgagor's credit and any refund of premium received from cancellation of any insurance policy by Mortgagee upon foreclosure of this Mortgage.

1.07 Condemnation. If all or any part of the Property shall be damaged or taken through condemnation or acquisition by any governmental authority under power of eminent domain, either temporarily or permanently, the entire indebtedness and other sums secured hereby shall, at the option of Mortgagee, become immediately due and payable. Mortgagee shall be entitled to all compensation awards, damages, claims, rights of action and proceeds of, or on account of any damage or taking through condemnation and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or Mortgagor's name, any action or proceeding 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 any other payments or relief, and the right thereto, are hereby assigned by Mortgagor to Mortgagee, who, after deducting

therefrom all its reasonable expenses including attorney's fees, may release any monies so received by it without affecting the lien of this Mortgage or may apply the same, in such manner as Mortgagee shall determine, to the reduction of the sums secured hereby. Any balance of such monies then remaining shall be paid to Mortgagor. Mortgagor agrees to execute such further assignments of any compensations, awards, damages, claims, any rights of action and proceeds as Mortgagee may reasonably require.

1.08 Care of Property and Inspection. Mortgagor shall preserve and maintain the Property in good condition and repair. Mortgagor shall not remove, demolish, materially alter or materially change the use of any building or structure now or hereafter on the Land without the prior written consent of Mortgagee, except as provided in the Construction Loan Agreement. Mortgagor shall not permit, commit or suffer any waste, impairment or deterioration of the Property or of any part thereof, and will not take any action which will increase the risk of fire or other hazard to the Property or to any part thereof. Mortgagee may enter upon and inspect the Property at any reasonable time during the life of this Mortgage.

1.09 Transfer of Property. Mortgagor shall not sell, convey, transfer, lease, mortgage or further encumber any interest in or any part of the Property or permit the transfer by assignment or otherwise of any interest in the Mortgagor, including any general partnership interest of the Mortgagor, without the prior written consent of Mortgagee. If any person should obtain any interest in all or any part of the Property or of any general partnership interest or voting stock, as applicable, pursuant to the execution or enforcement of any lien, security interest or other right, whether superior, equal or subordinate to this Mortgage or the lien hereof, such event shall be deemed to be a transfer prohibited by this Section. Mortgagor shall not, without the prior written consent of Mortgagee, further assign the rents from the Property, nor enter into any agreement or do any act to amend, modify, extend, terminate or cancel, accept the surrender, subordinate, accelerate the payment of rent, or change the terms of any renewal option of any lease now or hereafter covering such property or any part thereof. Notwithstanding anything provided herein to the contrary, Mortgagee hereby consents to (i) the sale and transfer of the Property to Daniel Realty Company, a New York general partnership ("DR Company"), any affiliate, subsidiary or sub-subsidiary of DR Company including any general or limited partnership in which DR Company or any affiliate, subsidiary or sub-subsidiary of DR Company is a general partner; (ii) the transfer of the stock of any general partner of Mortgagor to any affiliate, subsidiary or sub-subsidiary of DR Company; and (iii) the admission of additional general and limited partners in Mortgagor or any general or limited partnership to which Mortgagor has transferred

BOOK 252 PAGE 722

the Property as authorized by (and subject to) the provisions of subparagraph (i) above. As used in this subparagraph, the terms "affiliate, subsidiary or sub-subsidiary" shall refer only to entities which are wholly owned by DR Company or Daniel Realty Corporation, an Alabama corporation. No transfer permitted under this subparagraph shall affect, alter or diminish the liability of DR Company under the Guaranty Agreement.

1.10 Further Assurances. At any time and from time to time, upon Mortgagee's request, Mortgagor shall make, execute and deliver or cause to be made, executed and delivered to Mortgagee any and all such further mortgages, instruments of further assurance, certificates and other documents as Mortgagee may consider reasonably necessary or desirable in order to effectuate, complete, enlarge in accordance with the Construction Loan Agreement or perfect, or to continue and preserve the obligations of Mortgagor under the Note and this Mortgage and the lien of this Mortgage as a first and prior lien upon all of the Property, whether now owned or hereafter acquired by Mortgagor and placed on the Property.

1.11 Expenses. Mortgagor shall pay or reimburse Mortgagee for all reasonable costs, charges and expenses, including reasonable attorney's fees and disbursements, incurred or paid by Mortgagee in any pending or threatened action or proceeding in which Mortgagee is or may become a party and which affects or might affect the Note, or the Property or any part thereof, or the interests of Mortgagor or Mortgagee therein, including but not limited to the foreclosure of this Mortgage, condemnation involving all or part of the Property or any action to protect the security hereof. The amounts so incurred or paid by Mortgagee, together with interest thereon at the Default Rate as hereinafter defined from the date incurred until paid by Mortgagor, shall be added to the indebtedness and secured by the lien of this Mortgage.

1.12 Mortgagee's Performance of Defaults. If Mortgagor defaults in the payment of any tax, assessment, encumbrance or other imposition, in its obligation to furnish insurance hereunder or in the performance or observance of any other covenant, condition or term in this Mortgage or in any other instrument securing the Note, Mortgagee may at its sole option perform or observe the same (provided that unless such failure may, in Mortgagee's reasonable opinion, pose a risk to Mortgagee's collateral, Mortgagee shall first give written notice to Mortgagor and Mortgagor shall have thirty (30) days to cure such default), and all payments made (whether such payments are regular or accelerated payments) and costs and expenses incurred or paid by Mortgagee in connection therewith shall become due and payable immediately by Mortgagor. The amounts so incurred or paid by Mortgagee, together with interest thereon at the Default Rate as hereinafter defined from the date incurred until paid by

BOOK 252 PAGE 723

Mortgagor, shall be added to the indebtedness due on the Note and shall be secured by the lien of this Mortgage.

1.13 Assignment of Rents and Profits. Mortgagor assigns and transfers all rents and profits of the Mortgaged Property and the right, title and interest of Mortgagor in and under all leases now or hereafter affecting the Property to the Mortgagee. So long as no Event of Default exists under this Mortgage, the Note, or other Loan Documents, Mortgagor may collect the rents and profits up to one (1) month in advance of the accrual thereof. Upon the occurrence of any such Event of Default, or at such later time as Mortgagee, at its sole option, may fix by written notice, all right of Mortgagor to collect or to receive rents or profits of the Property shall wholly terminate.

1.14 Future Advances. Mortgagee, at its option, may make future advances to Mortgagor; provided, that nothing contained herein shall constitute an obligation to do so. Such future advances, with interest at the rate payable from time to time on the outstanding principal under the Note, shall be secured by this Mortgage when evidenced by the Note or by any other instrument indicating that such advances are secured by this Mortgage or when advanced under the terms of this Mortgage. Mortgagee may make such future advances (a) at the request of Mortgagor, whether or not there is any obligation to make future advances; or (b) to pay, with or without the consent or request of Mortgagor, any amounts which may be due under this Mortgage or under any other mortgage or lien affecting the Property.

1.15 Lease Affecting Mortgaged Property. Mortgagor shall comply with and observe its obligations as landlord under all leases affecting the Property or any part thereof. Mortgagor shall furnish promptly to Mortgagee executed copies of all such leases now existing or hereafter created, all of which shall either (a) be in form and substance subject to the approval of Mortgagee or (b) shall be on a lease form previously approved by Mortgagee in writing and shall be in compliance with leasing guidelines previously approved by Mortgagee in writing. Mortgagor shall not, without the express written consent of Mortgagee, modify, surrender, terminate or extend any such lease now existing or hereafter created, or permit or suffer an assignment or sublease. Mortgagor shall not accept payment of rent more than one (1) month in advance without the prior written consent of Mortgagee.

ARTICLE II

DEFAULTS AND REMEDIES

2.01 Event of Default. The term "Event of Default," wherever used in this Mortgage, shall mean any one or more of the following events: (a) failure of Mortgagor to make any payment of principal or interest as required by the Note; (b) failure of

BOOK 252 PAGE 724

Mortgagor to pay any other sum secured by this Mortgage within ten (10) days from written notice to Mortgagor; (c) an "Event of Default" under any of the Loan Documents (which is not cured prior to the expiration of any applicable cure period following the giving of any required notice); (d) breach of any warranties or representations given by the Mortgagor to Mortgagee, and, if capable of cure, is not cured within thirty (30) days after written notice is given by Mortgagee to Mortgagor; (e) failure of Mortgagor to observe or perform any covenant or agreement set forth in this Mortgage, which failure is not cured within thirty (30) days after written notice thereof is given by Mortgagee to Mortgagor; or (f) commencement of any proceedings or other written admission by Mortgagor or any guarantor of the Note ("Guarantor") of an inability to pay the debts of Mortgagor or Guarantor as they mature, assignment of the assets of Mortgagor or a Guarantor for the benefit of creditors, request or petition by Mortgagor or Guarantor for the appointment of a receiver, trustee or conservator of the assets of Mortgagor or Guarantor or for reorganization or liquidation of Mortgagor or Guarantor, or acquiescence by Mortgagor or Guarantor to any such request or petition made by another person.

2.02 Remedies. Upon the occurrence of an Event of Default as hereinabove defined, Mortgagee by written notice to Mortgagor may declare all sums secured by this Mortgage immediately due and payable and may commence proceedings to collect such sums, foreclose this Mortgage and sell the Property. During the pendency of any such proceedings, Mortgagee shall be entitled to the appointment of a receiver to collect the rents and profits from the Property, without regard to the value of the Property or other security for the sums secured hereby or the sufficiency thereof for the payment of such sums. As a method of foreclosure, Mortgagee may sell the 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, Mortgagee or any person conducting the sale for Mortgagee is authorized to execute to the purchaser at said sale a deed to the Property so purchased, Mortgagee may bid at said sale and purchase said Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Property may be 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 Mortgagee may elect. At the option of the Mortgagee, 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 expenses, be allowed and paid out of the proceeds of the sale. In the event Mortgagee exercises its option to foreclose the mortgage in equity, Mortgagee may, at its option, foreclose this mortgage subject to

BOOK 252 PAGE 725

the rights of any tenants of the Property, and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose its rights will not be, nor be asserted to be by the Mortgagor, a defense to any proceedings instituted by the Mortgagee to collect the sum secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Property. Upon the occurrence of an Event of Default, Mortgagee shall also be entitled to the extent permitted by law to have a receiver appointed to enter upon and take possession of the Property and to collect all rents, revenues, profits and income therefrom and apply the same as the court may direct. The expenses, including attorneys' fees, receiver's fees, and all other costs related to the receivership, shall be secured by this mortgage.

2.03 Waiver of Appraisement, Valuation, Stay, Extension, and Redemption Laws. Mortgagor agrees to the full extent permitted by law that in case of an Event of Default on its part hereunder, neither Mortgagor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any right of appraisement, valuation, stay, or extension now or hereafter in force in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Property or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereat. Mortgagor further waives the right to petition for the appointment of appraisers following foreclosure.

2.04 Suits to Protect the Mortgaged Property. Mortgagee shall have the power and authority to institute and maintain any suits and proceedings as Mortgagee may deem advisable to prevent any impairment of the Property by any acts which may be unlawful or any violation of this Mortgage and to preserve or protect its interest in the Property.

2.05 Delay or Omission No Waiver. No delay or omission of Mortgagee 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 waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to Mortgagee may be exercised from time to time and as often as may be deemed expedient by Mortgagee.

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

2.07 Remedies Cumulative. Notwithstanding the provisions of Section 2.02, no right, power or remedy conferred upon or reserved to Mortgagee by the Note, this Mortgage or any other instrument

BOOK
252 PAGE 726

securing the Note is exclusive of any other 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 under the Note or any other instrument securing the Note, or now or hereafter existing at law, in equity or by statute.

ARTICLE III

MISCELLANEOUS PROVISIONS

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

3.02 Notices. Any notice given by either party hereto to the other party shall be in writing and shall be signed by the party giving notice. Any notice or other document to be delivered to either party hereto by the other party shall be deemed delivered if mailed postage prepaid to the party to whom directed at the address of such party stated above. This paragraph shall not be deemed to prohibit any other manner of delivering a notice or other document.

3.03 Invalid Provisions to Affect No Others. In the event that any of the covenants, agreements, terms or provisions contained in the Note, this Mortgage or any other instrument securing the Note shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein and in the Note and any other instrument securing the Note shall be in no way affected, prejudiced or disturbed thereby.

3.04 Changes or Modifications. Neither this Mortgage nor any term hereof may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement hereafter made by Mortgagor and Mortgagee relating to this Mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance.

3.05 Governing Law. This Mortgage and all of the Loan Documents shall be governed by the laws of the State of Alabama.

3.06 Default Rate. The Default Rate shall be as provided in the Note.

BOOK
252 PAGE 727

BOOK 252 PAGE 728

3.07 Exculpation of Borrower. Notwithstanding anything contained herein or in any of the Loan Documents to the contrary, Mortgagor, its partners (general or limited) and Daniel Realty Investment Corporation-MB600 ("DRIC-600") shall not have any personal liability for payment of the indebtedness evidenced by the Note, and upon any Event of Default hereunder, the liability of any of them for payment of the Note shall be limited solely to the Mortgagor's interest in collateral given to secure the indebtedness. The holder of the Note hereby waives any right to, and will not, sue for, or otherwise seek, any monetary or deficiency judgment against Mortgagor, its partners (general or limited) or DRIC-600 in any action brought on the Note or for foreclosure of this mortgage. Provided, however, the foregoing shall not be construed as a waiver of the right of the holder to pursue and collect a judgment or a deficiency judgment against Guarantor under its Guaranty Agreement.

3.08 Defeasance. If Mortgagor shall pay or cause to be paid to Mortgagee the indebtedness hereby secured (including future advances) in the manner stipulated herein, in the Note or in any note or notes hereafter delivered to Mortgagee, all without deduction or offset or credit for taxes or similar charges paid by Mortgagor, and shall keep, perform and observe all and singular the covenants and promises herein, in the Note, in the Construction Loan Agreement, in any note or notes hereafter secured by this mortgage, and in all other Loan Documents, all without fraud or delay, then the properties, interest and rights hereby granted, bargained and sold shall cease, determine and be void, but shall otherwise remain in full force and effect; provided all covenants herein expressly stated to survive shall survive, and all indemnities herein shall survive notwithstanding any satisfaction, release, or foreclosure (or deed in lieu of foreclosure) with respect to this mortgage.

IN WITNESS WHEREOF, the undersigned have executed this instrument the day and year first written.

Signed, sealed and delivered MORTGAGOR:
in the presence of:

DANIEL MEADOW BROOK 600
LIMITED, PARTNERSHIP, an
Alabama limited partnership

By: Daniel Realty Investment
Corporation-MB600, an
Alabama corporation
Its: General Partner

By:
Its: VICE PRESIDENT

STATE OF ALABAMA)
 SHELBY)
COUNTY OF ~~JEFFERSON~~) |

I, the undersigned, a notary public in and for said County, in said State, hereby certify that Jack R. Peterson whose name as Vice President of Daniel Realty Investment Corporation-MB600, an Alabama corporation, as general partner of Daniel Meadow Brook 600 Limited Partnership, an Alabama limited partnership, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that being informed of the contents of said instrument, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said corporation, acting in its capacity as general partner as aforesaid.

Given under my hand and official seal this the 23rd day of August, 1989.

Shirley D. Ellis
NOTARY PUBLIC
My Commission Expires: 2/5/90

BOOK 252 PAGE 729

EXHIBIT A

Lot 11B-1, MEADOW BROOK CORPORATE PARK SOUTH PHASE II, RESURVEY OF LOT 11-A & LOT 11B, as recorded in Map Book 13, Page 84, in the Probate Office of Shelby County, Alabama, and being more particularly described as follows:
Commence at the point of intersection of the Southeasterly right-of-way line of Meadow Brook Road with the Southwesterly right-of-way line of Corporate Parkway and run South 51 degrees 47 minutes 47 seconds East along the Southwesterly right-of-way line of Corporate Parkway a distance of 97.80 feet to the P.C. (point of curve) of a curve to the left having a radius of 339.25 feet, a central angle of 54 degrees 42 minutes 45 seconds and a chord bearing South 79 degrees 09 minutes 10 seconds East; thence Southeasterly, Easterly, and North-easterly along the arc of said curve and along said right-of-way line a distance of 323.95 feet to the P.T. (point of tangent) of said curve, said point being the point of beginning; thence North 73 degrees 29 minutes 28 seconds East in the tangent to said curve and along said right-of-way line a distance of 109.47 feet to the P.C. (point of curve) of a curve to the right having a radius of 440.00 feet, a central angle of 52 degrees 32 minutes 36 seconds and a chord bearing South 80 degrees 14 minutes 14 seconds East; thence Northeasterly, Easterly, and Southeasterly along the arc of said curve and along said right-of-way line a distance of 403.50 feet to the P.T. (point of tangent) of said curve; thence South 53 degrees 58 minutes 00 seconds East in the tangent to said curve and along said right of way line a distance of 359.44 feet to a point; thence South 36 degrees 39 minutes 53 seconds West a distance of 99.01 feet to a point; thence South 73 degrees 24 minutes 59 seconds West a distance of 489.96 feet to a point; thence North 89 degrees 15 minutes 39 seconds West a distance of 50.92 feet to a point; thence North 23 degrees 15 minutes 35 seconds West a distance of 506.13 feet to the point of beginning.

BOOK 252 PAGE 730

SUBJECT TO:

1. Current year's taxes not yet overdue.
2. Transmission line permits to Alabama Power Company recorded in Deed Book 146, Page 391; Deed Book 109, Page 490; and Deed Book 112, Page 134, in Probate Office.
3. Title to all minerals underlying E 1/2 of SW 1/4, Section 31, Township 18 South, Range 1 West, with mining rights and privileges belonging thereto, as reserved in Deed Book 28, Page 581, in Probate Office.
4. Utility easements and storm sewer easements as shown on map recorded in Map Book 13, Page 84.

(Exhibit A continued)

5. Declaration of Covenants, Conditions and Restrictions for Meadow Brook Corporate Park South, as amended in Real Record 064, Page 91, as amended by First Amendment recorded in Real Record 095, Page 826, as further amended by Second Amendment recorded in Real Record 141, Page 784, and as further amended by Third Amendment recorded in Real Record 177, Page 244, and as further amended by Fourth Amendment recorded in Real Record 243, Page 453, and as further amended by Fifth Amendment recorded in Real Record 245, Page 89, in the Probate Office of Shelby County, Alabama.
6. 250-foot rear buffer zone and 175-foot building set back line as shown on Map recorded in Map Book 13, Page 84.

BOOK 252 PAGE 731

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

89 AUG 23 PM 2:11

Thomas A. Snowden, Jr.
JUDGE OF PROBATE

1. Deed Tax	\$	
2. Mtg. Tax		5460.00
3. Recording Fee		40.00
4. Indexing Fee		1.00
TOTAL		5504.00