

**THIS INSTRUMENT PREPARED BY:**

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Inst # 1995-03573

02/09/1995-03573  
08:39 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
025 KCD 8319.50

STATE OF ALABAMA )  
SHELBY COUNTY )

**MORTGAGE  
AND SECURITY AGREEMENT**

**THIS MORTGAGE AND SECURITY AGREEMENT**, made as of the 6<sup>th</sup> day of February, 1995 is by and between **DANIEL MEADOWS II GENERAL PARTNERSHIP**, a Virginia general partnership (hereinafter called the "Borrower"), as mortgagor, whose address is c/o Daniel Realty Corporation, 1200 Corporate Drive, Suite 400, Birmingham, Alabama, 35242, Attention: Mr. John Gorecki (hereinafter called "Borrower"), and **SOUTHTRUST BANK OF ALABAMA, N.A.**, a national banking association, as mortgagee and secured party, whose address is P.O. Box 2554, Birmingham, Alabama 35290, Attention: Real Estate Loan Department (hereinafter called "Lender").

**W I T N E S S E T H:**

**WHEREAS**, Borrower is justly indebted to the Lender for borrowed money in the principal sum of Five Million Five Hundred Thousand and No/100 Dollars (\$5,500,000) (the "Loan"), as evidenced by that certain promissory note of even date herewith from the Borrower, payable to Lender in installments with interest thereon (said promissory note, as the same may hereafter be renewed, extended or modified, being herein collectively called the "Note"), and that certain Loan Agreement of even date herewith between the Borrower and the Lender (the "Loan Agreement") (the Note, this Mortgage, the Loan Agreement, that certain Assignment of Rents and Leases of even date herewith from Borrower to Lender (the "Assignment"), that certain Assignment and Pledge of Deposit Account of even date herewith from Borrower to Lender (the "Assignment and Pledge"), and that certain Assignment of Contract Rights of even date herewith from Borrower to Lender (the "Contracts Assignment"), and all other documents now or hereafter evidencing or securing the Note and all certificates, documents, and instruments now or hereafter executed by the Borrower in favor of the Lender, are collectively referred to herein as the "Loan Documents").

**WHEREAS**, as a condition precedent to making the Loan, the Lender has required that the Borrower execute this Mortgage as security for the Loan.

**NOW, THEREFORE,** for and in consideration of the foregoing recitals, the sum of Ten Dollars, and other valuable considerations, the receipt and sufficiency whereof are hereby acknowledged, and in order to secure the indebtedness and other obligations of the Borrower under the Note, this Mortgage and all other Loan Documents (all of such indebtedness and obligations secured hereby being referred to herein as the "Secured Indebtedness"), Borrower has bargained and sold and does hereby grant, bargain, sell, alien, and convey unto the Lender, its successors and assigns, all of the following described land and interests in land, estates, easements, rights, improvements, personal property, fixtures, equipment, furniture, furnishings, appliances and appurtenances, including replacements and additions thereto (which property is hereinafter referred to collectively as the "Mortgaged Property"):

(a) All that certain tract or parcel of land located in Shelby County, Alabama, as more particularly described in Exhibit A attached hereto and by this reference made a part hereof (the "Land"); and

(b) All buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, and all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, carpeting and other floor coverings, water heaters, awnings and storm sashes, and cleaning apparatus which are or shall be attached to said buildings, structures or improvements, and all other furnishings, furniture, fixtures, machinery, equipment, appliances, vehicles and personal property of every kind and nature whatsoever now or hereafter owned by Borrower and located in, on or about, or used or intended to be used with or in connection with the construction, use, operation or enjoyment of the Mortgaged Property, including all extensions, additions, improvements, betterments, renewals and replacements, substitutions, or proceeds from a permitted sale of any of the foregoing, and all building materials and supplies of every kind now or hereafter placed or located on the Land (collectively the "Improvements"), all of which are hereby declared and shall be deemed to be fixtures and accessions to the Land and a part of the Mortgaged Property as between the parties hereto and all persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the indebtedness herein described and to be secured by this Mortgage; and

(c) All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter located on the Land or under or above the same or any part or parcel thereof, and all ground leases, estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversions, and remainders whatsoever, in any way belonging, relating or appertaining to the Mortgaged Property or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by them; and

(d) All rents, issues, profits and revenues of the Mortgaged Property from time to time accruing, including, without limitation, all sums due under any leases or tenancies, together with all proceeds of insurance, condemnation payments, security deposits and escrow funds, and all of the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Borrower of, in and to the same, reserving only the



right to Borrower to collect the same so long as an Event of Default has not occurred hereunder or such collection is not otherwise restricted by this Mortgage; and

(e) To the fullest extent assignable (if assignable by law), any and all licenses and permits obtained by the Borrower relating to the use and operation of the Mortgaged Property.

**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 set forth.

**PROVIDED, HOWEVER,** that, if the Borrower shall pay 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 shall keep, perform, and observe all and singular the covenants and promises in the Note and in each of the Loan Documents expressed to be kept, performed, and observed by and on the part of the Borrower, all without fraud or delay, then this Mortgage, and all 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.

**AND** the Borrower covenants and agrees with the Lender as follows:

## **ARTICLE I**

**1.01 Performance of the Loan Documents.** The Borrower will perform, observe, and comply with all provisions of the Loan Documents secured hereby and duly and punctually will 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 or other Loan Documents, 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 real 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 in Schedule B-Section 2 of the title insurance policy delivered to the Lender in connection with this Mortgage (a "Permitted Encumbrance"), 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 thereto unto the Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

**1.03 Monthly Tax Deposits.** If required by the Lender, the Borrower will pay to the Lender, 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 (1/12th) 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 by the Borrower in the performance of any of the terms, covenants or conditions in the Note or this Mortgage, 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 promptly, when and as due, and will exhibit promptly 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 pay promptly all charges by utility companies, whether public or private, for electricity, gas, water, sewer, or other utilities.

(c) The Borrower shall pay promptly 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 remain outstanding upon any of the Mortgaged Property, unless arrangements satisfactory to Lender are made with respect thereto.

**1.05 Insurance.** The Borrower will procure for, deliver to, and maintain for the benefit of the Lender during the life of this Mortgage, insurance policies in such amounts as the Lender shall 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 require. The form of such policies and the companies issuing them shall be 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.

Borrower may, without Lender's approval, adjust or compromise any loss of less than \$100,000 in amount under any insurance policies on the Mortgaged Property. Borrower may, with Lender's prior approval, adjust or compromise any loss in excess of \$100,000 in amount under any insurance policies on the Mortgaged Property. 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, subject to the provisions of Section 1.07 hereof, 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 its place or for any other purpose or object satisfactory to the Lender without affecting the lien of this 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.

If required by the Lender, 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 (1/12th) 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 of the Mortgaged Property 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 become immediately due and payable. The Borrower, immediately upon obtaining knowledge of the institution of any proceeding for the condemnation of the Property, or any portion thereof (a "Proceeding"), will notify the Lender immediately of the pendency of such Proceeding. 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 Proceeding 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, and the Borrower agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as the Lender may require. The Lender, after deducting therefrom all its expenses, including attorney's fees, may release any moneys so received by it from a Proceeding 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; notwithstanding the foregoing provision, Lender has agreed to make available to Borrower, under the terms and conditions set forth in Section 1.07 hereof, condemnation awards for repair or reconstruction in the event that less than fifty percent (50%) of the Mortgaged Property is taken through a Proceeding.

**1.07 Restoration and Repair of Property Damaged or Taken.** Notwithstanding the provisions of Sections 1.05 and 1.06 hereof, in the event that any portion or portions of the Improvements are damaged or destroyed or, in the event that less than fifty percent (50%) of the Mortgaged Property is the subject of a partial condemnation, and such damage, destruction or condemnation results in the need for repair, rebuilding or restoration work to be performed on the Improvements (such repair, rebuilding or restoration being hereinafter referred to as the "Work"), Lender shall allow the Borrower to use the amount by which the proceeds of all insurance policies, judgments, settlements or awards collected with respect to such damage, destruction or condemnation exceed the reasonable cost, if any, to Lender for the recovery thereof (said net amount being hereinafter referred to as the "Proceeds"), for the Work, so long as the following conditions have been met:

(1) At the time of such loss or damage and at all times thereafter while Lender is holding any portion of such proceeds, there shall exist no uncured event, which, but for expiration of any applicable grace period, would constitute an event of default on the part of Borrower under this instrument or under any other loan document;

(2) Borrower shall have delivered evidence reasonably satisfactory to Lender that the Improvements may be reconstructed in accordance with all applicable zoning, building code and other governmental requirements and that, upon completion of the Work, the condition of the Improvements will be at least equal in value and general utility to that which existed on the date of this Mortgage, or the cash flow available from the undamaged portion and the restored Improvements will be sufficient to meet the debt service of the Note;

(3) Borrower shall have delivered evidence reasonably satisfactory to Lender that sufficient funds, including the Proceeds, are available to perform the Work; and

(4) In the event of a casualty loss, the Borrower shall have delivered evidence reasonably satisfactory to Lender that business income or rental interruption insurance



proceeds payable to the Lender as a result of the damage or destruction (together with cash flow from any undamaged portion of the Improvements), are sufficient to cover debt service on the Note from the date of the loss until the Work is to be performed. In the event of a condemnation loss, the Borrower shall have delivered evidence reasonably satisfactory to Lender that income from the Property is sufficient to cover debt service on the Note during the period the Work is to be performed or shall have provided sufficient assurances to the Lender of Borrower's ability to meet the debt service on the Note during the period the Work is to be performed.

(5) Within sixty (60) days from the date of such loss or damage, Borrower shall have given Lender a written notice electing to have the proceeds applied for such purpose;

(6) Within sixty (60) days following the date of notice under the preceding paragraph and prior to any proceeds being disbursed to Borrower, Borrower shall have provided to Lender all of the following:

(i) complete plans and specifications for restoration of the property, buildings, improvements and fixtures damaged or taken to the condition and utility prior to such loss or damage,

(ii) if loss or damage exceeds \$100,000, fixed-price or guaranteed maximum cost bonded (or otherwise secured in such manner as shall be acceptable to Lender) construction contracts for completion of the repair and restoration work in accordance with such plans and specifications,

(iii) builder's risk insurance for the full cost of construction with Lender named under a standard mortgagee loss-payable clause,

(iv) such additional funds as in Lender's opinion are necessary to complete the repair and restoration, and

(v) copies of all permits and licenses necessary to complete the work in accordance with the plans and specifications;

(7) Lender will, at Borrower's expense, retain an independent inspecting engineer to review plans and specifications and completed construction and to certify all requests for disbursement;

(8) No portion of such Proceeds shall be made available by Lender for architectural reviews or for any other purposes which are not directly attributable to the cost of reconstructing those portions of the Mortgaged Property for which a loss or damage has occurred;

(9) Borrower shall commence such work within one hundred twenty (120) days of such loss or damage and shall diligently pursue such work to completion;

(10) Each disbursement by Lender of such proceeds and deposits shall be funded in accordance with disbursement procedures set forth in the Loan Agreement and the available amount of any such disbursements shall be not greater than the amount that would be available if the net proceeds were substituted for the "Loan" under the Loan Agreement;

(11) Borrower shall grant to Lender a first lien and security interest in all building materials and completed repair and restoration work and in all fixtures and equipment acquired with such proceeds, and Borrower shall execute and deliver such mortgages, security agreements, financing statements and other instruments as Lender shall request to create, evidence, or perfect such lien and security interest;

(12) In the event and to the extent such Proceeds are not required or used for the repair and restoration of the damaged property, buildings, improvements or fixtures, or in the event Borrower fails timely to make such election or having made such election fail timely to comply with the terms and conditions set forth herein, Lender shall be entitled without notice to or consent from Borrower to apply such proceeds or the balance thereof at Lender's option either (i) to the full or partial payment or prepayment of the indebtedness under the Note (principal, interest, and prepayment premium, if any), or (ii) to the repair and/or restoration of the property, buildings, improvements or fixtures damaged or taken.

#### **1.08 Care of the Property.**

(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.

(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, in upon replacing the same by, or substituting for the same, other furniture, furnishings, equipment, tools, appliances, machinery, fixtures, or appurtenances not necessarily 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 comply promptly with all present and future laws, ordinances, rules and regulations of any governmental authority affecting 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 restore promptly 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 restore promptly, repair or alter the remaining property in a manner satisfactory to the Lender.

**1.09 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 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 opinion of the Lender, be necessary or desirable in order to effectuate, complete, perfect, or to continue and preserve the obligation of the Borrower under the Note and 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.

**1.10 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 form and substance subject to the approval of Lender. Except for rent as may be held as a security deposit, Borrower will not accept payment of rents in advance for periods in excess of thirty (30) days.

**1.11 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 appears as party plaintiff or defendant, affecting any of the Loan Documents, Borrower, or the Mortgaged Property, including but not limited to the foreclosure of this Mortgage, any condemnation action involving the Mortgaged Property, or any action to protect the security hereof; and any such amounts paid by the Lender in connection with a default or Event of Default hereunder 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.

**1.12 Performance by Lender of Defaults by Borrower.** If the Borrower shall default in the payment of 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 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 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. The Lender shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium and 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.

**1.13 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 and will furnish to Lender the financial and operating statements required under Section 4.11 of the Loan Agreement.

**1.14 Estoppel Affidavits.** Within ten (10) days after written request from the Lender, the Borrower shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Note and whether or not any offsets or defenses exist against such principal and interest.

**1.15 Environmental Matters.** Borrower represents and warrants to Lender that neither the Mortgaged Property nor Borrower is in violation of or subject to any existing, pending, or to the best of Borrower's knowledge, threatened investigation or inquiry by any governmental authority or any remedial obligations under any Applicable Environmental Laws (as such term is defined in the Loan Agreement). 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 and the Borrower will promptly notify Lender if Borrower becomes aware of any such facts, conditions, or circumstances or any such investigation or inquiry. 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 Mortgaged Property or improvements constructed or to be constructed by reason of any Applicable Environmental Laws. Borrower represents and warrants that no oil, toxic or hazardous substances or solid wastes have been disposed of or released on the Mortgaged Property, and Borrower agrees that it will not in its use of the Mortgaged Property dispose of or release oil, toxic or hazardous substances or solid wastes on the Mortgaged Property. Borrower, the "Loan Guarantor," and the "Performance Guarantors" (as such terms are hereinafter defined) have executed and delivered to the Lender a separate Indemnity Agreement with respect to environmental matters, the terms and conditions of which are incorporated herein by this reference. As used herein, the term "Loan Guarantor" shall mean, Daniel Realty Investment Corporation-Meadows II, a Virginia corporation, and the term the "Performance Guarantors" shall mean, collectively, PaineWebber Income Properties Eight Limited Partnership, and Eighth Income Properties, Inc., a Delaware corporation.

**1.16 Due Partnership Formation.** Borrower is a duly organized and existing general partnership having full power and authority to consummate the transactions contemplated by this Mortgage and each of the other Loan Documents.

**1.17 No Litigation Pending.** There are no actions, suits, or proceedings pending or, to the best of Borrower's knowledge, threatened, which might adversely affect the financial condition of the Borrower or the Loan Guarantor or which might impair the value of any collateral taken or to be taken by Lender in connection with this loan transaction. Neither Borrower nor Loan Guarantor is in violation of any agreement the violation of which might reasonably be expected to have a materially adverse effect on such Borrower's or Loan Guarantor's business or assets, and neither Borrower nor the Loan Guarantor is in violation of any order, judgment, or decree of any court, or any statute or governmental regulation to which the Borrower or Loan Guarantor is subject. Neither the execution and performance of this Mortgage, the Note, or any other document executed in connection herewith by Borrower or the Loan Guarantor will result in any breach of any mortgage, security deed, lease, credit or loan agreement or any other instrument which may bind or affect Borrower or such Loan Guarantor.

**1.18 Financial Statements Accurate.** All financial statements of Borrower, the Loan Guarantor and other business enterprises in which Borrower or any Loan Guarantor has an interest heretofore given and hereafter to be given to Lender are and will be true and complete in all respects as of its respective dates and fairly represent the financial conditions of the business or persons to which they pertain, and no materially adverse change has occurred in the financial conditions reflected therein since the respective date thereof.

**1.19 No Condemnation Proceedings Pending.** There are no proceedings pending, or, to the best of Borrower's knowledge, threatened, to acquire any power of condemnation or eminent domain with respect to the Mortgaged Property, or any interest therein, or to enjoin or similarly prevent the use of any of the Mortgaged Property as presently used.

**1.20 Documents Accurate.** All documents furnished to Lender by or on behalf of Borrower as part of or in support of the loan application or pursuant to the commitment letter issued by Lender are true, correct, complete and accurately represent the matters to which they pertain.

**1.21 Security Agreement.** With respect to the apparatus, fittings, fixtures and articles of personal property referred to or described in this Mortgage, or in any way connected with the use and enjoyment of the Mortgaged Property, this Mortgage is hereby made and declared to be a security agreement encumbering each and every item of personal property included herein as a part of the Mortgaged Property, in compliance with the provisions of the Uniform Commercial Code as enacted in the state wherein the Land is situated, and Borrower hereby grants to Lender a security interest in said personal property. A financing statement or statements reciting this Mortgage to be a security agreement affecting all of said personal property aforementioned shall be executed by Borrower and Lender and appropriately filed. The remedies for any violation of the covenants, terms and conditions of the security agreement contained in this Mortgage, or otherwise in respect of an Event of Default hereunder, shall be (i) as prescribed herein, or (ii) as prescribed by general law, or (iii) as prescribed by the specific statutory consequences now or hereafter enacted and specified in said Uniform Commercial Code, all at Lender's sole election. Borrower and Lender agree that the filing of such financing statement(s) in the records normally having to do with personal property shall not in any way affect the agreement of Borrower and Lender that everything used in connection with the production of income from the Mortgaged Property or adapted for use therein or which is described or reflected in this Mortgage, is, and at all times and for all purposes and in all proceedings, both legal or equitable, shall be, regarded as part of the real estate conveyed hereby regardless of whether (a) any such item is physically attached to the improvements, (b) serial numbers are used for the better identification of certain items capable of being thus identified in an Exhibit to this Mortgage, or (c) any such item is referred to or reflected in any such financing statement(s) so filed at any time. Similarly, the mention in any such financing statement(s) of the rights in and to (i) the proceeds of any fire and/or hazard insurance policy, or (ii) any award in eminent domain proceedings for taking or for loss of value, or (iii) Borrower's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Mortgaged Property, whether pursuant to lease or otherwise, shall not in any way alter any of the rights of Lender as determined by this instrument or affect the priority of Lender's security interest granted hereby or by any other recorded document, it being understood and agreed that such mention in such financing statement(s) is solely for the protection of Lender in the event any court shall at any time hold, with respect to the foregoing items (i), (ii), or (iii), that notice of Lender's priority of interest, to be effective against a particular class of persons, must be filed in the Uniform Commercial Code records. This Mortgage may be filed as a financing statement in any office where Lender deems such filing necessary or desirable, and Borrower will promptly upon demand reimburse Lender for the costs therefor.



## **ARTICLE II**

**2.01 Events of Default.** The terms "Event of Default" or "Events of Default," wherever used in this Mortgage, shall mean any one or more of the following events:

(a) The occurrence of any Event of Default (as therein defined) under any other Loan Documents; or

(b) The sale, transfer, lease (other than leases in the ordinary course of business), assignment, or other disposition, voluntarily or involuntarily, of the Mortgaged Property, or, except as otherwise permitted in Section 4.12 of the Loan Agreement, any part thereof or any interest therein, including a sale or transfer in lieu of condemnation, or, except for Permitted Encumbrances, any further encumbrance of the Mortgaged Property, unless the prior written consent of Lender is obtained (which consent may be granted or refused in Lender's sole discretion).

**2.02 Acceleration of Maturity.** If an Event of Default shall have occurred, then the entire Secured Indebtedness shall, at the option of Lender, immediately become due and payable without notice or demand, time being of the essence of this Mortgage, and no omission on the part of Lender to exercise such option when entitled to do so shall be construed as a waiver of such right.

**2.03 Right to Enter and Take Possession.**

(a) If an Event of Default shall have occurred and be continuing, Borrower, upon demand of Lender, shall forthwith surrender to Lender the actual possession of the Mortgaged Property and, if and to the extent permitted by law, Lender itself, or by such officers or agents as it may appoint, may enter and take possession of all or any part of the Mortgaged Property without the appointment of a receiver or an application therefor, and may exclude Borrower and its agents and employees wholly therefrom, and take possession of the books, papers and accounts of Borrower;

(b) If Borrower shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after such demand by Lender, Lender may obtain a judgment or decree conferring upon Lender the right to immediate possession or requiring Borrower to deliver immediate possession of the Mortgaged Property to Lender. Borrower will pay to Lender, upon demand, all expenses of obtaining such judgment or decree, including reasonable compensation to Lender, its attorneys and agents, and all such expenses and compensation shall, until paid, become part of the Secured Indebtedness and shall be secured by this Mortgage;

(c) Upon every such entering upon or taking of possession, 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 of the rights and powers of Borrower to the same extent as Borrower could in its own name or otherwise act with respect to the same; and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted to Lender, all as Lender from time to time may determine to be in its best interest. Lender may collect and receive all the rents, issues, profits and revenues from the Mortgaged Property, 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 similar charges as Lender may at its option 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 agents of Lender, Lender shall apply the remainder of the monies and proceeds so received by Lender, first, to the payment of accrued interest; second, to the payment of deposits required in Section 1.05 and to other sums required to be paid hereunder; and third, to the payment of overdue installments of principal. Anything in this Section 2.03 to the contrary notwithstanding, Lender shall not be obligated to discharge or perform the duties of a landlord to any tenant or incur any liability as a result of any exercise by Lender of its rights under this Mortgage, and Lender shall be liable to account only for the rents, incomes, issues and profits actually received by Lender;

(d) Whenever all such interest, deposits and principal installments and other sums due under any of the terms, covenants, conditions and agreements of this Mortgage shall have been paid and all Events of Default shall have been cured, Lender shall surrender possession of the Mortgaged Property to Borrower, its successors or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

**2.04 Performance by Lender.** Upon the occurrence of an Event of Default in the payment, performance or observance of any term, covenant or condition of this Mortgage, Lender may, at its option, pay, perform or observe the same, and all payments made or costs or expenses incurred by Lender in connection therewith, with interest thereon at the Default Rate provided in the Note or at the maximum rate from time to time allowed by applicable law, whichever is less, shall be secured hereby and shall be, without demand, immediately repaid by Borrower to Lender. Lender shall be the sole judge of the necessity for any such actions and of the amounts to be paid. Lender is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to Borrower or any person in possession holding under Borrower. Notwithstanding anything to the contrary herein, Lender shall have no obligation, explicit or implied to pay, perform, or observe any term, covenant, or condition.



**2.05 Receiver.** If any Event of Default shall have occurred and be continuing, Lender, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice and without regard to the occupancy or value of any security for the Secured Indebtedness 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 and apply the rents, issues, profits and revenues thereof. The receiver shall have all of the rights and powers permitted under the laws of the state wherein the Land is situated. Borrower will pay unto Lender upon demand all expenses, including receiver's fees, reasonable attorney's fees, costs and agent's compensation, incurred pursuant to the provisions of this Section 2.05, and upon any Borrower's failure to pay the same, any such amounts shall be added to the Secured Indebtedness and shall be secured by this Mortgage.

**2.06 Lender's Power of Enforcement and Power of Sale.**

(a) If an Event of Default shall have occurred and be continuing, 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 (i) to enforce payment of the Note or the performance of any term thereof or any other right, power or remedy hereunder, (ii) to foreclose this Mortgage and to sell the Mortgaged Property, as an entirety or in separate lots or parcels, as provided by applicable law, and (iii) 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.

(b) If an Event of Default shall have occurred, 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 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 Lender may elect.

**2.07 Purchase by Lender.** Upon any foreclosure sale or sale of all or any portion of the Mortgaged Property under the power herein granted, Lender may bid for and purchase the Mortgaged Property and shall be entitled to apply all or any part of the Secured Indebtedness as a credit to the purchase price.

**2.08 Application of Proceeds of Sale.** In the event of a foreclosure or other sale of all or any portion of the Mortgaged Property, the proceeds of said sale shall be applied, first, to the expenses of such sale and of all proceedings in connection therewith, including reasonable

attorneys' fees (attorneys fees and expenses shall become absolutely due and payable whenever foreclosure is commenced); then to insurance premiums, liens, assessments, taxes and charges including utility charges advanced by Lender hereunder, and interest thereon; then to payment of the Secured Indebtedness and accrued interest thereon, in such order of priority as Lender shall determine, in its sole discretion; and finally the remainder, if any, shall be paid to Borrower, or to the person or entity lawfully entitled thereto.

**2.09 Borrower as Tenant Holding Over.** In the event of any such foreclosure sale or sale under the powers herein granted, Borrower (if Borrower shall remain in possession) shall be deemed a tenant holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable to tenants holding over.

**2.10 Waiver of Appraisement, Valuation, Etc.** Borrower agrees, to the full extent permitted by law, that in case of a default on the part of Borrower hereunder, neither Borrower nor anyone claiming through or under Borrower will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension, exemption or laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Mortgaged Property, or the delivery of possession thereof immediately after such sale to the purchaser at such sale, and Borrower, for itself and all who may at any time claim through or under it, hereby waives to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets subject to the security interest of this Mortgage marshaled upon any foreclosure or sale under the power herein granted.

**2.11 Waiver of Homestead.** Borrower hereby waives and renounces all homestead and exemption rights provided for by the Constitution and the laws of the United States and of any state, in and to the Mortgaged Property as against the collection of the Secured Indebtedness, or any part thereof.

**2.12 Discontinuance of Proceedings.** In case Lender shall have proceeded to enforce any right, power 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 Lender, then in every such case, Borrower and Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Lender shall continue as if no such proceedings had occurred.

**2.13 Remedies Not Exclusive.** Lender shall be entitled to enforce payment and performance of the Secured Indebtedness and to exercise all rights and powers under this Mortgage or under any other of the Loan Documents or other agreement or under any laws now or hereafter in force, notwithstanding that some or all of the Secured Indebtedness may now or hereafter be otherwise secured, whether by mortgages, deeds of trust, deeds to secure debt, pledges, liens, assignments or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Lender's right to realize upon or enforce any



other security now or hereafter held by Lender, it being agreed that Lender shall be entitled to enforce this Mortgage and any other security now or hereafter held by Lender in such order and manner as they or either of them may in their absolute discretion determine. No right or remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Lender or to which it otherwise may be entitled, may be exercised concurrently or independently, from time to time and as often as may be deemed expedient by Lender, and either of them may pursue inconsistent remedies.

#### **2.14 No Waiver.**

(a) No delay or omission by Lender or by any holder of the Note to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein, and every right, power and remedy given by this Mortgage to Lender may be exercised from time to time and as often as may be deemed expedient by Lender. No consent or waiver expressed or implied by Lender to or of any breach or default by Borrower in the performance of the obligations of Borrower hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of the same or any other obligations of Borrower hereunder. Failure on the part of Lender to complain of any act or failure to act or failure to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by Lender of its rights hereunder or impair any rights, powers or remedies of Lender hereunder.

(b) No act or omission by Lender shall release, discharge, modify, change or otherwise affect the original liability under the Note or this Mortgage or any other obligation of Borrower or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, cosigner, endorser, surety or guarantor, nor preclude Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any default then existing or of any subsequent default, nor alter the lien of this Mortgage, except as expressly provided in an instrument or instruments executed by Lender. Without limiting the generality of the foregoing, Lender may (i) grant forbearance or an extension of time for the payment of all or any portion of the Secured Indebtedness; (ii) take other or additional security for the payment of any of the Secured Indebtedness; (iii) waive or fail to exercise any right granted herein or in the Note; (iv) release any part of the Mortgaged Property from the security interest or lien of this Mortgage or otherwise change any of the terms, covenants, conditions or agreements of the Note or this Mortgage; (v) consent to the filing of any map, plat or replat affecting the Mortgaged Property; (vi) consent to the granting of any easement or other right affecting the Mortgaged Property; (vii) make or consent to any agreement subordinating the security title or lien hereof, or (viii) take or omit to take any action whatsoever with respect to the Note, this Mortgage, the Mortgaged Property or any document or instrument evidencing, securing or in any way related to the Secured Indebtedness, all without releasing, discharging,

modifying, changing or affecting any such liability, or precluding Lender from exercising any such right, power or privilege or affecting the lien of this Mortgage. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, Lender, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the Secured Indebtedness, or with reference to any of the terms, covenants, conditions or agreements 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 liabilities, obligations or undertakings.

**2.15 Suits to Protect the Mortgaged Property.** Lender shall have power to institute and maintain such suits and proceedings as it may deem expedient (a) to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or constitute a default under this Mortgage; (b) to preserve or protect its interest in the Mortgaged Property and in the rents, issues, profits and revenues 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 materially impair the security hereunder or be prejudicial to the interest of Lender.

**2.16 Proofs of Claim.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Borrower, its creditors or its property, Lender, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Lender allowed in such proceedings for the entire amount due and payable by Borrower under this Mortgage at the date of the institution of such proceedings and for any additional amount which may become due and payable by Borrower hereunder after such date.

**2.17 Tradenames, etc.** During the exercise of any right in the Mortgaged Property pursuant to this Article II, Lender shall not be liable to Borrower for any inadvertent violation or infringement upon any tradename, trademark, service mark, or logo relating to the Mortgaged Property, and Borrower waives any claim for any such violation or infringement that occurs prior to notice of such infringement by Borrower to Lender.

### **ARTICLE III**

**3.01 Successors and Assigns.** This Mortgage shall inure to the benefit of and be binding upon Borrower and Lender and their respective heirs, executors, legal representatives, successors, successors-in-title, and assigns. Whenever a reference is made in this Mortgage to "Borrower" or "Lender," such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors, successors-in-title and assigns of Borrower or Lender, as the case may be, but shall not imply any permission to make or permit any transfer which is otherwise prohibited.



**3.02 Terminology.** All personal pronouns used in this Mortgage, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles and Articles are for convenience only and neither limit nor amplify the provisions of this Mortgage, and all references herein to Articles, Sections or subparagraphs shall refer to the corresponding Articles, Sections or subparagraphs of this Mortgage unless specific reference is made to Articles, Sections or subparagraphs of another document or instrument.

**3.03 Severability; Complete Agreement.** If any provisions of this Mortgage or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Mortgage and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law. This Mortgage, the Note and the instruments executed in connection herewith constitute the full and complete agreement of the parties and supersede all prior negotiations, correspondence, and memoranda relating to the subject matter hereof, and this Mortgage may not be amended except by a writing signed by the parties hereto.

**3.04 Applicable Law.** The laws of the State of Alabama shall govern the validity, interpretation, construction, enforcement and performance of this Mortgage and all other Loan Documents. If, for any reason or to any extent any word, term, provision, or clause of this Mortgage or any of the other Loan Documents, or its application to any person or situation, shall be found by a court or other adjudicating authority to be invalid or unenforceable, the remaining words, terms, provisions or clauses shall be enforced, and the affected word, term, clause or provision shall be applied, to the fullest extent permitted by law.

**3.05 Limitation of Interest.** It is the intent of Borrower and Lender in the execution of this Mortgage and all other Loan Documents to contract in strict compliance with the usury laws governing the Loan evidenced by the Note. In furtherance thereof, Lender and Borrower stipulate and agree that none of the terms and provisions contained in the Loan Documents shall ever be construed to create a contract for the use, forbearance, or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws governing the Loan evidenced by the Note. Borrower or any guarantor, endorser or other party now or hereafter becoming liable for the payment of the Note shall never be liable for unearned interest on the Note and shall never be required to pay interest on the Note at a rate in excess of the maximum interest that may be lawfully charged under the laws governing the Loan evidenced by the Note, and the provisions of this paragraph shall control over all other provisions of the Note and any other instrument executed in connection herewith which may be in apparent conflict herewith. In the event any holder of the Note shall collect monies that are deemed to constitute interest and that would otherwise increase the effective interest rate on the Note to a rate in excess of that permitted to be charged by the laws governing the Loan evidenced by the Note, all such sums deemed to constitute interest in excess of the legal rate shall be applied to the unpaid principal balance of the Note and if in excess of such balance, shall be immediately returned to the Borrower upon such determination.

**3.06 Notices.** All notices and other communications provided for hereunder shall be in writing and be deemed received (a) on the date delivered, if sent by hand delivery (to the person or department if one is specified below), (b) on the date deposited in U.S. mail, certified or registered, with return receipt requested, or (c) on the date deposited with Federal Express or other national overnight carrier, and in each case properly addressed as set forth in the heading of this Mortgage. Either party may change its address for receipt of notices to another single address within the United States as provided herein. Actual receipt of any notice other than a change of address notice shall not be required if properly sent in accordance with this Section 3.06.

**3.07 Replacement of Note.** Upon receipt of evidence reasonably satisfactory to Borrower of the loss, theft, destruction or mutilation of the Note, and in the case of any such loss, theft or destruction, upon delivery of an indemnity agreement reasonably satisfactory to Borrower or, in the case of any such mutilation, upon surrender and cancellation of the Note, Borrower at Lender's expense will execute and deliver, in lieu thereof, a replacement note, identical in form and substance to such Note and dated as of the date of such Note, and upon such execution and delivery all references in this Mortgage to the Note shall be deemed to refer to such replacement note.

**3.08 Assignment.** This Mortgage is assignable by Lender and any assignment hereof by Lender shall operate to vest in the assignee all rights and powers herein conferred upon and granted to Lender.

**3.09 Time of the Essence.** Time is of the essence with respect to each and every covenant, agreement and obligation of Borrower under this Mortgage, the Note and any and all other instruments now or hereafter evidencing, securing or otherwise relating to the Secured Indebtedness.

**3.10. Counterparts.** This Mortgage may be executed in any number of counterparts, each of which shall be deemed an original, but such counterparts together shall constitute one and the same instrument.

**3.11 Non-recourse Loan.** At such time as the Completion Date (as defined in the Loan Agreement) occurs, the indebtedness secured hereby will become nonrecourse as to, and Lender shall thereupon waive, any right to any money judgment against, the Borrower and its partners, whether the money judgment arises from an action brought upon the Loan Documents or by an action brought for a deficiency judgment. Lender hereby agrees that the liability on the part of the Borrower and its partners is limited to the Mortgaged Property and the rents and revenues thereof, and the other security granted to Lender under this Mortgage, the Assignment, the Assignment and Pledge, and the Contracts Assignment, including without limitation, any proceeds of insurance or condemnation, and Lender agrees to look solely to the Mortgaged Property and the rents, revenues, security, policies, proceeds, awards, and the Construction Funds (as defined in the Assignment and Pledge) in satisfaction of the indebtedness evidenced hereby in the case of an Event of Default hereunder or under any of the Loan Documents.



Notwithstanding the foregoing, the Borrower and its partners shall at all times be subject to personal liability for each of the following: (i) to the extent that the rents, issues and profits of the Property are received by Borrower or any of its partners after a breach of any condition or covenant in any of the Loan Documents and are not applied to the indebtedness evidenced by this Note or the normal operating expenses of the Mortgaged Property; (ii) to the extent that the rents, issues and profits of the Mortgaged Property are received by the Borrower or its partners after acceleration of the maturity of the indebtedness evidenced by the Note pursuant to a right on the part of Lender so to accelerate the same, and are not applied to the indebtedness evidenced by the Note or to the normal operating expenses of the Mortgaged Property; (iii) to the extent that rents from the Mortgaged Property are collected for more than each current month in advance or to the extent payments in the nature of security for the performance of any of lessee's obligations under any lease of all or a part of the Mortgaged Property are held by such party, at the time of the occurrence of a breach of condition or covenant referred to in clause (i) above or acceleration referred to in clause (ii) above, and are not delivered to Lender; or (iv) to the extent that Lender may suffer any damages as a result of any willful or intentional misrepresentation made herein or in any of the other Loan Documents; (v) to the extent that any condemnation proceeds or insurance proceeds available from the Mortgaged Property shall be misapplied by any such party; (vi) to the extent of any damages caused by the failure to keep the Mortgaged Property adequately insured as required by this Mortgage; (vii) to the extent of the indemnities set forth in that certain Indemnity Agreement delivered to Lender from Borrower, Loan Guarantor, and Performance Guarantors; (viii) to the extent that Lender incurs attorneys' fees and costs or other costs and expenses in connection with any foreclosure or proceedings to collect the loan evidenced hereby and/or realize upon any of the collateral if (x) Borrower contests such proceeding and (y) Lender shall prevail in such proceeding, or in connection with any bankruptcy case or other insolvency proceeding filed by or against Borrower; and (ix) to the extent Lender incurs any liability as a result of any mechanic's or materialman's lien filed against the Mortgaged Property. For purposes of this paragraph, the Borrower's "partners" shall mean Daniel Realty Investment Corporation-Meadows II, PaineWebber Income Properties Eight Limited Partnership, and Eighth Income Properties, Inc.

Nothing contained herein shall in any manner or way constitute or be deemed to be a release or impairment of the Loan Guaranty or to affect the obligations and liability of the Loan Guarantor under the Loan Guaranty prior to the time (if any) Lender releases the Loan Guarantor from its obligations under the Loan Guaranty. Lender agrees that it will release the Loan Guaranty, upon written request of the Loan Guarantor, upon the Completion Date, provided, however, that as a condition precedent to such release, there must exist no outstanding "Monetary Event of Default" (as herein defined) under the Loan. The term "Monetary Event of Default" shall mean Borrower's failure to pay principal, interest, and other charges under the Note, or the Borrower's failure to pay any insurance premiums or ad valorem taxes before the same become delinquent.

**3.11 Waiver of Jury Trial.** BORROWER HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY PERTAINING OR RELATING TO THIS MORTGAGE, THE NOTE, OR ANY OTHER LOAN DOCUMENT, OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATING TO OR INCIDENTAL TO ANY DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THIS MORTGAGE, THE NOTE, OR ANY OTHER LOAN DOCUMENT, OR IN CONNECTION WITH ANY TRANSACTIONS RELATED THERETO OR CONTEMPLATED THEREBY OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES THEREUNDER, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. BORROWER AND LENDER AGREES THAT LENDER MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED AGREEMENT OF BORROWER IRREVOCABLY TO WAIVE TRIAL BY JURY, AND THAT ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN BORROWER AND LENDER SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY. BORROWER HEREBY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF LENDER, INCLUDING LENDER'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT LENDER WOULD NOT, IN THE EVENT OF SUCH DISPUTE OR CONTROVERSY, SEEK TO ENFORCE THE PROVISIONS OF THIS PARAGRAPH, AND BORROWER ACKNOWLEDGES THAT LENDER HAS, IN PART, BEEN INDUCED TO MAKE THE EXTENSION OF CREDIT EVIDENCED BY THE NOTE IN RELIANCE ON THE PROVISIONS OF THIS PARAGRAPH.

IN WITNESS WHEREOF, Borrower has caused this instrument to be executed by its duly authorized general partner as of the day and year first above written.

**BORROWER:**

**DANIEL MEADOWS II GENERAL PARTNERSHIP,**  
a Virginia general partnership

By: DANIEL REALTY INVESTMENT  
CORPORATION-MEADOWS II, a Virginia  
corporation  
Its General Partner

By:   
Its S.V.P.



STATE OF ALABAMA     )  
JEFFERSON COUNTY    )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Senior V.P., whose name as John C. Gorecki of Daniel Realty Investment Corporation-Meadows II, a Virginia corporation, as general partner of Daniel Meadows II General Partnership, a Virginia general partnership, is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of said conveyance, he, as such duly authorized officer, and with full authority, executed the same voluntarily for and as the act of said corporation, acting in its capacity as aforesaid.

Given under my hand and seal of office this 6<sup>th</sup> day of February, 1995.

Hail L. Smith  
Notary Public

[NOTARIAL SEAL]

My commission expires: 1-28-98

## Exhibit "A"

(Meadows in the Park)

### Parcel I

Part of the North 1/2 of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows: From the NW corner of Lot 12, Jessica Ingram Property, as recorded in the Office of the Judge of Probate, Shelby County, Alabama, in Map Book 3, page 54, run in a southerly direction along the west lot line of said Lot 12 for a distance of 30.26 feet to an existing old iron rebar being the point of beginning; thence turn an angle to the left of 89 deg. 23 min. 50 sec. and run in an easterly direction for a distance of 1236.08 feet to an existing old iron rebar and being on the west right of way line of Shelby County Road No. 495; thence turn an angle to the right 85 deg. 56 min. 17 sec. and run in a southerly direction along the west right of way line of said Shelby County Road No. 495 for a distance of 626.46 feet to an existing old iron rebar; thence turn an angle to the right of 94 deg. 15 min. 23 sec. and run in a westerly direction for a distance of 1373.90 feet, more or less, to an existing old iron pin being on the east right of way line of Brook Highland Drive, and also being on a curve, said curve being concave in a westerly direction and having a central angle of 17 deg. 50 min. 56 sec. and a radius of 621.12 feet; thence turn an angle to the right (99 deg. 36 min. 27 sec. to the chord of said curve) and run in a northerly direction along the east right of way line of said Brook Highland Drive and along the arc of said curve for a distance of 193.49 feet to the point of ending of said curve; thence continue in a northerly direction along the east right of way line of said Brook Highland Drive and along a line tangent to the end of said curve for a distance of 324.02 feet to the point of beginning of a new curve, said newest curve being concave in a westerly direction and having a central angle of 3 deg. 9 min. 36 sec. and a radius of 1169.80 feet; thence turn an angle to the left and run along the arc of said curve and along the east right of way line of said Brook Highland Drive for a distance of 64.52 feet to an existing iron pin; thence turn an angle to the right (54 deg. 07 min. 17 sec. from the chord of the last mentioned curve) and run in a northeasterly direction for a distance of 70.27 feet, more or less, to an existing iron pin being the point of beginning; being situated in Shelby County, Alabama.

### Parcel II

Together with the rights of ingress, egress, and other rights set forth in that certain Non-Exclusive Access Easement Agreement recorded in Real Record 155, page 540 in the Probate Office of Shelby County, Alabama, over and across the following land:

### (Parcel C)

A parcel of land located in the SE 1/4 of the NW 1/4 of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, said parcel being 16 feet in width and lying adjacent to the



East right of way line of Brook Highland Drive as shown on the map of the "The Meadows Residential Sector One," as recorded in Map Book 9, page 142, in the Office of the Judge of Probate, 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, Shelby County, Alabama, run 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 right of 54 deg. 03 min. 52 sec. and run in a Southwesterly direction for a distance of 70.27 feet to the point of beginning of the property, herein described; from the point of beginning, thus obtained, continue along the last described course for a distance of 19.42 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 right, said curve being concave to the West and having a radius of 1,153.80 feet, a central angle of 2 deg. 37 min. 02 sec. and a chord of 52.70 feet, which forms an interior angle to the right of 126 deg. 06 min. 26 sec. with the last described course; run thence in a Southerly direction along the arc of said curve for a distance of 52.70 feet to the end of said curve; run thence in a Southerly direction tangent to said curve for a distance of 324.02 feet to the beginning of a curve to the right, said curve being concave to the Northwest and having a radius of 605.12 feet, a central angle of 18 deg. 21 min. 26 sec. and a chord of 193.05 feet; run thence in a Southwesterly direction along the arc of said curve for a distance of 193.88 feet to a point; thence turn an interior angle to the right of 80 deg. 08 min. 18 sec. from the chord of the last described curve and departing said right of way line run in an Easterly direction for a distance of 16.90 feet to a point on a curve to the left, said curve being concave to the Northwest and having a radius of 621.12 feet, a central angle of 17 deg. 50 min. 56 sec. and a chord of 192.71 feet which forms an interior angle to the right of 99 deg. 36 min. 27 sec. with the last described course; run thence in a Northeasterly direction along the arc of said curve for a distance of 193.49 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 being concave to the West and having a radius of 1,169.80 feet, a central angle of 3 deg. 09 min. 36 and a chord of 64.51 feet; run thence in a Northerly direction along the arc of said curve for a distance of 64.52 feet to the point of beginning.

All being situated in Shelby County, Alabama.

Inst # 1995-03573

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08:39 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
025 NCD 8319.50

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