

STATE OF ALABAMA)

COUNTY OF SHELBY)

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT ("Mortgage") is made and entered into as of the 14th day of July, 1995 by and between DANIEL EQUITY PARTNERS LIMITED PARTNERSHIP, a Virginia limited partnership ("Borrower"), as mortgagor, and DANTRACT, INC., an Alabama corporation ("Lender"), as mortgagee.

R E C I T A L S:

Borrower is justly indebted to Lender in the principal sum of Six Million and No/100 Dollars (\$6,000,000.00) (the "Loan"), as evidenced by a promissory note of even date herewith (said note, as the same may hereafter be renewed, extended or modified, is hereinafter referred to as the "Note") in said principal amount executed and delivered by Borrower to Lender.

Mortgage

NOW, THEREFORE, in consideration of the foregoing Recital, and to induce Lender to extend the Credit, as hereinafter defined, to Borrower under the Security Documents, Borrower and Lender agree as follows:

ARTICLE 1

SECTION 1.1 Rules of Construction. For the purposes of this Mortgage, except as otherwise expressly provided herein to the contrary or unless the context otherwise requires:

(a) Words of masculine, feminine or neuter gender include the correlative words of other genders. Singular terms include the plural as well as the singular, and vice versa.

(b) All references herein to designated "Articles," "Sections" and other subdivisions or to lettered Exhibits are to the designated Articles, Sections and subdivisions hereof and the Exhibits annexed hereto unless expressly otherwise designated in context. All Article, Section, other subdivision and Exhibit captions herein are used for convenience of reference only and do not limit or describe the scope or intent of, or in any way affect, this Mortgage.

(c) The terms "include", "including", and similar terms shall be construed as if

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followed by the phrase "without being limited to".

(d) The terms "herein", "hereof" and "hereunder" and other words of similar import refer to this Mortgage as a whole and not to any particular Article, Section, or other subdivision or Exhibit.

(e) All Recitals set forth in, and all Exhibits to, this Mortgage are hereby incorporated in this Mortgage by reference.

(f) No inference in favor of or against any party shall be drawn from the fact that such party or such party's counsel has drafted any portion hereof.

(g) All references in this Mortgage to a separate instrument are to such separate instrument as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

SECTION 1.2 Definitions. As used in this Mortgage, capitalized terms that are not otherwise defined herein shall have the following meanings:

(a) **Affiliate** means any Person who (i) directly or indirectly controls or is controlled by or is under common control with the specified Person, (ii) is an officer of, partner in or member or trustee of, or serves in a similar capacity with respect to, the specified Person, or of which the specified Person is an officer, partner, member or trustee, or with respect to which the specified Person serves in a similar capacity and (iii) directly or indirectly, is the beneficial owner of more than fifty percent (50%) of any class of voting security of or interest in the specified Person or of which the specified Person is directly or indirectly the owner of more than fifty percent (50%) of any class of voting security or other interest therein.

(b) **Business Day** means any day other than a Saturday, a Sunday or a day on which banking institutions are required or authorized to close in Birmingham, Alabama.

(c) **Credit** means, individually and collectively, the Loan and all other loans, forbearances, advances, disbursements and other extensions of credit now or hereafter made by Lender to or for the account of Borrower under the Security Documents.

(d) **Event of Default** is defined in Section 5.2. An Event of Default "exists" if the same has occurred and is continuing.

(e) **Governmental Authority** means any national, state, county, municipal or other government, domestic or foreign, and any agency, authority, department, commission, bureau, board, court or other instrumentality thereof.

(f) **Governmental Requirements** means all laws, rules, regulations, ordinances, judgments, decrees, codes, orders, injunctions, notices and demand letters of any Governmental Authority.

(g) **Impositions** means all taxes, assessments, dues, fines, rents, levies, fees, permits and other governmental and quasi-governmental charges imposed or levied upon the Property (or any part thereof), the operations thereon, the use or occupancy thereof, the Liens or other interests created by this Mortgage, the filing or recording of this Mortgage or the Obligations.

(h) **Improvements** is defined in Section 2.1(b).

(i) **Land** is defined in Section 2.1(a).

(j) **Lien** means any mortgage, pledge, assignment, charge, encumbrance, lien, security title, security interest or other preferential arrangement and shall also mean and include all Prior Mortgages.

(k) **Obligations** means (1) the payment of all amounts now or hereafter becoming due and payable under the Security Documents, including the principal amount of the Credit and all other fees, charges and costs (including attorneys' fees and disbursements) payable in connection therewith; (2) the observance and performance by Borrower of all of the provisions of the Security Documents; and (3) the payment of all sums advanced or paid by Lender in exercising any of its rights, powers or remedies under the Security Documents.

(l) **Permitted Encumbrances** means any Liens and other matter affecting title to the Property that are described in Exhibit B and shall include all Prior Mortgages.

(m) **Person** (whether or not capitalized) includes natural persons, sole proprietorships, corporations, trusts, limited liability companies, unincorporated organizations, associations, companies, institutions, entities, joint ventures, partnerships and Governmental Authorities.

(n) **Personal Property** is defined in Section 2.1(c).

(o) **Prior Mortgages** is defined in Section 6.19.

(p) **Property** is defined in Section 2.1.

(q) **Real Property** is defined in Section 2.1(b).

(r) **Security Documents** means this Mortgage, the Note and any other documents

now or hereafter executed or delivered in connection with the transactions provided for therein.

(s) **UCC Property** means the Personal Property and all other personal property and fixtures included in the Property.

ARTICLE 2

Granting Clauses

SECTION 2.1 Granting Clauses. As security for the Obligations, Borrower hereby grants, bargains, sells, assigns and conveys unto Lender, and hereby grants to Lender a security interest in, all of Borrower's right, title and interest in, to and under the following property and interests in property (collectively, the "Property"):

(a) **Land.** The land located in Shelby County, Alabama which is more particularly described in Exhibit A and all reversions and remainders in and to said land and all tenements, hereditaments, easements, rights-of-way, rights (including mineral and mining rights, and all water, oil and gas rights), privileges, royalties and appurtenances to said land, now or hereafter belonging or in anywise appertaining thereto, including any right, title and interest in, to or under any agreement or right granting, conveying or creating, for the benefit of said land, any easement, right or license in any other property, and in, to or under any streets, ways, alleys, vaults, gores or strips of land adjoining said land or any parcel thereof, or in or to the air space over said land; and all claims or demands of Borrower, at law or in equity, in possession or expectancy of, in or to any of the same (collectively, the "Land").

(b) **Improvements.** All buildings, structures, facilities and other improvements now or hereafter located on the Land, and all building materials, building equipment and fixtures of every kind and nature now or hereafter located on the Land or attached to, contained in, or used in connection with, any such buildings, structures, facilities or other improvements, and all appurtenances and additions thereto and betterments, renewals, substitutions and replacements thereof, now owned or hereafter acquired by Borrower (collectively, the "Improvements" and, together with the Land, collectively, the "Real Property").

(c) **Personal Property.** All goods, equipment, inventory, supplies and other items or types or tangible personal property (including additions and accessions thereto and replacements and substitutions therefor) now owned or hereafter created or acquired by Borrower and attached to the Real Property (other than fixtures); or placed on the Real Property and used or useful in connection with, or in any way pertaining or relating to, the

Real Property or the use and occupancy thereof, though not attached to the Real Property (collectively, the "Personal Property").

(d) **Rents and Leases.** All leases, subleases, lettings and licenses, and other use and occupancy agreements, now or hereafter pertaining to any of the Real Property or Personal Property, and all rents, profits, issues and revenues of the Real Property and Personal Property now or hereafter accruing; provided, however, that if no Event of Default exists, Borrower shall have a license (but limited as set forth in Section 5.3(f)) to collect and receive all of such rents, profits, issues and revenues.

(e) **Insurance Policies.** All policies of hazard insurance now or hereafter in effect that insure the Real Property, the Personal Property or any other property conveyed or encumbered hereby, together with all right, title and interest of Borrower in and to each and every such policy, and all proceeds thereof, including any premiums paid and rights to returned premiums.

(f) **Litigation Awards.** All judgments, damages, settlements, awards, payments and compensation, including all interest thereon, that may be made or due to Borrower or any subsequent owner of any of the Real Property, the Personal Property or any other property conveyed or encumbered hereby, as a result of the exercise of the right of eminent domain or condemnation, the alteration of the grade of any street or any other injury to or diminution or decrease in value of the Real Property, the Personal Property, or any other such property.

(g) **General Intangibles and Agreements.** (1) All general intangibles relating to the development or use of the Real Property, the Personal Property or any other property conveyed or encumbered hereby, or the management and operation of any business of Borrower thereon, including all patents, patent applications, trade names, trademarks, trademark applications, knowledge and process, licensing arrangements, blueprints, technical specifications, manuals and other trade secrets; (2) the good will of any business conducted or operated on the Real Property, all governmental licenses and permits relating to the construction, renovation or operation thereof, all names under or by which the same may at any time be operated or known and all rights to carry on business under any such names or any variant thereof; and (3) all contracts and agreements (including construction, renovation, maintenance, engineering, architectural, leasing, management, operating and concession agreements) affecting the Real Property, the Personal Property or any other property conveyed or encumbered by this Mortgage, or used or useful in connection therewith, whether now or hereafter entered into.

(h) **Proceeds.** All proceeds of any of the foregoing.

SUBJECT, HOWEVER, to the Permitted Encumbrances.

TO HAVE AND TO HOLD the Property, together with all the rights, privileges and appurtenances thereunto belonging, unto Lender, its successors and assigns, forever.

ARTICLE 3

Representations and Warranties

Borrower represents and warrants to the Lender that:

SECTION 3.1 Valid Title, Debt, etc. (a) Subject to the Permitted Encumbrances, Borrower is lawfully seized in fee simple of the Real Property and is the lawful owner of, and has good title to, the remainder of the Property, and Borrower has good right to mortgage, assign and grant a security interest in the Property as aforesaid; (b) the Property is free of all Liens other than the Permitted Encumbrances; (c) subject to the Permitted Encumbrances, Borrower has full power to encumber, assign and convey the Property as provided herein; (d) subject to all Prior Mortgages, this Mortgage is and will remain a valid and enforceable first priority mortgage lien on, and security interest in, the Property, subject only to the Permitted Encumbrances; and (e) Borrower shall forever warrant and defend the title to the Property unto Lender against the lawful claims of all persons whomsoever, except those claiming under the Permitted Encumbrances.

SECTION 3.2 Intentionally Deleted.

SECTION 3.3 Governmental Compliance. To the best knowledge of Borrower, (a) the Property and the use and operation thereof comply with all applicable Governmental Requirements; and (b) except for the Permitted Exceptions, no Lien exists on the Property, or any part thereof, in favor of any Governmental Authority or other person under any Governmental Requirement that might have priority over this Mortgage.

SECTION 3.4 Bankruptcy. To the best knowledge of Borrower, Borrower is, and after giving effect to the transactions contemplated under the Security Documents will be, solvent, and no bankruptcy, insolvency or similar proceeding is pending or contemplated by or against Borrower.

SECTION 3.5 Existing Default. Except as heretofore disclosed by Borrower in writing to Lender, there is no existing default by Borrower under the Security Documents or the Permitted Encumbrances, and no event has occurred that, with notice or the passage of time or both, would constitute or result in such a default.

SECTION 3.6 Certificates and Permits. Borrower has or will obtain all material certificates, licenses, authorizations, registrations, permits and other approvals of

Governmental Authorities necessary for the operation of any of the Property and the conduct of the Borrower's business at the Real Property, including all required zoning, building, land use, environmental, occupancy, fire and other approvals and, promptly upon request by Lender, shall deliver copies of the same to Lender.

ARTICLE 4

Covenants and Agreements of Borrower

SECTION 4.1 Payment and Performance of Obligations and Impositions.

Borrower covenants and agrees to pay and perform all of the Obligations in a prompt and punctual manner and in accordance with all of the terms, provisions and requirements of the Security Documents. Borrower shall pay or cause to be paid all Impositions and, at Lender's request, shall furnish evidence of the payment thereof at least 10 days before the Impositions are due. Borrower may, at Borrower's own expense, in good faith contest any such Impositions and, in the event of any such contest, may permit the Impositions so contested to remain unpaid during the period of such contest and any appeal therefrom, provided that during such period enforcement of the contested items shall be effectively stayed.

SECTION 4.2 Intentionally Deleted.

SECTION 4.3 Damage and Destruction. In the event of any damage to or loss of destruction of the Property, Borrower shall (a) promptly notify Lender of such event and take such steps as shall be necessary to preserve any undamaged portion of the Property, and (b) unless otherwise instructed by Lender, promptly, regardless of whether any insurance proceeds are sufficient for the purpose, commence and diligently pursue to completion the restoration, replacement or rebuilding of the Property as nearly as possible to the value, condition and character thereof immediately prior to such damage, loss or destruction.

SECTION 4.4 Condemnation.

(a) **Borrower's Responsibilities; Proceedings.** Borrower, immediately upon obtaining knowledge thereof, shall notify Lender of any pending or threatened proceedings for the condemnation of any of the Property or of the exercise of any right of eminent domain with respect thereto, or of any other pending or threatened proceedings arising out of injury or damage to any of the Property. Subject to the rights of the holders of any Prior Mortgages, Lender may participate in any such proceedings, and Borrower from time to time shall execute and deliver to Lender all instruments requested by Lender to permit such participation. Borrower shall, at Borrower's expense, diligently prosecute any such proceedings, deliver to Lender copies of all papers served in connection therewith and consult and cooperate with Lender, its attorneys and agents, in carrying on and defending

any such proceedings. Subject to the rights of the holders of any Prior Mortgages, no settlement of any such proceedings shall be made by Borrower without Lender's consent, not to be unreasonably withheld.

(b) **Lender's Rights to Proceeds.** Subject to the rights of the holders of any Prior Mortgages, all proceeds of condemnation awards or proceeds of sale in lieu of condemnation, and all judgments, decrees and awards for injury or damage to the Property shall be paid to Lender. Subject to the rights of the holders of any Prior Mortgages, Borrower authorizes Lender to collect and receive the same, to give receipts and acquittances therefor, and to appeal from any such judgment, decree or award. Lender shall not be liable for any failure to collect, or exercise diligence in the collection of, any of the same.

(c) **Application of Proceeds.** Subject to the rights of the holders of any Prior Mortgages, Lender shall have the right to apply any proceeds, judgments, decrees or awards referred to in Section 4.4(b), first, to reimburse Lender for all reasonable costs and expenses, including attorneys' fees and disbursements, incurred in connection with the proceeding in question or the collection of such amounts, and second, the remainder thereof to the repayment of the principal balance of the Obligations.

SECTION 4.5 Liens and Liabilities.

(a) **Discharge of Liens.** Borrower shall pay, bond or otherwise discharge, from time to time when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers and others that, if unpaid, might result in, or permit the creation of, a Lien on any of the Property, and, subject to the Liens in favor of any of the holders of the Prior Mortgages, Borrower shall do, or cause to be done, at Borrower's sole cost and expense, everything necessary to fully preserve the Lien and priority of this Mortgage.

(b) **No Consent.** Nothing in the Security Documents shall be deemed or construed as constituting the consent or request by Lender, express or implied, to any contractor, subcontractor, laborer, mechanic or materialman for the performance of any labor or the furnishing of any material for any improvement, construction, renovation, alteration or repair of the Property. Borrower agrees that Lender does not stand in any fiduciary relationship to Borrower by reason of the transactions contemplated by the Security Documents.

SECTION 4.6 Intentionally Deleted.

SECTION 4.7 Intentionally Deleted.

SECTION 4.8 Sale, Lease or Transfer, etc.

(a) Subject to the provisions of Section 6.19 below, Borrower shall not (i) sell,

assign, transfer, convey, lease with an option to purchase, exchange or otherwise dispose of, any of the Real Property or any interest therein; (ii) contract with any person for any of the foregoing; or (iii) subject any of the Real Property or any interest therein to any additional Lien (other than Permitted Encumbrances), either voluntarily or involuntarily.

(b) The occurrence of any of the events described in Section 4.8(a) will constitute an Event of Default under this Mortgage, and Lender may, in its sole discretion, exercise any of its rights and remedies on default under Section 5.3.

SECTION 4.9 Intentionally Deleted.

SECTION 4.10 Intentionally Deleted.

ARTICLE 5

Defeasance, Default and Remedies

SECTION 5.1 Defeasance. This Mortgage is made upon the condition that if (a) all of the Obligations are paid in full and (b) Borrower reimburses Lender for any amount Lender has paid in respect of Liens, impositions, Prior Mortgages, insurance premiums, repairing or maintaining the Property and in performing any of Borrower's obligations under any of the Security Documents, then this conveyance shall be null and void.

SECTION 5.2 Events of Default. The occurrence of any of the following events shall constitute an event of default (an "Event of Default") under this Mortgage (whatever the reason for such event and whether or not it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree, order, rule or regulation of any Governmental Authority):

(a) any representation or warranty made in this Mortgage or in any of the other Security Documents shall prove to be false or misleading in any material respect as of the time made; or

(b) [intentionally deleted]; or

(c) default shall be made in the payment when due of any of the Obligations and such default shall continue unremedied for more than 10 days after written notice thereof has been given by Lender to Borrower; or

(d) default shall be made in the due observance or performance of any covenant, condition or agreement on the part of Borrower to be observed or performed pursuant to the terms of this Mortgage and such default shall continue unremedied for more than 30 days after written notice thereof has been given by Lender to Borrower; or

(e) any event of default, as therein defined, shall occur under any of the other Security Documents, after giving effect to any applicable notice, grace or cure period specified therein; or

(f) Borrower shall (1) apply for or consent to the appointment of a receiver, trustee, liquidator or other custodian for Borrower or for any of Borrower's properties or assets (including the Property), (2) fail or admit in writing its inability to pay its debts generally as they become due, (3) make a general assignment for the benefit of creditors, (4) suffer or permit an order for relief to be entered against it in any proceeding under the federal Bankruptcy Code, or (5) file a voluntary petition in bankruptcy, or a petition or an answer seeking an arrangement with creditors or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or an answer admitting the material allegations of a petition filed against it in any proceeding under such law or statute; or

(g) a petition shall be filed, without the application, approval or consent of Borrower in any court of competent jurisdiction, seeking bankruptcy, reorganization, rearrangement, dissolution or liquidation of Borrower or of all or a substantial part of its properties or assets, or seeking the appointment of a receiver, trustee, liquidator or other custodian of Borrower or of all or a substantial part of its properties or assets, and such petition shall not have been stayed or dismissed within 90 days after the filing thereof; or

(h) Borrower shall become insolvent, suspend its business or be dissolved or liquidated or any writ of execution, attachment or garnishment shall be issued against the assets of Borrower and such writ of execution, attachment or garnishment shall not be dismissed, discharged or quashed within 30 days of issuance; or

(i) any final judgment for the payment of money shall be rendered against any Borrower and the same shall remain undischarged for a period of 30 days during which execution shall not be effectively stayed.

SECTION 5.3 Rights and Remedies of Lender Upon Default.

(a) **Acceleration of Obligations.** If an Event of Default exists, Lender shall have the right without further notice to Borrower (except any such notice as may be specifically required under the other Security Documents) to declare all of the Obligations immediately due and payable.

(b) **Possession and Operation of Property.** If an Event of Default exists, in addition to all other rights herein conferred on Lender, Lender (or any person designated by Lender) may, but will not be obligated to, (1) enter upon the Real Property and take possession of any or all of the Property without being guilty of trespass or conversion, exclude Borrower therefrom, and hold, use, administer, manage and operate the same to the extent that Borrower could do so, without any liability to Borrower resulting therefrom; (2)

collect, receive and receipt for all proceeds accruing from the operation and management of the Property; (3) make repairs and purchase needed additional property; (4) insure or reinsure the Property; (5) maintain and restore the Property; (6) prepare the Property for resale, lease or other disposition; (7) have furnished to the Property utilities and other materials and services used on or in connection with the Property; and (8) exercise every power, right and privilege of Borrower with respect to the Property.

(c) **Judicial Proceedings; Right to Receiver.** If an Event of Default exists, Lender, in lieu of or in addition to exercising the power of sale hereinafter given, may proceed by suit to foreclose its Lien on the Property, to sue Borrower for damages on account of said default, for specific performance of any provision contained herein, or to enforce any other appropriate legal or equitable right or remedy. Lender shall be entitled, as a matter of right, upon bill filed or other proper legal proceedings being commenced for the foreclosure of this Mortgage, to the appointment by any competent court or tribunal, without notice to Borrower or any other party, of a receiver of the rents, issues, profits and revenues of the Property, with power to lease and control the Property and with such other powers as may be deemed necessary.

(d) **Power of Sale.** If an Event of Default exists, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past-due mortgages, and Lender shall be authorized, at its option, whether or not possession of the Property is taken, to sell the Property (or such part or parts thereof as Lender may from time to time elect to sell) under the power of sale which is hereby given to Lender, at public outcry, to the highest bidder for cash, at the front or main door of the courthouse of the county in which the Land to be sold, or a substantial and material part thereof, is located, after first giving notice by publication once a week for three successive weeks of the time, place and terms of such sale, together with a description of the Property to be sold, by publication in some newspaper published in the county or counties in which the Land to be sold is located. If there is Land to be sold in more than one county, publication shall be made in all counties where the Land to be sold is located, but if no newspaper is published in any such county, the notice shall be published in a newspaper published in an adjoining county for three successive weeks. The sale shall be held between the hours of 11:00 a.m. and 4:00 p.m. on the day designated for the exercise of the power of sale hereunder. Lender may bid at any sale held under this Mortgage and may purchase the Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale shall be under no obligation to see to the proper application of the purchase money. At any sale all or any part of the Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, and the proceeds of any such sale en masse shall be accounted for in one account without distinction between the items included therein and without assigning to them any proportion of such proceeds, Borrower hereby waiving the application of any doctrine of marshalling or like proceeding. In case Lender, in the exercise of the power of sale herein given, elects to sell the Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Property not previously sold shall have been sold or all the Obligations shall have been paid in full and this Mortgage shall have been terminated as provided herein.

(e) **Personal Property and Fixtures.** If an Event of Default exists, Lender shall have, with respect to the UCC Property, all rights and remedies of a secured party under the Alabama Uniform Commercial Code, including the right to sell it at public or private sale or otherwise dispose of, lease or use it, without regard to preservation of the UCC Property or its value and without the necessity of a court order. At Lender's request, Borrower shall assemble the UCC Property and make it available to Lender at any place designated by Lender. To the extent permitted by law, Borrower expressly waives notice and any other formalities prescribed by law with respect to any sale or other disposition of the UCC Property or exercise of any other right or remedy upon default. Borrower agrees that Lender may sell or dispose of both the Real Property and the UCC Property in accordance with the rights and remedies granted under this Mortgage with respect to Real Property.

(f) **Rents and Leases.** If an Event of Default exists, Lender, at its option, shall have the right, power and authority to terminate the license granted to Borrower in Section 2.1(d) to collect the rents, profits, issues and revenues of the Real Property, and, without taking possession, in Lender's own name to demand, collect, receive, sue for, attach and levy such rents, profits, issues and revenues, to give proper receipts, releases and acquittances thereof, and to apply the proceeds thereof as set forth in Section 5.3(h).

(g) **Foreclosure Deeds.** To the extent permitted by applicable law, Borrower hereby authorizes and empowers Lender or the auctioneer at any foreclosure sale had hereunder, for and in the name of Borrower, to execute and deliver to the purchaser or purchasers of any of the Property sold at foreclosure good and sufficient deeds of conveyance or bills of sale thereto.

(h) **Order of Application of Proceeds.** All payments received by Lender as proceeds of any of the Property, as well as any and all amounts realized by Lender in connection with the enforcement of any right or remedy under this Mortgage, shall be applied by Lender as follows: (1) to the payment of all expenses incident to the exercise of any remedies under this Mortgage, including attorneys' fees and disbursements as provided in the Security Documents, appraisal fees, environmental site assessment fees, title search fees and foreclosure notice costs, (2) to the payment in full of any of the Obligations that are then due and payable (including principal, accrued interest and all other sums secured hereby) in such order as Lender may elect in its sole discretion, (3) to a cash collateral reserve fund to be held by Lender in an amount equal to, and as security for, any of the Obligations that are not then due and payable, and (4) the remainder, if any, shall be paid to Borrower or such other persons as may be entitled thereto by law, after deducting therefrom the cost of ascertaining their identity.

(i) **Multiple Sales.** If an Event of Default exists, Lender shall have the option to proceed with foreclosure, either through the courts or by power of sale as provided for in this Mortgage, but without declaring the whole Obligations due. Any such sale may be made subject to the unmatured part of the Obligations, and such sale, if so made, shall not affect the unmatured part of the Obligations, but as to such unmatured part of the Obligations this Mortgage shall remain in full force and effect as though no sale had been made under this

Section 5.3(i). Several sales may be made hereunder without exhausting the right of sale for any remaining part of the Obligations, whether then matured or unmatured, the purpose hereof being to provide for a foreclosure and sale of the Property for any matured part of the Obligations without exhausting the power of foreclosure and the power to sell the Property for any other part of the Obligations, whether matured at the time or subsequently maturing.

(j) **Waiver of Certain Laws.** Borrower waives, to the fullest extent permitted by law, the benefit of all laws now existing or hereafter enacted providing for (1) any appraisement before sale of any portion of the Property (commonly known as appraisement laws), or (2) any extension of time for the enforcement of the collection of the Obligations or any creation or extension of a period of redemption from any sale made in collecting the Obligations (commonly known as stay laws and redemption laws). Borrower also waives any and all rights Borrower may have to a hearing before any Governmental Authority prior to the exercise by Lender of any of its rights or remedies under the Security Documents and applicable law.

(k) **Prerequisites of Sales.** In case of any sale of the Property as authorized by this Section 5.3, all prerequisites to the sale shall be presumed to have been performed, and in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the nonpayment of any of the Obligations or as to the advertisement of sale, or the time, place and manner of sale, or as to any other fact or thing, shall be taken in all courts of law or equity as rebuttably presumptive evidence that the facts so stated or recited are true.

SECTION 5.4 Remedies Cumulative. The rights, powers and remedies of the Lender under this Mortgage are cumulative and not exclusive of any other rights, powers, or remedies now or hereafter existing at law or in equity.

ARTICLE 6

Miscellaneous

SECTION 6.1 Notices.

(a) **Methods.** Any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by this Mortgage to be made upon, given or furnished to, or filed with, Borrower or Lender must (except as otherwise expressly provided in this Mortgage) be in writing and be delivered by one of the following methods: (1) by personal delivery at the hand delivery address specified below, (2) by first-class, registered or certified mail, postage prepaid, addressed as specified below, or (3) if facsimile

transmission facilities for such party are identified below or pursuant to a separate written notice from such party, sent by facsimile transmission to the number specified below or in such notice.

(b) **Addresses.** The hand delivery address, mailing address and (if applicable) facsimile transmission number for receipt of notice or other documents by such parties are as follows:

(1) **Borrower:**

By hand or mail: Daniel Equity Partners Limited Partnership
1200 Corporate Drive
Meadow Brook Corporate Park
Birmingham, Alabama 35242
Attention: Mr. T. Charles Tickle

With a copy to: Daniel Realty Corporation
1200 Corporate Drive
Meadow Brook Corporate Park
Birmingham, Alabama 35242
Attention: Stephen R. Monk, Esq.

(2) **Lender:**

By hand or mail: Dantract, Inc.
820 Shades Creek Parkway, Suite 1200
Birmingham, Alabama 35209
Attention: Mr. Charles W. Daniel

With a copy to: Gordon, Silberman, Wiggins & Childs, P.C.
1400 SouthTrust Tower
Birmingham, Alabama 35203
Attention: Bruce L. Gordon, Esq.

Any of such parties may change the address or number for receiving any such notice or other document by giving notice of the change to the other parties named in this Section 6.1.

(c) Any such notice or other document shall be deemed delivered when actually received by the party to whom directed (or, if such party is not an individual, to an officer, director, partner or other legal representative of the party) at the address or number specified pursuant to Section 6.1(b), or, if sent by mail, three Business Days after such notice or document is deposited in the United States mail, addressed as provided above.

(d) Five Business Days' written notice to Borrower as provided above shall constitute reasonable notification to Borrower when notification is required by law; provided, however, that nothing contained in the foregoing shall be construed as requiring five Business Days' notice if, under applicable law and the circumstances then existing, a shorter period of time would constitute reasonable notice.

SECTION 6.2 Expenses. Borrower shall promptly on demand pay all reasonable costs and expenses, including the fees and disbursements of counsel to Lender, incurred by Lender in connection with the enforcement of this Mortgage following an Event of Default.

SECTION 6.3 Successors and Assigns. Whenever in this Mortgage any party hereto is referred to, such reference shall be deemed to include the successors and assigns of such party, except that Borrower may not assign or transfer this Mortgage without the prior written consent of Lender; and all covenants and agreements of Borrower contained in this Mortgage shall bind Borrower's successors and assigns and shall inure to the benefit of the successors and assigns of Lender.

SECTION 6.4 Intentionally Deleted.

SECTION 6.5 Intentionally Deleted.

SECTION 6.6 Governing Law. This Mortgage shall be construed in accordance with and governed by the internal laws of the State of Alabama (without regard to conflict of law principles) except as required by mandatory provisions of law and except to the extent that the validity and perfection of the Liens on the Property are governed by the laws of any jurisdiction other than the State of Alabama.

SECTION 6.7 Date of Mortgage. The date of this Mortgage is intended as a date for the convenient identification of this Mortgage and is not intended to indicate that this Mortgage was executed and delivered on that date.

SECTION 6.8 Separability Clause. If any provision of the Security Documents shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 6.9 Counterparts. This Mortgage may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all such counterparts shall together constitute but one and the same agreement.

SECTION 6.10 No Oral Agreements. This Mortgage is the final expression of the agreement between the parties hereto, and this Mortgage may not be contradicted by evidence of any prior oral agreement between such parties. All previous oral agreements between the parties hereto have been incorporated into this Mortgage and the other Security Documents, and there is no unwritten oral agreement between the parties hereto in existence.

SECTION 6.11 Waiver and Election. The exercise by Lender of any option given under this Mortgage shall not constitute a waiver of the right to exercise any other option. The filing of a suit to foreclose the Lien granted by this Mortgage, either on any matured portion of the Obligations or for the whole of the Obligations, shall not be considered an election so as to preclude foreclosure by judicial foreclosure the Lien granted by this Mortgage. No failure or delay on the part of Lender in exercising any right, power or remedy under this Mortgage shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any further exercise thereof or the exercise of any other right, power or remedy. No modification, termination or waiver of any provisions of the Security Documents, nor consent to any departure by Borrower therefrom, shall be effective unless in writing and signed by an authorized officer of Lender, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on Borrower in any case shall entitle Borrower to any other or further notice or demand in similar or other circumstances.

SECTION 6.12 Intentionally Deleted.

SECTION 6.13 Advances by the Lender. If an Event of Default occurs hereunder, Lender may (but shall not be required to) make advances to cure any such Event of Default and, where necessary, enter the Property for the purpose of performing Borrower's obligations to the extent necessary to cure such Event of Default. Borrower agrees to repay all such sums advanced upon demand and all sums so advanced shall be a part of the Obligations. The making of any such advances shall not be construed as a waiver by Lender of any Event of Default resulting from Borrower's failure to pay such amounts.

SECTION 6.14 Rights, Liens and Obligations Absolute. All rights of Lender hereunder, all Liens granted to Lender hereunder, and all obligations of Borrower hereunder, shall be absolute and unconditional and shall not be affected by (a) any lack of validity or enforceability as to any other person of any of the Security Documents, (b) any change in the time, manner or place of payment of, or any other term of the Obligations, (c) any amendment or waiver of any of the provisions of the Security Documents as to any other person, and (d) any exchange, release or non-perfection of any other collateral or any release, termination or waiver of any guaranty, for any of the Obligations.

SECTION 6.15 Construction of Mortgage. This Mortgage is and may be construed as a mortgage, deed of trust, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, fixture filing, hypothecation or contract, or any one or more of them, in order fully to effectuate the Liens created hereby and the purposes and agreements herein set forth.

SECTION 6.16 Fixture Filing. This Mortgage shall be effective as a financing statement filed as a fixture filing for purposes of Article 9 of the Uniform Commercial Code. The fixture filing covers all goods that are or are to become affixed to the Real Property. The goods are described by item or type in Section 2.1. Borrower is the debtor, and Lender is the secured party. The names of the debtor (Borrower) and the secured party (Lender)

are given in the first paragraph of this Mortgage. This Mortgage is signed by the debtor (Borrower) as a fixture filing. The mailing address of Lender set out in Section 6.1(b)(2) is an address of the secured party from which information concerning the security interest may be obtained. The mailing address of Borrower set out in Section 6.1(b)(1) is a mailing address for the debtor. A statement indicating the types, or describing the items, of collateral is set forth in this Section 6.16 and in Section 2.1. The real estate to which the goods are or are to be affixed is described in Exhibit A. Borrower is a record owner of the real estate.

SECTION 6.17 Landlord-Tenant Relationship. Any sale of the Property under Section 5.3 of this Mortgage shall, without further notice, create the relationship of landlord and tenant at sufferance between the purchaser and Borrower.

SECTION 6.18 Limitation of Liability of Borrower and Partners of Borrower. Notwithstanding anything provided herein or in any of the other Security Documents to the contrary, neither Borrower nor any of its partners (general or limited) shall be personally liable for the payment of any sum or the performance of any Obligations set forth in any of the Security Documents and Lender acknowledges and agrees that its sole remedy upon a default in the payment or performance of any of the Obligations shall be to foreclose this Mortgage and any of the security interests or other collateral described herein, it being the intent of the parties that no deficiency judgment shall be sought or taken against Borrower or any of its partners (either general or limited). Furthermore, neither Borrower nor its partners (general or limited) shall be liable for any deficiency or other personal money judgment with respect to any of the Obligations for the payment of any sums or the performance of any obligations set forth in any of the Security Documents.

SECTION 6.19 Subordination of Lien. Notwithstanding anything provided herein or in any of the Security Documents to the contrary, Lender does hereby covenant, acknowledge and agree that this Mortgage is and shall be subject and subordinate to the Lien of each and every mortgage or mortgages which may now or at any time in the future secure any indebtedness of Borrower and to all modifications, extensions, renewals, replacements and refinancings thereof (collectively, the "Prior Mortgages") and Lender hereby agrees to execute and deliver to Borrower such instruments and agreements in form reasonably satisfactory to the holder of any of the Prior Mortgages whereby Lender shall agree, acknowledge and confirm that the Lien of this Mortgage is subordinate to the Lien of any and all Prior Mortgages.

SECTION 6.20 Purchase Money Mortgage. This Mortgage is a purchase money mortgage given to secure the entire purchase price for the Property. The entire proceeds of the Note have been applied to the purchase price of the Property which has been conveyed simultaneously herewith by Lender to Borrower.

IN WITNESS WHEREOF, the undersigned Borrower has caused this Mortgage to be executed as of the day and year first above written.

DANIEL EQUITY PARTNERS LIMITED PARTNERSHIP, a Virginia limited partnership,
Its Co-General Partner

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


By: 
T. Charles Tickle, Its Chairman

STATE OF ALABAMA)

COUNTY OF SHELBY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that T. Charles Tickle, whose name as Chairman of Daniel Equity Corporation I, a Virginia corporation, as general partner of Daniel Equity Partners Limited Partnership, a Virginia limited partnership, an Alabama general partnership, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of such corporation, in its capacity as general partner of Daniel Equity Partners Limited Partnership, a Virginia limited partnership.

Given under my hand and official seal, this the 14th day of July, 1995.


Notary Public
My Commission Expires: 7/18/98

This instrument was prepared by:

Stephen R. Monk
Daniel Corporation
1200 Corporate Drive
Birmingham, Alabama 35242-2940
(205)991-4500

EXHIBIT A

LEGAL DESCRIPTION OF LAND

LEGAL DESCRIPTION OF 450 ACRE TRACT

Commence at a 3 inch capped iron pipe marking the Northeast corner of Section 22, Township 18 South, Range 1 West; run thence South 88 deg. 57 min. 05 sec. West along the North line of said Section 22 for 1318.81 feet to the Northwest corner of the NE 1/4 of NE 1/4 of Section 22, being the point of beginning; run thence South 0 deg. 34 min. 32 sec. East along the West line of the East 1/2 of the Northeast 1/4 of said Section 22 for 2665.12 feet to the Southwest corner of SE 1/4 of NE 1/4 of said Section 22; run North 88 deg. 52 min. 07 sec. East along the South line of the East 1/2 of the Northeast 1/4 of said Section 22 for 1324.55 feet to the Southeast corner of the SE 1/4 of NE 1/4 of said Section 22; run thence South 0 deg. 40 min. 07 sec. East along the East line of said Section 22 for 1331.29 feet to the Northwest corner of the Southwest 1/4 of the Southwest 1/4 of Section 23, Township 18 South, Range 1 West; run thence North 32 deg. 47 min. 48 sec. East for 4795.81 feet to the Southwest corner of the Southwest 1/4 of the Southeast 1/4 of Section 14, Township 18 South, Range 1 West; run thence North 30 deg. 58 min. 42 sec. East for 2549.52 feet to the East line of NW 1/4 of SE 1/4 of said Section 14; run thence North for 500.00 feet to the Northeast corner of the Northwest 1/4 of the Southeast 1/4 of said Section 14; run thence South 89 deg. 11 min. 31 sec. West along the North line of the south 1/2 of said Section 14 for 2654.14 feet to the Northeast corner of the NW 1/4 of SW 1/4 of said Section 14; run thence South 0 deg. 24 min. 10 sec. East for 1333.55 feet to the Southeast corner of the NW 1/4 of the SW 1/4 of said Section 14; run thence South 89 deg. 11 min. 37 sec. West for 1324.95 feet to the Southwest corner of the NW 1/4 of the SW 1/4 (being the West line of Section 14); run thence North 0 deg. 29 min. 15 sec. West along the West line of said Section 14 for 1333.50 feet to the Northeast corner of the East 1/2 of the Southeast 1/4 of Section 15, Township 18 South, Range 1 West; run thence South 88 deg. 47 min. 40 sec. West along the North line of said East 1/2 of the SE 1/4 for 1321.78 feet, being the Northwest corner of the NE 1/4 of the SE 1/4 of Section 15; run thence South 0 deg. 33 min. 01 sec. East along the West line of the said East 1/2 of the Southeast 1/4 for 2663.35 feet to the point of beginning. Said land being in Sections 14, 15, 22 and 23, Township 18 South, Range 1 West, of the Huntsville Principle Meridian, Shelby County, Alabama.

Less and except the Southwest diagonal one-half of the Southeast 1/4 of Southeast 1/4 of said Section 15, Township 18 South, Range 1 West, Shelby County, Alabama.

EXHIBIT B

PERMITTED EXCEPTIONS

PERMITTED ENCUMBRANCES

1. Real estate ad valorem taxes, library district assessments and fire district dues for the 1995 tax year and all subsequent years thereafter.
2. Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto, including rights set out in Deed Book 121, Page 294 and Real 261, Page 494 in the Office of the Judge of Probate of Shelby County, Alabama (the "Probate Office").
3. Covenant and Agreement for Water Service dated April 24, 1989, between Dantract, Inc., Daniel Realty Company and Shelby County, as recorded in Real 235, Page 574 in the Probate Office.
4. Lack of access to or from a public road.
5. Easements, restrictions, reservations and rights-of-way of record.

Inst # 1995-35671

C:\WP60\TEXT\BILLDAN\MOR&SEC.AGR

12/12/1995-35671
04:28 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
022 HCD 9062.00