

THIS MORTGAGE IS RECORDED SIMULTANEOUSLY WITH A MORTGAGE AND SECURITY AGREEMENT FROM DANIEL OAK MOUNTAIN LIMITED PARTNERSHIP, AN ALABAMA LIMITED PARTNERSHIP, TO SOUTHTRUST BANK OF ALABAMA, NATIONAL ASSOCIATION. BOTH MORTGAGES SECURE A SINGLE INDEBTEDNESS OF DANIEL REALTY COMPANY IN THE PRINCIPAL SUM OF \$17,600,000. MORTGAGE TAX UPON THE ENTIRE INDEBTEDNESS WILL BE PAID UPON THE RECORDING OF THIS MORTGAGE. NO ADDITIONAL RECORDING TAX WILL BE PAYABLE UPON THE RECORDING OF THE OTHER MORTGAGE, WHICH IS GIVEN AS ADDITIONAL COLLATERAL.

THIS INSTRUMENT PREPARED BY:

Eric L. Carlton

3100 SouthTrust Tower

Birmingham, Alabama 35203

Inst # 1996-01847

01/19/1996-01847
08:33 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
019 MCD 54.50

STATE OF ALABAMA)
SHELBY COUNTY)

**MORTGAGE
AND SECURITY AGREEMENT**

THIS MORTGAGE AND SECURITY AGREEMENT, made as of the 17th day of January, 1996, is by and among DANIEL U. S. PROPERTIES LIMITED PARTNERSHIP II, an Alabama limited partnership (hereinafter called "Mortgagor"), as Mortgagor whose address is c/o Daniel Realty Corporation, 1200 Corporate Drive, Suite 400, Birmingham, Alabama, 35242, Attention: Stephen R. Monk and SOUTHTRUST BANK OF ALABAMA, NATIONAL ASSOCIATION, a national banking association, as mortgagee and secured party, whose address is Post Office Box 2554, Birmingham, Alabama 35290, Attention: Real Estate Loan Department (hereinafter called "Lender").

WITNESSETH:

WHEREAS, Daniel Realty Company, an Alabama general partnership ("Borrower") is justly indebted to Lender for borrowed money in the principal sum of Seventeen Million Six Hundred Thousand Dollars (\$17,600,000)(the "Loan"), as evidenced by that certain Promissory Note of even date herewith from 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 and among Borrower, Mortgagor, and Daniel Oak Mountain Limited Partnership, an Alabama limited partnership ("Daniel Oak Mountain") and Lender (as the same may hereafter be modified,

the "Loan Agreement"; capitalized terms not otherwise defined herein will have the meanings assigned in the Loan Agreement); and

WHEREAS, pursuant to the Loan Agreement, Borrower has agreed to re-lend proceeds of the Loan to the Mortgagor and other affiliates of Borrower, so that Mortgagor will benefit from the making of the Loan; and

WHEREAS, as a condition precedent to making the Loan, the Lender has required that the Mortgagor 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 Borrower and Mortgagor 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"), Mortgagor has bargained and sold and does hereby grant, bargain, sell, alien, and convey unto the Lender, its successors and assigns, all of its interests in 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 those certain tracts or parcels 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 Mortgagor 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 Mortgagor of, in and to the same, reserving only the right to Mortgagor 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 Mortgagor relating to the use and operation of the Mortgaged Property.; and

(f) All rights, powers and reservations as the "Developer" under the Declaration of Covenants, Conditions and Restrictions for Meadow Brook Corporate Park South dated September 1, 1985 as set out in Real 64, Page 91, as amended, and (ii) the Declaration of Covenants, Conditions and Restrictions for Meadow Brook Corporate Park dated October 17, 1984 as set out in Real 5, Page 772, as amended.

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 if the Borrower and the Mortgagor shall keep, perform, and observe all and singular the covenants and promises in each of the Loan Documents expressed to be kept, performed, and observed by and on their part, all without any deduction or credit for taxes or other similar charges paid by the Borrower or the Mortgagor, 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 Mortgagor, subject to the provisions of Section 3.10 below, covenants and agrees with the Lender as follows:

ARTICLE I

1.01 Warranty of Title. Mortgagor 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 Mortgagor 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.

1.02 Monthly Tax Deposits. If required by the Lender, Mortgagor will pay to the Lender, monthly throughout the term of the Note, 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 payments shall be held in trust by Lender but no interest shall be payable in respect thereof. Upon demand of the Lender, Mortgagor agrees to deliver to the Lender such additional moneys as are necessary to make up any deficiencies in the amounts necessary to enable the Lender to pay such taxes, assessments and similar charges. Upon the occurrence of an Event of Default, the Lender may apply to the reduction of the sums secured hereby, in such manner as the Lender shall determine, any amount under this Section 1.02 remaining to Mortgagor's credit.

1.03 Other Taxes, Utilities and Liens.

(a) The Mortgagor 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 1.02 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 Mortgagor 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 Mortgagor will pay promptly all charges by utility companies, whether public or private, for electricity, gas, water, sewer, or other utilities.

(c) The Mortgagor 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.

1.04 Insurance. The Mortgagor will procure for, deliver to, and maintain for the benefit of the Lender during the life of this Mortgage, insurance policies as required by the Loan Agreement. The form of such policies and the companies issuing them shall be acceptable to the Lender. All fire and casualty insurance 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 Mortgagor 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 Mortgagor in and to all insurance policies then in force shall pass to the purchaser or grantee.

Proceeds of insurance shall be payable, and shall be applied, as provided in the Loan Agreement.

If required by the Lender, Mortgagor will pay to the Lender, monthly throughout the term of the Note, 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 payments shall be held in trust but no interest shall be payable in respect thereof. Upon demand of the Lender, Mortgagor 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 Mortgagor's credit.

1.05 Condemnation. The Mortgagor, 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 Mortgagor'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 Mortgagor to the Lender, and the Mortgagor 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 reasonable 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 Mortgagor.

1.06 Care of the Property.

(a) The Mortgagor 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 Mortgagor 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 Mortgagor 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 Mortgagor 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 Mortgagor 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 Mortgagor will restore promptly the Mortgaged Property to substantially 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 Mortgagor will restore promptly, repair or alter the remaining property in a manner reasonably satisfactory to the Lender.

1.07 Further Assurances; After Acquired Property. At any time, and from time to time, upon request by the Lender, the Mortgagor 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 Mortgagor under this Mortgage, and the lien of this Mortgage as a first and prior lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by the Mortgagor. Upon any failure by the Mortgagor 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 Mortgagor and the Mortgagor hereby irrevocably appoints the Lender the agent and attorney-in-fact of the Mortgagor 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.

1.08 Leases Affecting Mortgaged Property. The Mortgagor will comply with and observe its obligations as landlord under all leases affecting the Mortgaged Property or any part thereof. If requested by Lender, Mortgagor 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. Mortgagor will not accept payment of rents in advance for periods in excess of thirty (30) days.

1.09 Expenses. The Mortgagor 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, Mortgagor, 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 the Default Rate, shall be payable upon demand, and shall be secured by the lien of this Mortgage.

1.10 Performance by Lender of Defaults by Mortgagor. If the Mortgagor shall default in the payment of any tax, lien, assessment, or charge levied or assessed against the Mortgaged Property (unless the same is being contested in good faith by Mortgagor in accordance with the provisions of Section 5.8 of the Loan Agreement), 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 Mortgagor to the Lender with interest thereon at the Default Rate. 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 Mortgagor or any person in possession holding under the Mortgagor.

1.11 Books and Records. The Mortgagor 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 5.5 of the Loan Agreement.

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

1.13 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 Mortgagor 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 Mortgagor 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. Mortgagor 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 Mortgagor 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) Mortgagor'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 Mortgagor 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 the Loan Agreement or any other Loan Document; 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 4.3 of the Loan Agreement, any part thereof or any interest therein, 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 occur, Lender shall have the rights and remedies provided in the Loan Agreement, including, without limitation, the right to declare the entire Secured Indebtedness immediately due and payable. No omission on the part of Lender to exercise any 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, Mortgagor, 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 Mortgagor and its agents and employees wholly therefrom, and take possession of the books, papers and accounts of Mortgagor.

(b) If Mortgagor 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 Mortgagor to deliver

immediate possession of the Mortgaged Property to Lender. Mortgagor 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 Mortgagor to the same extent as Mortgagor 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 1.04 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 Mortgagor, 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, shall be secured hereby and shall be, without demand, immediately repaid by Mortgagor 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 Mortgagor or any person in possession holding under Mortgagor. 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. Mortgagor 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 Mortgagor'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 performance of this Mortgage or any 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 and be continuing, 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 Mortgagor, or to the person or entity lawfully entitled thereto.

2.09 Mortgagor as Tenant Holding Over. In the event of any such foreclosure sale or sale under the powers herein granted, Mortgagor (if Mortgagor 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 Appraisalment, Valuation, Etc. Mortgagor agrees, to the full extent permitted by law, that in case of a default on the part of Mortgagor hereunder, neither Mortgagor nor anyone claiming through or under Mortgagor will set up, claim or seek to take advantage of any appraisalment, 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 Mortgagor, 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. Mortgagor 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, Mortgagor 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 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.

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 Mortgagor in the performance of the obligations of Mortgagor 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 Mortgagor 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 or this Mortgage or any other obligation of Mortgagor 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) release any other collateral securing the Secured Indebtedness; (vi) consent to the filing of any map, plat or replat affecting the Mortgaged Property; (vii) consent to the granting of any easement or other right affecting the Mortgaged Property; (viii) make or consent to any agreement subordinating the security title or lien hereof, or (ix) 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 Mortgagor, 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 Mortgagor under this Mortgage at the date of the institution of such proceedings and for any additional amount which may become due and payable by Mortgagor 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 Mortgagor for any inadvertent violation or infringement upon any tradename, trademark, service mark, or logo relating to the Mortgaged Property, and Mortgagor waives any claim for any such violation or infringement that occurs prior to notice of such infringement by Mortgagor to Lender.

ARTICLE III

3.01 Successors and Assigns. This Mortgage shall inure to the benefit of and be binding upon Mortgagor and Lender and their respective heirs, executors, legal representatives, successors, successors-in-title, and assigns. Whenever a reference is made in this Mortgage to "Mortgagor" or "Lender," such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors, successors-in-title and assigns of Mortgagor 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 constitutes the full and complete agreement of the parties and supersedes 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. If, for any reason or to any extent any word, term, provision, or clause of this Mortgage, 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 Notices. All notices and other communications provided for hereunder shall be in writing and be given in accordance with the applicable provisions of the Loan Agreement.

3.06 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.

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

3.08 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.

3.09 Release of Mortgaged Property. Reference is hereby made to Section 4.3 of the Loan Agreement, pursuant to which Lender has agreed to release portions of the Mortgaged Property, upon compliance with the provisions set forth therein.

3.10 Waiver of Jury Trial. MORTGAGOR 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 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 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. MORTGAGOR AND LENDER AGREE THAT LENDER MAY FILE A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED AGREEMENT OF MORTGAGOR IRREVOCABLY TO WAIVE TRIAL BY JURY, AND THAT ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN MORTGAGOR AND LENDER SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY. MORTGAGOR 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 SECTION, AND MORTGAGOR 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 SECTION.

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

**DANIEL U.S. PROPERTIES LIMITED
PARTNERSHIP II**, an Alabama limited partnership

BY: DANIEL REALTY INVESTMENT
CORPORATION, a Virginia corporation
Its General Partner

BY:


Donald K. Lloyd

Its Senior Vice President

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Donald K. Lloyd, whose name as Senior Vice President of Daniel Realty Investment Corporation, a Virginia corporation, as general partner of Daniel U. S. Properties Limited Partnership II, an Alabama limited 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 officer, and with full authority, executed the same voluntarily for and as the act of said corporation, acting in its capacity as general partner, as aforesaid.

Given under my hand and seal of office this 17th day of January, 1996.


Notary Public

[NOTARIAL SEAL]

My commission expires:

8-8-99

EXHIBIT A

Lot 7, according to the Map and Survey of Meadow Brook Corporate Park South, Phase II, as recorded in Map Book 12 page 10 in the Office of the Judge of Probate of Shelby County, Alabama. ("the Probate Office");

Lot 11-A-1, Meadow Brook Corporate Park South, Phase II, according to the Resurvey of Lots 11A and 11B, as recorded in Map Book 13 page 84 in the Probate Office;

Lots 11-C, 11-D and 11-E, according to Meadow Brook Corporate Park South, Phase II, Resurvey of Lot 11, as recorded in Map Book 13 page 82 in the Probate Office;

Lot 2-D, according to a Resurvey of Lot 2-B, being a resurvey of Lot 2, Meadow Brook Corporate Park, Phase I, as recorded in Map Book 17 page 44 in the Probate Office;

Lot 6-A-1, according to Meadow Brook Corporate Park South, Phase II, Resurvey of Lots C and 6A, as recorded in Map Book 20 page 108 in the Probate Office;

Lots 9-B-2 and 9-B-3, according to Meadow Brook Corporate Park South, Phase II, Resurvey of Lot 9-B, as recorded in Map Book 19 page 88 in the Probate Office;

Together with all rights of Daniel U. S. Properties Limited Partnership II under that certain Reciprocal Easement Agreement recorded as Instrument #1995-32944 in said Probate Office.

All being situated in Shelby County, Alabama.

Inst # 1996-01847

01/19/1996-01847
08:33 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
019 MCD 54.50