

THIS INSTRUMENT PREPARED BY:

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Inst # 1998-50930

**12/22/1998-50930
09:16 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
019 CRH 16629.50**

**STATE OF ALABAMA)
COUNTY OF SHELBY)**

--Meadow Brook South 2700, L.L.C.

**MORTGAGE
AND SECURITY AGREEMENT**

THIS MORTGAGE AND SECURITY AGREEMENT (this "Mortgage") made as of the 17th day of December, 1998, is by and between **MEADOW BROOK SOUTH 2700, L.L.C.**, a Delaware limited liability company, whose address is 3595 Grandview Parkway, Suite 400, Birmingham, Alabama 35243-1930 (the "Borrower"), as mortgagor and **SOUTHTRUST BANK, NATIONAL ASSOCIATION**, a national banking association, whose address is 420 North 20th Street, 11th Floor, Birmingham, Alabama 35203, Attn: Commercial Real Estate (the "Lender"), as mortgagee.

WITNESSETH:

WHEREAS, Borrower is justly indebted to the Lender for borrowed money in the principal sum of **ELEVEN MILLION FIFTY THOUSAND AND NO/100 DOLLARS (\$11,050,000)** (the "Loan"), as evidenced by that certain Promissory Note of even date herewith from the Borrower, payable to Lender in installments with interest thereon (said promissory note, as the same may hereafter be renewed, extended or modified, being herein collectively called the "Note"), and by that certain Construction Loan Agreement of even date herewith between Borrower and Lender (the "Construction Loan Agreement") (the Note, the Construction Loan Agreement, this Mortgage, that certain Assignment of Rents and Leases of even date herewith from Borrower to Lender (the "Assignment of Rents"), that certain Guaranty Agreement of even date herewith from **DANIEL REALTY COMPANY**, an Alabama general partnership (the "Guaranty"), that certain Tri-Party Agreement of even date herewith between Guarantor, Borrower, Lender and The Prudential Insurance Company of America, that certain Indemnity Agreement of even date herewith from Borrower and Guarantor in favor of Lender (the "Indemnity") together with all other documents now or hereafter evidencing or securing the Note

THIS MORTGAGE AND SECURITY AGREEMENT SERVES AS A FINANCING STATEMENT FILED AS A FIXTURE FILING, PURSUANT TO SECTION 7-9-402(6), CODE OF ALABAMA, 1975, AS AMENDED.

and all certificates, documents, and instruments now or hereafter executed by the Borrower in favor of the Lender, are collectively referred to herein as the "Loan Documents").

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

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

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

(b) All buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, and all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, carpeting and other floor coverings, water heaters, awnings and storm sashes, and cleaning apparatus which are or shall be attached to said buildings, structures or improvements, and all other furnishings, furniture, fixtures, machinery, equipment, appliances, and personal property of every kind and nature whatsoever now or hereafter owned by Borrower and located in, on or about, or used or intended to be used with or in connection with the construction, use, operation or enjoyment of the Mortgaged Property, including all extensions, additions, improvements, betterments, renewals and replacements, substitutions, or proceeds from a permitted sale of any of the foregoing (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 building materials, equipment, fixtures, fittings, and personal property of every kind or character now owned or hereafter acquired by the Borrower for the purpose of being used or useful in connection with the Improvements located or to be located on the Mortgaged Property, whether such materials, equipment, fixtures, fittings, and personal property are actually located on or adjacent to said Mortgaged Property or not, and whether in storage or otherwise, wheresoever the same may be located, including, but without limitation, all lumber and lumber products, bricks, building stones, and building blocks, sand and cement, roofing material,

paint, doors, windows, hardware, nails, wires and wiring, plumbing and plumbing fixtures, heating and air conditioning equipment and appliances, electrical and ornamental and decorative fixtures, furniture, ranges, refrigerators, dishwashers, disposals, washers, dryers, and in general all building materials and equipment of every kind and character used or useful in connection with said Improvements; and

(d) 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 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 Borrower; and

(e) All rents, issues, profits and revenues of the Mortgaged Property from time to time accruing, including, without limitation, all sums due under any leases or tenancies, together with all proceeds of insurance, condemnation payments, security deposits and escrow funds, and all of the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Borrower of, in and to the same, reserving only the right to Borrower to collect the same so long as an Event of Default has not occurred hereunder or such collection is not otherwise restricted by this Mortgage; and

(f) All licenses, permits, general intangibles, accounts, trade names, trademarks, contract rights and other intangible property, now owned or hereafter acquired, relating to the foregoing real property or the business now or hereafter conducted thereat, it being agreed that the same may not be transferred to other real estate without the Lender's prior written consent.

(g) Proceeds and products of all of the foregoing real and personal property.

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

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

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

ARTICLE I

1.01 Performance of Note and Mortgage. This Mortgage shall secure payment of the Note and the payment and performance of all of Borrower's obligations under the Loan Documents. The Borrower will perform, observe and comply with all provisions hereof, of the Note secured hereby and of the Loan Documents to which Borrower is a party, and duly and punctually will pay to the Lender the sum of money expressed in the Note with interest thereon and all other sums required to be paid by the Borrower pursuant to the provisions of this Mortgage or the Loan Documents, all without any deductions or credit for taxes or other similar charges paid by the Borrower.

1.02 Warranty of Title. The Borrower is lawfully seized of an indefeasible estate in fee simple in the land and real property hereby mortgaged and has good and absolute title to all existing personal property hereby mortgaged and has good right, full power and lawful authority to sell, convey and mortgage the same in the manner and form aforesaid; that, except as otherwise set forth in the title insurance policy delivered to the Lender at closing (the "Permitted Encumbrances") the same is free and clear of all liens, charges, and encumbrances whatsoever, including, as to the personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature, and that Borrower shall and will warrant and forever defend the title thereto unto the Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

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

1.04 Other Taxes, Utilities and Liens.

(a) The Borrower will pay promptly, when and as due, and will exhibit promptly to the Lender receipts for the payment of, all taxes, assessments, water rates, dues, charges, fines and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon the interest of the Lender in the Mortgaged Property (other than any of the same for which provision has been made

in Section 1.03 hereof), this Mortgage or the Note, as well as all income taxes, assessments and other governmental charges lawfully levied and imposed by the United States of America or any state, county, municipality, borough or other taxing authority upon the Borrower or in respect of the Mortgaged Property or any part thereof, or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property.

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

(c) Except as otherwise specifically permitted in the Loan Agreement the Borrower shall pay promptly all charges for labor and materials and will not suffer any mechanic's, laborer's, statutory, or other lien to be filed against any of the Mortgaged Property, provided, however, that Borrower shall have the opportunity to contest any such lien as long as arrangements satisfactory to Lender are made with respect thereto.

(d) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes so as to affect adversely the Lender, the Borrower shall have a period of ten (10) days from Lender's demand to make, or reimburse Lender for, payment of same. If it shall be unlawful for Borrower to pay the same, the entire balance of the principal sum secured by this Mortgage and all interest accrued thereon shall, at the option of the Lender, become immediately due and payable upon 120 days notice to Borrower.

1.05 Insurance. The Borrower will procure for, deliver to, and maintain for the benefit of, the Lender during the life of this Mortgage, the insurance policies required under the Construction Loan Agreement. In the event of the foreclosure of this Mortgage or any other transfer of title to the Mortgaged Property in extinguishment of the indebtedness secured hereby, all right, title and interest of the Borrower in and to all insurance policies then in force shall pass to the purchaser or grantee.

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

1.06 Condemnation. If all or any material portion of the Mortgaged Property shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire indebtedness secured hereby shall, at the Lender's option, become immediately due and payable. The Borrower, immediately upon obtaining knowledge of the institution of any proceeding for the condemnation of the Mortgaged 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, is hereby authorized, but only if an Event of Default shall have occurred, at its option, to commence, appear in and prosecute, in its own or the Borrower's name any actions or proceedings relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by the Borrower to the Lender, and the Borrower agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as the Lender may require. The Lender, after deducting therefrom all its reasonable expenses, including reasonable 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 (without prepayment premium or penalty), and any balance of such moneys then remaining shall be paid to the Borrower.

1.07 Care of the Property.

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

(b) No buildings, fixtures, personal property, or other part of the Mortgaged Property shall be removed, demolished or substantially altered without the prior written consent of the Lender. The Borrower may sell or otherwise dispose of, free from the lien of this Mortgage, furniture, furnishings, equipment, tools, appliances, machinery, fixtures or appurtenances, subject to the lien hereof, which may become worn out, undesirable, obsolete, disused or unnecessary for use in the operation of the Mortgaged Property, upon replacing the same by, or substituting for the same, other furniture, furnishings, equipment, tools, appliances, machinery, fixtures, or appurtenances not necessarily of the same character, but of at least equal value to the Borrower and costing not less than the amount realized from the property sold or otherwise disposed of, which shall forthwith become, without further action, subject to the lien of this Mortgage.

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

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

(e) The Borrower will comply promptly with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Mortgaged Property or any part thereof, including, without limitation, all laws, ordinances, rules and regulations relating to zoning, building codes, set back requirements and environmental matters, and with all present and future restrictive covenants affecting the Mortgaged Property.

(f) If all or any part of the Mortgaged Property shall be damaged by fire or other casualty, the Borrower will restore promptly the Mortgaged Property to the equivalent of its original condition, regardless of whether or not there shall be any insurance proceeds therefor. If a part of the Mortgaged Property shall be physically damaged through condemnation, the Borrower will restore promptly, repair or alter the remaining property in a manner satisfactory to the Lender.

1.08 Further Assurances; After Acquired Property. At any time, and from time to time, upon request by the Lender, the Borrower will make, execute and deliver or cause to be made, executed and delivered, to the Lender and, where appropriate, to cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such 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, enlarge, or perfect, or to continue and preserve the obligation of the Borrower under the Note and this Mortgage, and the lien of this Mortgage as a first and prior lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by the Borrower. Upon any failure by the Borrower so to do, the Lender may make, execute, and record any and all such mortgages, instruments, certificates, and documents for and in the name of the Borrower and the Borrower hereby irrevocably appoints the Lender the agent and attorney-in-fact of the Borrower so to do. To the extent permitted by applicable law, the lien hereof will automatically attach, without further act, to all after acquired property attached to and/or used in the operation of the Mortgaged Property or any part thereof.

1.09 Expenses. The Borrower will pay or reimburse the Lender for all reasonable attorney's fees, costs, and expenses incurred by the Lender in any action, proceeding, or dispute of any kind in which the Lender is made a party, or appears as party plaintiff or defendant, affecting any of the Loan Documents, Borrower, or the Mortgaged Property, including but not limited to the foreclosure of this Mortgage, any condemnation action involving the Mortgaged Property, or any action to protect the security hereof; and any such amounts paid by the Lender shall bear interest at a rate equal to 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 Borrower. If the Borrower shall default in the payment of any tax, lien, assessment, or charge levied or assessed against the Mortgaged Property; in the payment of any utility charge, whether public or private; in the payment of insurance premium; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any covenant, condition, or term of this Mortgage, then the Lender, at its option, may perform or observe the same, and all payments made

for costs or incurred by the Lender in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by the Borrower to the Lender with interest thereon at the Default Rate set forth in the Note. The Lender shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium; 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 Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to the Borrower or any person in possession holding under the Borrower.

1.11 Books and Records. The Borrower shall keep and maintain at all times full, true and accurate books of accounts and records, adequate to reflect correctly the results of the operation of the Mortgaged Property. The Borrower will furnish to the Lender financial and operating statements as required by the Construction Loan Agreement.

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

1.13 Documents Accurate. All documents furnished to Lender by or on behalf of Borrower as part of or in support of the loan application or pursuant to the Commitment Letter (as defined in the Loan Agreement) issued by Lender are, in all material respects, true, correct, complete and accurately represent the matters to which they pertain.

1.14 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 of Alabama, and Borrower hereby grants to Lender a security interest in said personal property. The remedies for any violation of the covenants, terms and conditions of the security agreement contained in this Mortgage, or otherwise in respect of an Event of Default hereunder, shall be (i) as prescribed herein, or (ii) as prescribed by general law, or (iii) as prescribed by the specific statutory consequences now or hereafter enacted and specified in said Uniform Commercial Code, all at Lender's sole election. Borrower and Lender agree that the filing of such financing statement(s) in the records normally having to do with personal property shall not in any way affect the agreement of Borrower and Lender that everything used in connection with the production of income from the Mortgaged Property or adapted for use therein or which is described or reflected in this Mortgage, is, and at all times and for all purposes and in all proceedings, both legal or equitable, shall be, regarded as part of the real estate conveyed hereby regardless of whether (a) any such item is physically attached to the improvements, (b) serial numbers are used for the better identification of certain items capable of being thus identified in an Exhibit to this Mortgage, or (c) any such item is referred to or reflected in any such financing statement(s) so filed at any time.

1.15 Compliance with Applicable Environmental Law. As used herein, the term "Applicable Environmental Law" shall mean any applicable laws, rules or regulations pertaining to health or the environment, or petroleum products, or radon radiation, or oil or hazardous substances, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), as codified at 42 U.S.C. § 9601 et seq., as amended, the Resource Conservation and Recovery Act of 1976, as amended ("RCRA") and the Federal Emergency Planning and Community Right-To-Know Act of 1986. The terms "hazardous substance" and "release" shall have the meanings specified in CERCLA, and the terms "solid waste," "disposal," "dispose," and "disposed" shall have the meanings specified in RCRA, except that if such acts are amended to broaden the meanings thereof, the broader meaning shall apply herein prospectively from and after the date of such amendments); notwithstanding the foregoing, provided, to the extent that the laws of the State of Alabama establish a meaning for "hazardous substance" or "release" which is broader than that specified in CERCLA, as CERCLA may be amended from time to time, or a meaning for "solid waste," "disposal," and "disposed" which is broader than specified in RCRA, as RCRA may be amended from time to time, such broader meanings under said state law shall apply in all matters relating to the laws of such State. Borrower represents and warrants to Lender that, to the best of its knowledge, the Mortgaged Property and Borrower are not in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority or any response costs or remedial obligations under any Applicable Environmental Law; that Borrower has not obtained and is not required to obtain any permits, licenses or similar authorizations to construct, operate or use any buildings, improvements, fixtures or equipment forming a part of the Mortgaged Property by reason of any Applicable Environmental Law; that Borrower has taken all steps necessary to determine and has determined that no petroleum products, oil, hazardous substances, or solid wastes have been disposed of or otherwise released on the Mortgaged Property; and that the use which Borrower has made, makes or intends to make of the Mortgaged Property will not result in the location on or disposal or other release of any petroleum products, oil, hazardous substances or solid waste on or to the Mortgaged Property. Borrower agrees to notify Lender in the event that any governmental agency or other entity notifies Borrower that it may not be in compliance with any Applicable Environmental Laws. Borrower agrees to permit Lender to have access to the Mortgaged Property at all reasonable times in order to conduct, at Borrower's expense and without unreasonable interruption to Borrower's activities to construct or lease the project, any tests which Lender deems are necessary to ensure that Borrower and the Mortgaged Property are in compliance with all Applicable Environmental Laws. Borrower and Guarantors have executed and delivered to Lender a separate Indemnity Agreements with respect to environmental matters, the terms and conditions of which are incorporated herein by this reference.

ARTICLE II

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

(a) The failure of the Borrower properly and timely to perform or observe any covenant or condition set forth in this Mortgage or any other Loan Document which is not cured within applicable cure periods as set forth herein or therein or, if no cure period is specified therefor, is not cured within thirty (30) days of Lender's notice to Borrower of such Default; provided, however, that Borrower shall have a reasonable period of time following the expiration of such initial 30-day cure period within which to cure such Default if the same is not reasonably capable of being cured during the initial thirty (30)-day cure period; or

(b) The occurrence of any Event of Default (as therein defined) under the Construction Loan Agreement or any other Loan Document; or

(c) The sale, transfer, lease, assignment, or other disposition, voluntarily or involuntarily, of the Mortgaged Property, or any part thereof or any interest therein, or, except for Permitted Encumbrances, any further encumbrance of the 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 exist, then the entire principal amount of the indebtedness secured hereby with interest accrued thereon shall, at the option of the Lender, become due and payable without notice of demand time being of the essence; and any omission on the part of the Lender to exercise such option when entitled to do so shall not be considered as a waiver of such right.

2.03 Right of Lender to Enter and Take Possession.

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

(b) Upon every such entering upon or taking of possession, the Lender or its agents or representatives may hold, store, use, operate, manage, and control the Mortgaged Property and conduct the business thereof, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments, and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty, and other property; (ii) insure or keep the Mortgaged Property insured; (iii) manage and operate the Mortgaged Property and exercise all the rights and powers of the Borrower in Borrower's name or otherwise, with respect to the same; (iv) enter into any and all agreements with respect to the exercise by others of any of the

powers herein granted the Lender, all as the Lender from time to time may reasonably determine to be necessary or desirable; and the Lender or its agents or representatives may collect and receive all the income, revenues, rents, issues and profits of the same including those past due as well as those accruing thereafter, and, after deducting (A) all expenses of taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes); (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases, and acquisitions; (C) the cost of such insurance; (D) such taxes, assessments, and other charges prior to the lien of this Mortgage as the Lender may determine to pay; (E) other proper charges upon the Mortgaged Property or any part thereof; and (F) the reasonable compensation, expenses, and disbursements of the attorneys and agents of the Lender; shall apply the remainder of the moneys so received to the payment of accrued interest, to the payment of tax and insurance deposits required in Sections 1.03 and 1.05 hereof, and to the payment of overdue installments of principal, all in such order and priority as the Lender may determine.

(c) Whenever all such Events of Default have been cured and satisfied, the Lender may, at the option of the Lender, surrender possession of the Mortgaged Property to the Borrower, its successors or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall exist.

2.04 Receiver.

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

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

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

2.06 Power of Sale. If an Event of Default shall have occurred, 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 of general circulation 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 foreclosure deed to the Mortgaged Property so purchased. Lender may bid at said sale and purchase said Mortgaged Property, 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 Application of Foreclosure Proceeds. The proceeds of any foreclosure sale pursuant to Section 2.06 shall be applied as follows:

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

(b) Second, to the repayment of any money, with interest thereon at a rate equal to the Default Rate which Lender may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided;

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

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

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

2.09 Waiver of Exemption. Borrower waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this Mortgage, and

Borrower waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the Mortgaged Property be set off against any part of the indebtedness secured hereby.

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

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

2.12 Delay or Omission No Waiver. No delay or omission of the Lender or of any holder of the Note to exercise any right, power, or remedy accruing upon any 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 the Lender may be exercised from time to time and as often as may be deemed expedient by the Lender.

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

If the Lender (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted herein or in the Note; (d) releases any part of the Mortgaged Property from the lien of this Mortgage or otherwise changes any of the terms of the Note or this Mortgage; (e) consents to the filing of any map, plat, or replat thereof; (f) consents to the granting of any easement thereon; or (g) makes or consents to any agreement subordinating the lien or charge hereof, any such act or omission shall not otherwise release, discharge, modify, change, or affect the original liability under the Note, this Mortgage or otherwise of the Borrower or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety, or guarantor; nor shall any such act or omission preclude the Lender from exercising any right, power, or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Lender, shall the lien of this Mortgage be altered thereby. In the event of the sale

or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, the Lender, at its option, without notice to any person or corporation hereby is authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

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

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

ARTICLE III

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

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

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

3.04 Lien on Personal Property. This Mortgage creates a lien on and grants a security interest in the personal property of the Borrower described herein which constitutes part of the Mortgaged Property, and it shall constitute a security agreement under the Alabama Uniform Commercial Code or other law applicable to the creation of liens on personal property. Borrower covenants and agrees to execute, file, and refile such financing statements, continuation statements

or other documents as Lender shall require from time to time with respect to such personal property. This Mortgage shall constitute a financing statement under the Alabama Uniform Commercial Code with Borrower as the "debtor" and Lender as the "secured party", and their respective addresses are set forth in the heading to this instrument. If an Event of Default occurs, the Lender shall have all rights and remedies of a secured party under the Alabama Uniform Commercial Code.

3.05 Construction Loan Agreement. This is a construction loan mortgage and the indebtedness secured hereby will be advanced to the Borrower by the Lender from time to time in accordance with the Construction Loan Agreement. This Mortgage secures future advances made pursuant to said Construction Loan Agreement. The Construction Loan Agreement is, by reference, herein incorporated to the same extent and effect as though set forth herein in full. In the event of a conflict between the terms of this Mortgage and the terms of the Construction Loan Agreement, the Construction Loan Agreement shall govern and prevail.

3.06 Notices. Any and all notices, elections or demands permitted or required to be made under this Mortgage shall be given in the manner set forth in the Construction Loan Agreement.

3.07 Controlling Law. THE VALIDITY, INTERPRETATION, ENFORCEMENT AND EFFECT OF THIS MORTGAGE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ALABAMA. THE LENDER'S PRINCIPAL PLACE OF BUSINESS IS LOCATED IN JEFFERSON COUNTY IN THE STATE OF ALABAMA, AND THE BORROWER AGREES THAT THE LOAN SHALL BE FUNDED FROM AND THIS MORTGAGE SHALL BE HELD BY LENDER AT SUCH PRINCIPAL PLACE OF BUSINESS, AND THE HOLDING OF THIS MORTGAGE BY LENDER THEREAT SHALL CONSTITUTE SUFFICIENT MINIMUM CONTACTS OF BORROWER WITH JEFFERSON COUNTY AND THE STATE OF ALABAMA FOR THE PURPOSE OF CONFERRING JURISDICTION UPON THE FEDERAL AND STATE COURTS PRESIDING IN SUCH COUNTY AND STATE. BORROWER CONSENTS THAT ANY LEGAL ACTION OR PROCEEDING ARISING HEREUNDER MAY BE BROUGHT IN THE CIRCUIT COURT OF THE STATE OF ALABAMA, JEFFERSON COUNTY, ALABAMA OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA AND ASSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF ANY SUCH COURT IN ANY ACTION OR PROCEEDING INVOLVING THIS MORTGAGE. NOTHING HEREIN SHALL LIMIT THE JURISDICTION OF ANY OTHER COURT.

3.08 Waiver of Jury Trial. BORROWER HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (I) ARISING OUT OF OR IN ANY WAY PERTAINING OR RELATED TO THIS MORTGAGE OR THE LOAN, OR (II) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF LENDER AND BORROWER WITH RESPECT TO THIS MORTGAGE, THE LOAN DOCUMENTS, OR THE LOAN, OR IN CONNECTION WITH THE TRANSACTIONS

RELATED HERETO OR CONTEMPLATED HEREBY OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES HEREUNDER, OR THE CONDUCT OF THE RELATIONSHIP OF THE PARTIES HERETO, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. BORROWER AGREES THAT LENDER MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED AGREEMENT OF BORROWER IRREVOCABLY TO WAIVE ITS RIGHTS TO TRIAL BY JURY, AND THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN BORROWER AND LENDER SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

[THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK]

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

BORROWER:

MEADOW BROOK SOUTH 2700, L.L.C.,
a Delaware limited liability company

By: Daniel Realty Company,
an Alabama general partnership
Its Operating Member

By: Daniel Equity Partners Limited Partnership,
a Virginia limited partnership
Its Managing General Partner

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

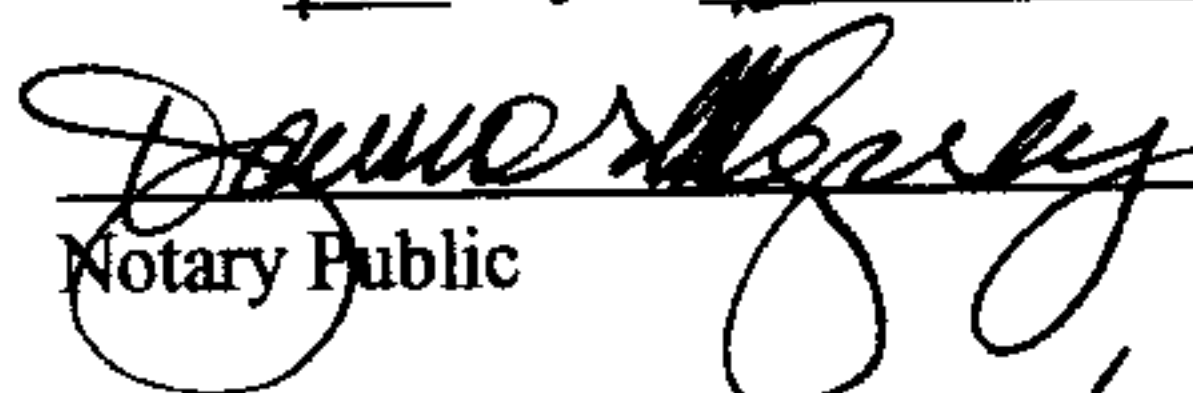
By: 

Jack R. Peterson
Its Vice President

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Jack R. Peterson, whose name as Vice President of Daniel Equity Corporation I, a Virginia corporation, the general partner of Daniel Equity Partners Limited Partnership, a Virginia limited partnership, the managing general partner of Daniel Realty Company, an Alabama general partnership, the operating member of Meadow Brook South 2700, LLC, a Delaware limited liability company, 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 in its capacity as general partner of Daniel Equity Partners Limited Partnership, a Virginia limited partnership, in its capacity as the managing general partner of Daniel Realty Company, an Alabama general partnership, in its capacity as operating member of Meadow Brook South 2700, L.L.C., a Delaware limited liability company.

Given under my hand and seal of office this 17th day of December, 1998.


Notary Public

[NOTARIAL SEAL]

My commission expires: 1/22/2000

EXHIBIT A

LEGAL DESCRIPTION

Lot 11H, Meadow Brook Corporate Park South, Phase II, Resurvey No. 4 as recorded in Map Book 24, Page 42 in the office of the Judge of Probate of Shelby County, Alabama, being more particularly described as follows:

Begin at the Easternmost corner of Lot 11H, Meadow Brook Corporate Park South, Phase II, Resurvey No. 4 as recorded in Map 24, Page 42 in the office of the Judge of Probate of Shelby County, Alabama and run North $66^{\circ}41'47''$ West along the Southwesterly right-of-way line of Corporate Drive a distance of 431.58 feet to the P.C. (point of curve) of a curve to the left have a radius of 211.67 feet and a central angle $8^{\circ}20'18''$ and chord bearing of North $70^{\circ}51'56''$ West; thence in a Northwesterly direction along the arc of said curve and along the Southwesterly right-of-way line of Corporate Drive a distance of 30.80 feet to the P.T. (point of tangent) of said curve; thence in the tangent to said curve and along the Southwesterly right-of-way line of Corporate Drive, North $75^{\circ}02'05''$ West a distance of 353.72 feet to a point; thence South $0^{\circ}25'10''$ East a distance of 97.46 feet to a point; thence South $15^{\circ}00'40''$ West a distance of 43.23 feet to a point; thence South $0^{\circ}25'10''$ East a distance of 460.67 feet to a point; thence South $22^{\circ}45'40''$ East a distance of 235.47 feet to a point; thence North $90^{\circ}00'$ East a distance of 222.93 feet to a point on the Northwesterly right-of-way line of Alabama Highway No. 119; thence North $46^{\circ}13'30''$ East along the Northwesterly right-of-way line of said Alabama Highway No. 119 a distance of 188.26 feet to the P.C. (point of curve) of a curve to the left having a radius of 1847.32 feet and a central angle of $16^{\circ}22'53''$ and a chord bearing of North $38^{\circ}02'04''$ East; thence along the arc of said curve in a Northeasterly direction along the Northwesterly right-of-way line of Alabama Highway No. 119 a distance of 528.17 feet to the POINT OF BEGINNING.

Inst # 1998-50930

12/22/1998-50930
09:16 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
019 CRH 16629.50