

RECORDER NOTE: THIS MORTGAGE IS GIVEN AS ADDITIONAL COLLATERAL FOR A MORTGAGE FROM GREYSTONE DEVELOPMENT COMPANY, L.L.C, TO SOUTHTRUST BANK, SUCH MORTGAGE BEING RECORDED AS INSTRUMENT NO. 1999-12259 IN THE OFFICE OF THE JUDGE OF PROBATE OF SHELBY COUNTY, ALABAMA, AND SECURES AN EXISTING INDEBTEDNESS UPON WHICH MORTGAGE TAX HAS PREVIOUSLY BEEN PAID. NO ADDITIONAL RECORDING TAX WILL BE PAYABLE UPON THE RECORDING OF THIS MORTGAGE, WHICH IS GIVEN AS ADDITIONAL COLLATERAL.

THIS INSTRUMENT PREPARED BY:

**Gail Livingston Mills
Burr & Forman LLP
3100 SouthTrust Tower
420 North 20th Street
Birmingham, Alabama 35203**

**STATE OF ALABAMA)
SHELBY COUNTY)**

Inst # 2001-02190

01/22/2001-02190

**09:07 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
029 NWB 96.00**

**MORTGAGE
AND SECURITY AGREEMENT**

THIS MORTGAGE AND SECURITY AGREEMENT, made as of the 21st day of December, 2000, is from **DANIEL OAK MOUNTAIN LIMITED PARTNERSHIP**, an Alabama limited partnership, as mortgagor, whose address is c/o Daniel Realty Corporation, 3595 Grandview Parkway, Suite 4000, Birmingham, Alabama, 35243-1930, Attention: Christopher A. Brown (hereinafter called "Mortgagor"), and **SOUTHTRUST BANK**, an Alabama banking corporation, 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, Greystone Development Company, LLC, an Alabama limited liability company ("Borrower") is justly indebted to Lender for borrowed money in the principal sum of Nine Million One Hundred Ninety-Five Thousand Eight Hundred Fifty-Eight and 08/100 Dollars (\$9,195,858.08) (the "Development Loan"), as evidenced by that certain Amended and Restated Promissory Note of even date herewith from Borrower, payable to Lender in installments with interest thereon (said Amended and Restated Promissory Note, as the same may hereafter be renewed, extended or modified, being herein collectively called the "Note"), and that certain Amended and Restated Loan Agreement of even date herewith between Borrower 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

Daniel Oak Mountain, Inc.

WHEREAS, as a condition precedent to entering into the Amended and Restated Loan Agreement and closing the transactions described therein, Lender has required that the Mortgagor execute this Mortgage as additional security for the Development Loan; and

WHEREAS, Mortgagor is an affiliated entity of the Borrower and shares common ownership and control with Borrower, and Mortgagor will receive direct and indirect benefits from the Development Loan, and Mortgagor represents and warrants that there is good and sufficient consideration for it to execute this Mortgage in favor of the Lender.

NOW, THEREFORE, for and in consideration of the foregoing recitals, the sum of Ten Dollars (\$10.00), and other good and valuable considerations, the receipt and sufficiency whereof are hereby acknowledged, and in order to secure the indebtedness and other obligations of Borrower under the Note and all other Loan Documents (all of such indebtedness and obligations secured hereby being referred to herein as the "Loan Obligations"), Mortgagor has bargained and sold and does hereby grant, bargain, sell, alien, and convey unto the Lender, its successors and assigns, all of its right, title, and interest 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, and all proceeds thereof (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; provided, however, that with respect to any items of equipment and personal property which are leased and not owned, the Mortgaged Property shall include the Mortgagor's leasehold interest only, together with any option to purchase any of said items and any additional or greater rights with respect to such items hereafter acquired; 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 Mortgagor (the "**Appurtenant Rights**"), and any and all such greater rights as the Mortgagor may hereafter acquire in and to the Appurtenant Rights; 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 (as herein defined) 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), licenses, permits, certificates of occupancy, and similar documents, warranties, guarantees, operating agreements, and service contracts 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 (i) the Greystone Residential Declaration of Covenants, Conditions and Restrictions as recorded in the Probate Office of Shelby County, Alabama in Real 317, Page 260 et seq., as amended from time to time, as such rights, powers, and reservations shall apply to the Mortgaged Property.

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

PROVIDED, HOWEVER, that, if the Borrower shall pay to the Lender the principal and interest payable in respect to the Note, at the times and in the manner stipulated therein, and 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 its 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 4.10 below, covenants and agrees with the Lender as follows:

ARTICLE I

DEFINITIONS; RULES OF CONSTRUCTION

1.01 Defined Terms. As used herein, all defined terms shall have the meanings ascribed to them, and, in addition, the following terms will have the following meanings:

"Applicable Environmental Law" shall mean any applicable federal, state or local 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"), the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"), the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. § 6901, et seq., as amended, the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq., as amended, the Clean Air Act, 42 U.S.C. § 741, et seq., as amended, the Clean Water Act 33 U.S.C. § 7401 et seq., as amended, the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2629, as amended, the Safe Drinking Water Act, 42 U.S.C. §§ 300f-300j, as amended, and the Federal Emergency Planning and Community Right-To-Know Act of 1986, as amended. 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.

"Amendment Agreement" means that certain Amendment Agreement of even date herewith among Borrower, Guarantor, and Lender.

"Assignment and Pledge/Development Funds" means that certain Assignment and Pledge of Development Funds and Development Funds Escrow Account dated March 4, 1999 from Borrower in favor of Lender, as amended by the Amendment Agreement.

"Assignment and Pledge/Lot Deposits" means that certain Assignment and Pledge of Lot Contracts, Contract Rights, and Lot Deposits Escrow Account dated March 4, 1999 from Borrower in favor of Lender, as amended by the Amendment Agreement.

"Assignment and Pledge/SIPI Escrow" means that certain Assignment and Pledge of SIPI Escrow Account dated March 4, 1999 from Borrower in favor of Lender, as amended by the Amendment Agreement.

"Default" means the occurrence or existence of any event which, but for the giving of notice or expiration of time or both, would constitute an Event of Default.

"Environmental Indemnity Agreement/Phase I" means that certain Environmental Indemnity Agreement of even date herewith from Borrower and Guarantor in favor of Lender with respect to the Mortgaged Property.

"Environmental Indemnity Agreement/Phase II" means that certain Environmental Indemnity Agreement dated March 4, 1999 from Borrower and Guarantor in favor of Lender, as amended by the Amendment Agreement, with respect to the property commonly described as "Greystone, Phase II."

"Event of Default" means any "Event of Default" as hereinafter defined.

"Exhibit" means an Exhibit to this Agreement, unless the context refers to another document, and each such Exhibit shall be deemed a part of this Agreement to the same extent as if it were set forth in its entirety wherever reference is made thereto.

"Guarantor" means Daniel Realty Company, an Alabama general partnership.

"Guaranty Agreement" means that certain Guaranty Agreement dated March 4, 1999 from Guarantor in favor of Lender, as amended by the Amendment Agreement.

"Loan Documents" means, collectively, this Mortgage, the Note, the Mortgage/Phase II, the Assignment and Pledge/Development Funds, the Assignment and Pledge/Lot Deposits, the Assignment and Pledge/SIPI Escrow, the Guaranty Agreement, the Environmental Indemnity/Phase I, the Environmental Indemnity/Phase II, and the Subordination Agreement, together with any and all other documents executed by Borrower, Mortgagor, Guarantor, or others in favor of Lender, evidencing, securing, or otherwise relating to the Development Loan.

"Loan Obligations" means the aggregate of all principal and interest owing from time to time under the Note and all expenses, charges and other amounts from time to time owing under the Note, this Mortgage, or the other Loan Documents and all covenants, agreements and other obligations from time to time owing to, or for the benefit of, Lender pursuant to the Loan Documents.

"Lot" means any developed residential lot comprising part of the Land, as such Lot is reflected on either a preliminary or final subdivision plat for that portion of the Mortgaged Property.

"Permitted Encumbrances" means all matters set forth in Schedule B-II to the title insurance policy insuring this Mortgage, as approved by the Lender.

1.02 Singular and Plural. Singular terms shall include the plural forms and vice versa, as applicable of the terms defined.

1.03 UCC. Terms contained in this Agreement shall, unless otherwise defined herein or unless the context otherwise indicates have the meanings, if any, assigned to them by the Uniform Commercial Code in effect in the State of Alabama.

1.04 GAAP. All accounting terms used in this Agreement shall be construed in accordance with GAAP, except as otherwise defined.

1.05 References. All references to other documents or instruments shall be deemed to refer to such documents or instruments as they may hereafter be extended, renewed, modified or amended, and all replacements and substitutions therefor.

1.06 Loan Agreement. All other capitalized terms not otherwise defined in this Mortgage shall have the meanings set forth in the Loan Agreement.

ARTICLE II

COVENANTS, AGREEMENTS, AND REPRESENTATIONS OF MORTGAGOR

2.01 Warranty of Title. Mortgagor is lawfully seized of an indefeasible estate in fee simple in the Land, Improvements, and Appurtenant Rights hereby mortgaged and has good and absolute title to all existing personal property hereby assigned and has good right, full power and lawful authority to sell, convey and mortgage the same in the manner and form aforesaid, and except for 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 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.

2.02 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 2.02 remaining to Mortgagor's credit.

2.03 Other Taxes, Utilities and Liens.

(a) 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 2.02 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) Mortgagor will pay promptly all charges by utility companies, whether public or private, for electricity, gas, water, sewer, or other utilities.

(c) 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.

2.04 Insurance. The Mortgagor will procure for, deliver to, and maintain for the benefit of the Lender during the life of this Mortgage, the following insurance:

(a) General liability insurance in an amount equal to at least \$1,000,000 per occurrence, \$2,000,000 aggregate, with a minimum \$5,000,000 umbrella policy. All such liability insurance shall be written on an occurrence basis and name the Lender as an additional insured; and

(b) "All-risk" broad form coverage on any insurable structures constituting any part of the Improvements, in an amount not less than the replacement cost thereof, with endorsements insuring against such potential causes of loss as shall be reasonably required by Lender, including, but not limited to, loss or damage from (i) earthquake and subsidence, and (ii) flood, unless evidence satisfactory to Lender is provided that all of the Property is located in an area which is designated as not being in a flood hazard area.

The policies described in Subsection 2.04(b) shall name Lender as mortgagee and loss payee under a standard non-contributory mortgagee clause, and shall provide that Lender shall receive not less than thirty (30) days written notice prior to cancellation. The proceeds of the policies described in Subsection 2.04(b) shall be payable by check payable to Lender or jointly payable to Borrower and to Lender, and shall be delivered to Lender, and such proceeds (after deducting Lender's reasonable costs and expenses of obtaining such proceeds, if any), shall be applied by Lender, at Lender's sole option, either (i) to the full or partial payment or prepayment of the Loan Obligations

(without premium), or (ii) to the repair and/or restoration of the Improvements damaged or taken, or Lender may release the net proceeds to Mortgagor.

Notwithstanding the foregoing, Lender agrees that Lender shall make the net proceeds of insurance (after payment of Lender's reasonable costs and expenses, if any) available to Mortgagor for Mortgagor's repair, restoration and replacement of the Improvements damaged or taken by depositing such proceeds in an interest bearing account (which interest shall be paid to Mortgagor) on the following terms and subject to satisfaction of the following conditions:

(1) At the time of such loss or damage and at all times thereafter while Lender is holding any portion of such proceeds, there shall exist no Event of Default;

(2) The Improvements for which loss or damage has resulted shall be capable of being restored to their pre-existing condition and utility in all material respects with a value equal to or greater than prior to such loss or damage and shall be capable of being completed prior to the Maturity Date specified in the Note;

(3) Within thirty (30) days from the date of such loss or damage, Mortgagor shall have given Lender a written notice electing to have the proceeds applied for such purpose;

(4) Within a reasonable period of time following the date of notice under the preceding subparagraph (3) and prior to any proceeds being disbursed to Mortgagor, Mortgagor shall have provided to Lender all of the following:

(A) complete plans and specifications for restoration, repair and replacement of the Improvements damaged to the condition, utility and value required by (2) above,

(B) if loss or damage exceeds \$50,000, fixed-price or guaranteed maximum cost bonded construction contracts for completion of the repair and restoration work in accordance with such plans and specifications,

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

(D) such additional funds as in Lender's reasonable opinion are necessary to complete the repair, restoration and replacement of the Improvements, and

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

(5) Lender may, at Mortgagor's reasonable expense, retain an independent inspector to review and approve plans and specifications and completed construction and to

approve all requests for disbursement, which approvals shall be conditions precedent to release of proceeds as work progresses;

(6) No portion of such proceeds shall be made available by Lender for architectural reviews or for any other purposes which are not directly attributable to the cost of repairing, restoring or replacing the improvements for which a loss or damage has occurred unless the same are covered by such insurance;

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

(8) Each disbursement by Lender of such proceeds and deposits shall be funded subject to conditions and in accordance with disbursement procedures which a commercial construction lender would typically establish in the exercise of sound banking practices and shall be made only upon receipt of disbursement requests on an AIA G702/703 form (or similar form approved by Lender) signed and certified by Mortgagor and its architect/engineer and general contractor with appropriate invoices and lien waivers as required by Lender;

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

(10) In the event and to the extent such proceeds are not required or used for the repair, restoration and replacement of the Improvements for which a loss or damage has occurred, or in the event Mortgagor fails to timely make such election or having made such election fails to timely comply with the terms and conditions set forth herein (following thirty (30) days notice of such non-compliance), Lender shall be entitled without further notice to or consent from Mortgagor to apply such proceeds, or the balance thereof, at Lender's option either (i) to the full or partial payment or prepayment of the Loan Obligations in the manner aforesaid, or (ii) to the repair, restoration and/or replacement of all or any part of such Improvements for which a loss or damage has occurred, or Lender may release the balance of such proceeds to Mortgagor.

Mortgagor appoints Lender as its attorney-in-fact to cause the issuance of or an endorsement of any policy to bring it into compliance herewith and, as limited above, at Lender's sole option, to make any claim for, receive payment for, and execute and endorse any documents, checks or other instruments in payment for loss, theft, or damage covered under any such insurance policy; however, in no event will Lender be liable for failure to collect any amounts payable under any insurance policy.

The form of such policies and the companies issuing them shall be acceptable 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.

If required by the Lender, Mortgagor will pay to the Lender, monthly throughout the term of the Development Loan, 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.

2.05 Condemnation. The Mortgagor, 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 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.

2.06 Care of the Property.

(a) 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) 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, Lender agrees that all insurance proceeds will be released to Mortgagor for the restoration of the Improvements in accordance with the provisions of Section 2.04. 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.

2.07 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.

2.08 Leases Affecting Mortgaged Property. 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.

2.09 Expenses. 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 an 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.

2.10 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 (provided, however, that the Mortgagor shall have the right to contest in good faith any such lien as long as such lien is bonded off or otherwise removed from the Mortgaged Property within sixty (60) days after the filing of such lien against the 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 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.

2.11 Books and Records. 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.

2.12 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.

2.13 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.

2.14. Environmental Matters. To the best of Mortgagor's knowledge, neither the Mortgaged Property nor the Mortgagor is 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, and this representation and warranty would continue to be true and correct following disclosure to the applicable governmental authorities of all relevant facts, conditions and circumstances, if any, pertaining to the Mortgaged Property or such entities. Mortgagor has not obtained and is not required to obtain, any permits, licenses or similar authorizations to construct, occupy, operate or use any of the Mortgaged Property by reason of any Applicable Environmental Law (except such permits, licenses and authorizations which have been obtained). To the best of Mortgagor's knowledge, no petroleum products, oil, or hazardous substances or solid wastes have been disposed of or otherwise released on or are otherwise located on the Mortgaged Property. The use of the Mortgaged Property as previously operated and hereafter intended to be operated by Mortgagor will not result in the location on or disposal or other release of any petroleum products, oil, or hazardous substances or solid wastes on or to the Mortgaged Property. Mortgagor hereby agrees to remedy promptly any violation of Applicable Environmental Laws with respect to the Mortgaged Property, and to pay any fines, charges, fees, expenses, damages, losses, liabilities, and response costs arising from or pertaining to the application of any

such Applicable Environmental Law to the Mortgaged Property or the Mortgagor. Mortgagor agrees to permit Lender to have access to the Mortgaged Property at all reasonable times in order to conduct any investigation and testing which Lender deems necessary to ensure that the Mortgaged Property and the Mortgagors are in compliance with all Applicable Environmental Laws, and Mortgagor agrees promptly to reimburse Lender for all reasonable costs incurred in such investigation and testing. Mortgagor and Guarantor have entered into the Environmental Indemnity Agreement/Phase I with respect to environmental matters, and the Mortgagor agrees to perform its obligations thereunder.

ARTICLE III

EVENTS OF DEFAULT; REMEDIES

3.01 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 failure of the Mortgagor properly and timely to perform or observe any covenant or condition set forth in this Mortgage 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 Mortgagor of such Default; or
- (b) The occurrence of any Event of Default (as therein defined) under the Loan Agreement or any default by Borrower or Guarantor under other Loan Documents following the giving of required notices and the expiration of applicable cure periods; or
- (c) 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 10.1 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).

3.02 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 Loan Obligations 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.

3.03 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 Loan Obligations 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 2.04 and to other sums required to be paid hereunder; and third, to the payment of overdue installments of principal. Anything in this Section 3.03 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.

3.04 Performance by Lender. Upon the occurrence and during the continuance 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.

3.05 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 Loan Obligations 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 3.05, and upon any Mortgagor's failure to pay the same, any such amounts shall be added to the Loan Obligations and shall be secured by this Mortgage.

3.06 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.

3.07 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 Loan Obligations as a credit to the purchase price.

3.08 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 Loan Obligations 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.

3.09 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.

3.10 Waiver of Appraisalment, Valuation, Etc. Mortgagor agrees, to the full extent permitted by law, that in case of an Event of 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.

3.11 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 Loan Obligations, or any part thereof.

3.12 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.

3.13 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 Loan Obligations 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.

3.14 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 Loan Obligations; (ii) take other or additional security for the payment of any of the Loan Obligations; (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 Loan Obligations; (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 Loan Obligations, 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 Loan Obligations, 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.

3.15 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.

3.16 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.

3.17 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 IV **MISCELLANEOUS**

4.01 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.

4.02 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.

4.03 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.

4.04 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.

4.05 Notices. Any notice or other communication required or permitted to be given by this Mortgage or by applicable law shall be in writing and shall be deemed received (c) on the date delivered, if sent by hand delivery (to the person or department if one is specified below), (d) three (3) days following the date deposited in U.S. mail, certified or registered, with return receipt requested, or (e) one (1) day following the date deposited with Federal Express or other national overnight carrier, and in each case addressed as follows:

If to Mortgagor:

Daniel Oak Mountain Limited Partnership
3595 Grandview Parkway
Suite 4000
Birmingham, Alabama 35243-1930
Attn: Christopher A. Brown, Senior Vice President

With a copy to:

Stephen R. Monk, Esq.
Bradley Arant, Rose & White LLP
2001 Park Place, Suite 1400
Birmingham, Alabama 35203

If to Lender:

SouthTrust Bank
P.O. Box 2554 (35290)
420 N. 20th Street
Commercial Real Estate Dept. 8th Floor
Birmingham, Alabama 35203

With a copy to:

Gail Livingston Mills, Esq.
Burr & Forman LLP
P.O. Box 830719 (35283)
420 North 20th Street
3100 SouthTrust Tower
Birmingham, Alabama 35203

Failure to provide courtesy copies shall not render invalid any notice otherwise properly given. Any party may change its address to another single address by notice given as herein provided, except any change of address notice must be actually received in order to be effective.

4.06 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.

4.07 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 Loan Obligations.

4.08 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.

4.09 Partial Release of Mortgaged Property. Reference is hereby made to Section 10.1 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.

4.10 Liability of Mortgagor. Mortgagor has executed this Mortgage as additional security for the performance by Borrower of its obligations under the Note, the Loan Agreement, and the other Loan Documents. Notwithstanding anything provided herein to the contrary, Mortgagor shall have no personal liability for the payment of the sums due and payable by the Borrower under the Loan Documents, and Lender acknowledges and agrees that its sole remedy against Mortgagor upon the occurrence of any Event of Default hereunder or under any of the Loan Documents shall be to foreclose this Mortgage and any of the security interests or other collateral described herein,

it being the intent of the parties that no deficiency judgment shall be sought or taken against Mortgagor.

4.11 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.

MORTGAGOR:

DANIEL OAK MOUNTAIN LIMITED PARTNERSHIP,
an Alabama limited partnership

BY: DANIEL REALTY INVESTMENT CORPORATION--
OAK MOUNTAIN, an Alabama corporation
Its General Partner

BY: Christopher A. Brown
Christopher A. Brown
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 Christopher A. Brown, whose name as Senior Vice President of Daniel Realty Investment Corporation--Oak Mountain, an Alabama corporation, as general partner of Daniel Oak Mountain Limited Partnership, 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/she, 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 21st day of December, 2000.

Carrie B. Mirabito
Notary Public

[NOTARIAL SEAL]

My commission expires: 7-2-02

EXHIBIT A

LEGAL DESCRIPTION OF MORTGAGED PROPERTY

Parcel 1

Lot 5, according to the Amended Map of Greystone, First Sector, Phase VII, as recorded in Map Book 17, Page 53 in the Office of the Judge of Probate of Shelby County, Alabama.

Lot 12, according to the Survey of Greystone, 4th Sector, Phase II, as recorded in Map Book 22, Page 27 in the Office of the Judge of Probate of Shelby County, Alabama.

Lot 2, according to the Survey of Greystone, 4th Sector, Phase II, First Addition, as recorded in Map Book 23, Page 13 in the Office of the Judge of Probate of Shelby County, Alabama.

Lot 66, according to the Survey of Greystone, 5th Sector, Phase I, as recorded in Map Book 17, Page 72 A, B & C in the Office of the Judge of Probate of Shelby County, Alabama.

Lots 1, 29, 30, 43, 55, 56 and 57, according to the Survey of Greystone, 6th Sector, as recorded in Map Book 17, Page 54 A, B & C in the Office of the Judge of Probate of Shelby County, Alabama.

Lot 37-A, according to a Resurvey of Lot 37, Greystone, 6th Sector, as recorded in Map Book 27, Page 67, in the Probate Office of Shelby County, Alabama.

Lot 13-A, according to the Resurvey of Lots 9, 11, 12, and 13, Greystone, 7th Sector, as recorded in Map Book 21, Page 35 in the Office of the Judge of Probate of Shelby County, Alabama.

Lots 1 and 28, according to the Survey of Greystone, 7th Sector, Phase IV, as recorded in Map Book 21, Page 38 A & B in the Office of the Judge of Probate of Shelby County, Alabama.

Lot 57-A, according to a Resurvey of Lots 57 and 58, Greystone, 8th Sector, as recorded in Map Book 26, Page 120 in the Office of the Judge of Probate of Shelby County, Alabama.

Lots 16 and 17, according to the Survey of Greystone, 8th Sector, Phase I, as recorded in Map Book 21, Page 151 in the Office of the Judge of Probate of Shelby County, Alabama.

Lots 2, 3, 6, 7, 8, 11, 12, 28, 33, 35 and 41, according to the Amended Map of The Crest at Greystone as recorded in Map Book 18, Page 17 A, B, C & D in the Office of the Judge of Probate of Shelby County, Alabama.

Parcel 2

A parcel of land situated in Section 28, Township 18 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

Begin at an iron pin found at the Southeast corner of Lot 30 in Greystone 6th Sector as recorded in Map Book 17, on Page 54 A, B, C & D, in the Office of the Judge of Probate, Shelby County, Alabama, thence run North 40 degrees 03 minutes 17 seconds West along the Northeast side of said Lot 30 for a

distance of 189.99 feet to an iron pin found; thence turn an angle to the right of 41 degrees 22 minutes 28 seconds and run North 1 degree 19 minutes 11 seconds East for a distance of 1379.13 feet to an iron pin found; thence turn an angle to the right of 121 degrees 25 minutes 56 seconds and run South 57 degrees 14 minutes 53 seconds East for a distance of 829.05 feet to an iron pin found; thence turn an angle to the right of 89 degrees 58 minutes 50 seconds and run South 32 degrees 43 minutes 57 seconds West for a distance of 278.88 feet to an iron pin found; thence turn an angle to the left of 76 degrees 22 minutes 34 seconds and run South 43 degrees 38 minutes 37 seconds East for a distance of 53.97 feet to an iron pin set on the Northeast corner of a lake that is part of Greystone Golf Course; thence turn an angle to the right of 94 degrees 36 minutes 11 seconds and run South 50 degrees 57 minutes 34 seconds West along the Northwest side of said Greystone Golf Course for a distance of 89.57 feet to an iron pin set; thence turn an angle to the left of 19 degrees 58 minutes 12 seconds and run South 30 degrees 59 minutes 22 seconds West along the Northwest side of said Greystone Golf Course for a distance of 205.17 feet to an iron pin set; thence turn an angle to the left of 2 degrees 45 minutes 09 seconds and run South 28 degrees 14 minutes 13 seconds West along the Northwest side of said Greystone Golf Course for a distance of 141.68 feet to an iron pin set; thence turn an angle to the left of 14 degrees 53 minutes 53 seconds and run South 13 degrees 20 minutes 20 seconds West along the Northwest side of said Greystone Golf Course for a distance of 170.88 feet to an iron pin set; thence turn an angle to the left of 11 degrees 05 minutes 53 seconds and run South 2 degrees 14 minutes 28 seconds West along the Northwest side of said Greystone Golf Course for a distance of 102.93 feet to an iron pin set; thence turn an angle to the right of 75 degrees 16 minutes 09 seconds and run South 77 degrees 30 minutes 37 seconds West along the Northwest side of said Greystone Golf Course for a distance of 67.33 feet to an iron pin set; thence turn an angle to the left of 44 degrees 45 minutes 54 seconds and run South 32 degrees 44 minutes 43 seconds West along the Northwest side of said Greystone Golf Course for a distance of 89.61 feet to an iron pin set; thence turn an angle to the right of 10 degrees 46 minutes 14 seconds and run South 43 degrees 30 minutes 56 seconds West along the Northwest side of said Greystone Golf Course for a distance of 36.85 feet to an iron pin set; thence turn an angle to the left of 62 degrees 03 minutes 39 seconds and run South 18 degrees 32 minutes 43 seconds East along the Southwest side of said Greystone Golf Course for a distance of 71.06 feet to an iron pin set on a curve to the left having a central angle of 4 degrees 21 minutes 11 seconds and a radius of 450.49 feet; thence turn an angle to the left of 13 degrees 19 minutes 54 seconds to the radius of said curve and run in a southwesterly direction along the arc of said curve for a distance of 34.23 feet to an iron pin set at the Northeast corner of Lot 31 in Greystone 6th Sector as recorded in Map Book 17, on Page 54 A, B, C & D, in the Office of the Judge of Probate, Shelby County, Alabama; thence turn an angle to the right of 57 degrees 50 minutes 10 seconds and run North 66 degrees 13 minutes 02 seconds West for a distance of 67.96 feet to an iron pin found at the point of beginning. Said parcel containing 14.24 acres more or less.

LESS AND EXCEPT any portion of the aforesaid parcel lying within the right-of-way of Greystone Way, a private roadway, as shown on the Survey of Greystone, 9th Sector, as recorded in Map Book 21, Page 143, in the Office of the Judge of Probate of Shelby County, Alabama.

Parcel 3

A parcel of land situated in Sections 32 and 33, Township 18 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows: Begin at an iron pin found at the Southwest corner of Lot 57 in Greystone 6th Sector as recorded in Map Book 17, on Page 54, in the Office of the Judge of Probate, Shelby County, Alabama; thence run north 31 degrees 11 minutes 29 seconds west along the Southwest line of said Lot 57 for a distance of 214.92 feet to

an iron pin set on the Southerly right-of-way line of Greystone Way as recorded in said Greystone 6th Sector, said iron pin being on a curve to the right having a central angle of 30 degrees 24 minutes 40 seconds and a radius of 280.00 feet and a chord bearing of south 74 degrees 00 minutes 51 seconds west; thence run in a southwesterly direction along the arc of said curve and also along said southerly right-of-way line for a distance of 148.62 feet to an iron pin set; thence run south 89 degrees 13 minutes 11 seconds west along said Southerly right-of-way line for a distance of 394.56 feet to an iron pin set on a curve to the left having a central angle of 40 degrees 52 minutes 36 seconds, a radius of 471.60 feet and a chord bearing of south 68 degrees 46 minutes 53 seconds west; thence run in a southwesterly direction along the arc of said curve and also along said Southerly right-of-way line for a distance of 336.45 feet to an iron pin set; thence run south 66 degrees 43 minutes 00 seconds east for a distance of 219.54 feet to an iron pin set; thence run north 78 degrees 46 minutes 58 seconds east for a distance of 548.28 feet to an iron pin found; thence run south 79 degrees 46 minutes 39 seconds east for a distance of 218.06 feet to the point of beginning. Said parcel containing 2.92 acres more or less.

Parcel 4 (Sales Center)

A parcel of land situated in Section 32, Township 18 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest corner of Lot 13 of Greystone 1st Sector Phase I as recorded in Map Book 14, on Page 91, in the Office of the Judge of Probate, Shelby County, Alabama, said Southwest corner being on the Northwest right-of-way of Greystone Drive as recorded in said Greystone 1st Sector and also being on a curve to the left having a central angle of 12 degrees 33 minutes 20 seconds and a radius of 1,678.31 feet; thence run in a southwesterly direction along the arc of said curve and also along said Northwest right-of-way for a distance of 367.78 feet to a point; thence turn an angle from the chord of last stated curve to the left of 3 degrees 13 minutes 26 seconds and run south 40 degrees 24 minutes 50 seconds West along said Northwest right-of-way for a distance of 375.41 feet to an iron pin set at the point of beginning; thence leaving said Northwest right-of-way run south 42 degrees 52 minutes 52 seconds West along the Southeast line of Greystone Golf Course for a distance of 553.80 feet to an iron pin found; thence turn an angle to the right of 28 degrees 40 minutes 08 seconds and run South 71 degrees 33 minutes 00 seconds West along the Southeast line of Greystone Golf Course for a distance of 161.43 feet to an iron pin found; thence turn an angle to the right of 34 degrees 35 minutes 47 seconds and run south 73 degrees 51 minutes 13 seconds West along the Southeast line of Greystone Golf Course for a distance of 168.12 feet to an iron pin found, said iron pin being on the bank of a lake; thence turn an angle to the left 33 degrees 08 minutes 30 seconds and run South 73 degrees 00 minutes 17 seconds West for a distance of 27.44 feet to an iron pin set; thence turn an angle to the left of 36 degrees 31 minutes 46 seconds and run South 36 degrees 28 minutes 31 West for a distance of 14.29 feet to an iron pin set; thence turn an angle to the left of 24 degrees 46 minutes 23 seconds and run South 11 degrees 42 minutes 08 seconds West for a distance of 55.77 feet to an iron pin set; thence turn an angle to the right of 33 degrees 24 minutes 37 seconds and run South 45 degrees 06 minutes 45 seconds West for a distance of 40.17 feet to an iron pin set; thence turn an angle to the right of 10 degrees 35 minutes 28

seconds and run South 55 degrees 42 minutes 13 seconds West for a distance of 52.06 feet to an iron pin set; thence turn an angle to the left of 18 degrees 10 minutes 41 seconds and run South 37 degrees 31 minutes 32 seconds West for a distance of 70.57 feet to an iron pin set; thence turn an angle to the left of 32 degrees 32 minutes 40 seconds and run South 4 degrees 58 minutes 52 seconds West for a distance of 85.50 feet to an iron pin set on the Northwest right-of-way of Hugh Daniel Drive; thence turn an angle to the left of 90 degrees 00 minutes 00 seconds and run South 85 degrees 01 minutes 08 seconds East for a distance of 161.67 feet to an iron pin set on a curve to the left having a central angle of 46 degrees 51 minutes 49 seconds and a radius of 310.00 feet; thence run in a northeasterly direction along the arc of said curve and also along said Hugh Daniel Drive for a distance of 253.56 feet to an iron pin set; thence run North 48 degrees 07 minutes 02 seconds East along said Hugh Daniel Drive for a distance of 229.62 feet to an iron pin set on a curve to the right having a central angle of 18 degrees 56 minutes 11 seconds and a radius of 650.00 feet; thence run in a northeasterly direction along the arc of said curve and also along said Hugh Daniel Drive for a distance of 214.83 feet to a point on a reverse curve to the left having a central angle of 36 degrees 58 minutes 29 seconds and a radius of 75.00 feet and also a radial bearing in of North 54 degrees 28 minutes 58 seconds West; thence run in a northeasterly direction along the arc of said curve and also along the Northwest right-of-way of Greystone Drive as recorded in said Greystone 1st Sector for a distance of 48.40 feet to an iron pin set on a reverse curve to the right having a central angle of 38 degrees 49 minutes 00 seconds and a radius of 483.48 feet; thence run in a northeasterly direction along the arc of said curve and also along said Greystone Drive for a distance of 327.55 feet to the point of beginning. Said parcel containing 3.447 acres more or less.

Parcel 5

To locate the point of beginning, commence at the southwest corner of Section 33, Township 18 South, Range 1 West, Shelby County, Alabama; thence South 88 degrees 48 minutes 29 seconds East on the south boundary of said Section 33 a distance of 745.00 feet to the point of beginning; thence North 21 degrees 40 minutes 24 seconds East a distance of 619.35 feet to a point; thence South 82 degrees 36 minutes 49 seconds West a distance of 126.88 feet to a curve to the right having a central angle of 20 degrees 00 minutes 32 seconds and a radius of 1890.00 feet; thence run along said curve a distance of 660.02 feet; thence tangent to said curve North 77 degrees 20 minutes 17 seconds West a distance of 250.27 feet to a curve to the left having a central angle of 3 degrees 49 minutes 59 seconds and a radius of 369.83 feet; thence run along said curve a distance of 24.74 feet; thence North 2 degrees 01 minutes 22 seconds East a distance of 60.13 feet; thence North 88 degrees 50 minutes 56 seconds West a distance of 166.57 feet; thence South 4 degrees 52 minutes 01 seconds East a distance of 73.87 feet to a point on a curve to the left having a central angle of 9 degrees 44 minutes 39 seconds and a radius of 369.83 feet; thence run along said curve a distance of 62.90 feet to a point; thence North 88 degrees 58 minutes 04 seconds West a distance of 154.82 feet to a point; thence North 18 degrees 27 minutes 45 seconds West a distance of 75.05 feet to a point; thence North 39 degrees 43 minutes 07 seconds West a distance of 38.96 feet to a point on a south right-of-way of Hugh Daniel Drive, said point being on a curve to the right having a central angle of 52 degrees 12 minutes 19 seconds and a radius of 570.00 feet; thence run along said curve a distance of 519.36 feet; thence tangent to said curve South 77 degrees 30 minutes 48 seconds East a distance of 251.65 feet to a curve to the left having a central angle of 20 degrees 00 minutes 20 seconds and a radius of 1690.00 feet; thence run along said curve a distance of 590.09 feet; thence tangent to said curve North 82 degrees 28 minutes 52 seconds East a distance of 169.49 feet to a

curve to the left having a central angle of 33 degrees 22 minutes 56 seconds and a radius of 1000.40 feet; thence run along said curve a distance of 582.86 feet to a point; thence tangent to said curve North 49 degrees 05 minutes 56 seconds East a distance of 49.58 feet to a curve to the right having a central angle of 8 degrees 28 minutes 00 seconds and a radius of 460.00 feet; thence run along said curve a distance of 67.97 feet; thence tangent to said curve North 57 degrees 33 minutes 56 seconds East a distance of 190.65 feet to a curve to the left having a central angle of 7 degrees 47 minutes 45 seconds and a radius of 1632.50 feet; thence run along said curve a distance of 222.12 feet to a point; thence tangent to said curve North 49 degrees 52 minutes 02 seconds East a distance of 138.87 feet to a curve to the right having a central angle of 29 degrees 57 minutes 09 seconds and a radius of 250.49 feet; thence run along said curve a distance of 130.95 feet to a curve to the left having a central angle of 22 degrees 21 minutes 34 seconds and a radius of 520.91 feet; thence run along said curve a distance of 203.28 feet to a point; thence South 31 degrees 37 minutes 12 seconds West and leaving said Hugh Daniel Drive a distance of 1825.76 feet to a point on the south boundary of said Section 33; thence North 88 degrees 48 minutes 29 seconds West a distance of 655.96 feet to the point of beginning.

All lying and being the SW1/4 of Section 33 and the SE1/4 of Section 32, Township 18 South, Range 1 West, Shelby County, Alabama, and containing 27.19 acres.

Being the same property shown on the boundary survey dated June 8, 1994, prepared by Charley Foster & Associates, Inc. and described as follows:

To locate the point of beginning, commence at the southwest corner of Section 33, Township 18 South, Range 1 West, Shelby County, Alabama; thence South 88 degrees 48 minutes 29 East seconds on the south boundary of said Section 33 a distance of 745.00 feet to the point of beginning; thence North 21 degrees 39 minutes 44 seconds East a distance of 619.23 feet to a point; thence South 82 degrees 35 minutes 44 seconds West a distance of 126.84 feet to a curve to the right having a central angle of 20 degrees 00 minutes 20 seconds and a radius of 1890.00 feet; thence run along said curve a distance of 659.92 feet; thence tangent to said curve North 77 degrees 23 minutes 57 seconds West a distance of 250.36 feet to a curve to the left having a central angle of 3 degrees 49 minutes 33 seconds and a radius of 370.00 feet; thence run along said curve a distance of 24.71 feet; thence North 1 degrees 11 minutes 29 seconds East a distance of 60.00 feet; thence North 88 degrees 48 minutes 31 seconds West a distance of 166.64 feet; thence South 4 degrees 52 minutes 01 seconds East a distance of 73.91 feet to a point on a curve to the left having a central angle of 9 degrees 44 minutes 39 seconds and a radius of 370.00 feet; thence run along said curve a distance of 62.93 feet to a point; thence North 88 degrees 48 minutes 29 seconds West a distance of 154.69 feet to a point; thence North 17 degrees 45 minutes 42 seconds West a distance of 74.92 feet to a point; thence North 39 degrees 44 minutes 09 seconds West a distance of 40.00 feet to a point on a south right-of-way of Hugh Daniel Drive, said point being on a curve to the right having a central angle of 52 degrees 20 minutes 28 seconds and a radius of 570.00 feet; thence run along said curve a distance of 520.71 feet; thence tangent to said curve South 77 degrees 23 minutes 57 seconds East a distance of 250.36 feet to a curve to the left having a central angle of 20 degrees 00 minutes 20 seconds and a radius of 1690.00 feet; thence run along said curve a distance of 590.09 feet; thence tangent to said curve North 82 degrees 35 minutes 43 seconds East a distance of 169.47 feet to a curve to the left having a central angle of 33 degrees 24 minutes 16 seconds and a radius of 1000.00 feet; thence run along said curve a distance of 583.02 feet to a point; thence tangent to said curve North 49 degrees 11 minutes 26 seconds East a distance of 49.12 feet to a curve to the right having a central angle of 8 degrees 25 minutes 01 seconds and a radius of 460.00 feet; thence run along said curve a distance of 67.58 feet; thence tangent to said curve North 57 degrees 36 minutes 27 seconds East a distance of 192.38 feet to a curve to the left having a central angle of 7 degrees 45 minutes 24 seconds and a radius

of 1640.00 feet; thence run along said curve a distance of 222.02 feet to a point; thence tangent to said curve North 49 degrees 51 minutes 03 seconds East a distance of 138.92 feet to a curve to the right having a central angle of 29 degrees 51 minutes 15 seconds and a radius of 251.62 feet; thence run along said curve a distance of 131.10 feet to a curve to the left having a central angle of 22 degrees 12 minutes 53 seconds and a radius of 523.89 feet; thence run along said curve a distance of 203.13 feet to a point; thence South 31 degrees 40 minutes 13 seconds West and leaving said Hugh Daniel Drive a distance of 1824.61 feet to a point on the south boundary of said Section 33; thence North 88 degrees 48 minutes 29 seconds West a distance of 656.00 feet to the point of beginning.

All lying and being the SW1/4 of Section 33 and the SE1/4 of Section 32, Township 18 South, Range 1 West, Shelby County, Alabama, and containing 27.19 acres.

LESS AND EXCEPT that portion of the above-described parcel situated in the SW 1/4 of Section 33 and the SE 1/4 of Section 32, Township 18 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

To locate the point of beginning, commence at the Southwest corner of said Section 33, thence run South 88°48'29" East along the South boundary line of said Section 33 for a distance of 745.00 feet to a point; thence run North 21°40'24" East for a distance of 619.35 feet to the point of beginning; thence run South 82°36'49" West for a distance of 126.88 feet to a point on a curve to the right having a central angle of 20°00'32" and a radius of 1890.00 feet and a radial bearing in of North 7°24'41" West; thence run along the arc of said curve in a northwesterly direction for a distance of 660.02 feet to a point; thence run North 77°20'17" West for a distance of 250.27 feet to a point on a curve to the left having a central angle of 3°49'59" and a radius of 369.83 feet and a radial bearing in of South 12°31'16" West; thence run in a northwesterly direction along the arc of said curve for a distance of 24.74 feet to a point; thence run North 2°01'22" East for a distance of 60.13 feet to a point; thence run North 88°50'56" West for a distance of 166.57 feet to a point on a curve to the right having a central angle of 1°54'04" and a radius of 2226.56 feet and a radial bearing in of South 84°07'39" West; thence run in a southeasterly direction along the arc of said curve for a distance of 73.87 feet to a point on a curve to the left having a central angle of 9°44'39" and a radius of 369.83 feet and a radial bearing in of South 16°02'40" East; thence run in a southwesterly direction along the arc of said curve for a distance of 62.90 feet to a point; thence run North 88°58'04" West for a distance of 154.82 feet to a point; thence run North 18°27'45" West for a distance of 75.05 feet to a point; thence run North 39°43'07" West for a distance of 38.96 feet to a point on the South right of way line of Hugh Daniel Drive, said point being on a curve to the right having a central angle of 52°12'19" and a radius of 570.00 feet and a radial bearing in of South 39°43'07" East; thence run in a northeasterly direction along the arc of said curve and also along said South right of way line for a distance of 519.36 feet to a point; thence run tangent to last stated curve South 77°30'48" East along said South right of way line for a distance of 251.65 feet to a point on a curve to the left having a central angle of 20°00'20" and a radius of 1690.00 feet; thence run in a southeasterly to northeasterly direction along the arc of said curve and also along said South right of way line for a distance of 590.09 feet to a point; thence run tangent to last stated curve along said South right of way line North 82°28'52" East for a distance of 169.49 feet to a point on a curve to the left having a central angle of 3°59'16" and a radius of 1000.40 feet; thence run in a northeasterly direction along the arc of said curve and also along said South right of way line for a distance of 69.63 feet to a point; thence run South 21°40'24" West and leaving said South right of way line for a distance of 232.50 feet to the point of beginning. Containing 6.54 acres more or less.