

STATE OF ALABAMA     )  
                                  :  
COUNTY OF SHELBY    )

**EASEMENT AGREEMENT**

THIS EASEMENT AGREEMENT (this "Agreement") is made and entered into as of the 6<sup>th</sup> day of December, 2004 by and between **MEADOW BROOK NORTH, L.L.C.**, a Delaware limited liability company ("Grantor"), and **DANIEL REALTY COMPANY, LLC**, an Alabama limited liability company ("Grantee").

**RECITALS:**

Grantor is the owner of Lot 1, according to the Map and Survey of Meadow Brook Corporate Park, Phase I, as recorded in Map Book 11, Page 72 in the Office of the Judge of Probate of Shelby County, Alabama (the "Building 1200 Property").

Grantee is currently the owner of Lot 11C, according to the Survey of Meadow Brook Corporate Park South, Phase II, being a Resurvey of Lot 11, as recorded in Map Book 13, Page 82 in the Office of the Judge of Probate of Shelby County, Alabama ("Lot 11C").

Following the execution of this Agreement, Grantee will cause Lot 11C to be resubdivided into two (2) lots substantially as shown on Exhibit A attached hereto and incorporated herein by reference (which said Lot 11C and the two (2) lots which will result from the resubdivision of Lot 11C pursuant to the proposed subdivision plat attached hereto as Exhibit A are hereinafter sometimes referred to individually as a "Lot" and collectively as the "Lots").

Grantor desires to grant to Grantee, for the benefit of the Lots a permanent, perpetual and non-exclusive easement over, across, through and upon that portion of the Building 1200 Property which is more particularly described in Exhibit B attached hereto and incorporated herein by reference (the "Easement Property"), for the purposes of providing ingress to and egress from the Lots and Corporate Parkway, a public roadway.

A paved drive, with curbing and gutters (the "Access Drive"), has heretofore been constructed on portions of the Easement Property. The Access Drive currently serves the Building 1200 Property only; however, Grantor and Grantee desire that that portion of the Access Drive situated within the Easement Property be subject to common use by the Authorized Parties in connection with the Building 1200 Property and each of the Lots.

NOW, THEREFORE, in consideration of the premises, the mutual covenants and agreements hereinafter set forth, the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Definitions and Rules of Construction.**

(a) In addition to the other definitions set forth in this Agreement, as used throughout this Agreement, the following defined terms shall have the meanings set forth below, which meanings shall be applicable to both the singular and plural forms and tenses of such terms:

(i) **"Applicable Rate"** shall mean simple interest at a rate equal to the lesser of eighteen percent (18%) per annum or the highest rate which may be charged by applicable law.

(ii) **"Authorized Parties"** shall mean either Grantor's or Grantee's, as the case may be, agents, employees, representatives, tenants (together with the agents, employees, guests and invitees of such tenants), guests, invitees and licensees. In addition, Grantor's Authorized Parties shall include any other persons or parties to whom Grantor has heretofore or may hereafter grant rights in, to or the use of the Easement Property or any portion thereof.

(iii) **"Building 1200 Improvements"** shall mean any parking areas, parking spaces, walkways, sidewalks, access roads, drives and passageways situated on the Building 1200 Property other than the Access Road and any Improvements thereto constructed by the Owner of Proposed Lot 11C-2 pursuant to the terms and provisions of this Agreement.

(iv) **"City"** shall mean the City of Hoover, Alabama, a municipal corporation.

(v) **"Corporate Parkway"** shall mean Corporate Parkway, a public roadway which abuts and is contiguous with the Building 1200 Property and the Easement Property.

(vi) **"Declaration"** shall mean the Declaration of Covenants, Conditions and Restrictions for Meadow Brook Corporate Park South dated September 1, 1985 and recorded in Book 64, Page 91, in the Office of the Judge of Probate of Shelby County, Alabama, together with all amendments thereto.

(vii) **"Force Majeure"** shall mean and refer to any delays which are occasioned by or result from acts of God, any fire or other casualty, inclement weather, labor and material shortages, labor strikes, work stoppages, war, civil unrest, riots, governmental requirements, the failure of any Governmental Authority to timely issue any applicable permits or grant approvals, any revisions required by any Governmental Authority to any plans, drawings, specifications or other documents, instruments or agreements submitted to any Governmental Authority for review or approval and any other causes beyond the reasonable control of Grantor and/or Grantee, as the case may be.



(viii) **"Governmental Authority"** shall mean and refer to any and all City, county, state and federal governmental or quasi-governmental agencies, bureaus, departments, divisions or regulatory authorities.

(ix) **"Governmental Requirements"** shall mean any and all statutes, laws, ordinances, code provisions, rules, regulations, requirements and directives of any Governmental Authority.

(x) **"Improvements"** shall mean those improvements, if any, to the Access Road and the Easement Property required by the City in connection with the resubdivision of Lot 11C into the Lots which will be made by the Owner of Proposed Lot 11C-2, including, without limitation, the widening of, or any other improvements required to be made to, the Access Drive, the construction of deceleration lanes within Corporate Parkway and the widening of any median cuts on Corporate Parkway.

(xi) **"Maintenance Costs"** shall mean all reasonable costs and expenses incurred by Grantor in the maintenance, repair and replacement of the Access Drive and any Improvements constructed thereon by the Owner of Proposed Lot 11C-2 pursuant to the terms and provisions of this Agreement, including, specifically, the reasonable costs and expenses incurred by Grantor with respect to the following: (1) the patching, repaving, resurfacing and re-striping (if necessary) of the Access Drive; and (2) repairing and replacing any curbing and gutters constituting a part of the Access Drive and any Improvements thereto.

(xii) **"Owner"** shall mean the then owner of each of the Lots and their respective successors and assigns. The term "Owner" shall also mean and include Grantee for so long as Grantee is the fee simple owner of either of the Lots.

(xiii) **"Plans and Specifications"** shall mean the plans and specifications for the Improvements to be prepared by the then Owner of Proposed Lot 11C-2, together with a construction schedule for the commencement and completion of such Improvements.

(xiv) **"Proposed Lot 11C-1"** shall mean that portion of Lot 11C which is more particularly shown on the proposed subdivision plat of Lot 11C which is attached hereto as Exhibit A and incorporated herein by reference. Proposed Lot 11C-1 constitutes a Lot.

(xv) **"Proposed Lot 11C-2"** shall mean that portion of Lot 11C which is more particularly shown on the proposed subdivision plat of Lot 11C which is attached hereto as Exhibit A and incorporated herein by reference. Proposed Lot 11C-2 constitutes a Lot.



(b) For the purposes of this Agreement, except as otherwise expressly provided herein to the contrary or unless the context otherwise requires:

(i) The terms “include”, “including”, and similar terms shall be construed as if followed by the phrase “without being limited to”;

(ii) The terms “herein”, “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Paragraph or other subdivision or Exhibit;

(iii) All Recitals set forth in, and all Exhibits to, this Agreement are hereby incorporated in this Agreement by reference; and

(iv) All references in this Agreement (1) to Grantor and Grantee shall specifically include the respective successors and assigns of Grantor and Grantee and (2) to Grantee shall specifically include all Owners of the Lots and their respective successors and assigns.

2. **Grant of Easement with Respect to Access Drive and Easement Property.**  
Subject to the terms and provisions set forth in Paragraph 3 below, Grantor does hereby grant, bargain, sell, convey and assign to Grantee forever, a permanent, perpetual and non-exclusive easement over, across, through, under and upon those portions of the Access Drive situated within the Easement Property for the purposes of providing vehicular and pedestrian access to and from each of the Lots and Corporate Parkway.

3. **Nature of Easement.**

(a) The easement granted pursuant to Paragraph 2 above (i) shall be and is appurtenant to and shall serve and benefit both of the Lots, (ii) shall be and is a covenant running with the Easement Property and the Lots, (iii) shall be and is binding upon and shall inure to the benefit of Grantor and Grantee, (iv) shall, subject to the provisions of Paragraph 3(d) below, be used in common by Grantee and Grantor and their respective Authorized Parties, (v) shall benefit only the Lots and no other real property situated adjacent to or in close proximity with the Lots shall be entitled to exercise any of the easement rights granted herein to Grantee, (vi) shall not be used by Grantee or Grantee’s Authorized Parties for any purposes except for those expressly set forth in this Agreement and (vii) shall be subject to all of the remaining terms and provisions of this Paragraph 3.

(b) The creation and grant of the easement over and upon the Easement Property pursuant to this Agreement shall not be deemed a dedication of any portion of the Access Drive or the Easement Property to any Governmental Authority and does not create any rights of any kind in the general public in or to the Access Drive or the Easement Property. Grantor and Grantee each covenant and agree that no fences or other obstructions shall be erected, placed, installed or permitted on, across or upon any portion of the Easement Property upon which the Access Drive is located; provided, however, that Grantor shall have the right, in its sole and absolute discretion, to take any action which may be reasonably necessary to prevent



any portion of the Access Drive and the Easement Property from becoming publicly dedicated roadways so long as such action does not materially and adversely interfere with, interrupt or impede access to and from any of the Lots and Corporate Parkway.

(c) Except for the Access Drive and Easement Property described herein, no other portions of the Building 1200 Property, including, without limitation, any of the Building 1200 Improvements, are subject to any of the terms and provisions of this Agreement. In no event shall any of the easement and other rights granted herein to Grantee be deemed to include any parking rights within or with respect to any of the parking areas situated on any portion of the Building 1200 Property. Grantee agrees to cooperate in good faith with Grantor in monitoring the use of the Building 1200 Improvements and requiring that Grantee's Authorized Parties not utilize any of the Building 1200 Improvements. The parties agree to jointly cooperate with each other in insuring that the Access Drive and any Improvements thereto are kept and maintained free of trash and other debris.

(d) Notwithstanding anything provided herein to the contrary, Grantor reserves the right, in its sole and absolute discretion, (i) at its sole cost and expense, to modify, relocate, improve and otherwise alter the Easement Property and the Access Drive at any time and from time to time, without being required to obtain any prior consent or approval of Grantee, so long as any such modification, relocation, improvement or alteration to the Easement Property and the Access Drive does not materially and adversely interfere with, interrupt or impede access to and from any of the Lots and Corporate Parkway and (ii) at any time and from time to time, to grant to any other persons or parties access, utility and other rights and easements to use any portion of the Access Drive and the Easement Property, without being required to obtain the consent or approval of Grantee so long as the exercise of such rights and easements do not materially and adversely affect the rights and easements granted to Grantee pursuant to this Agreement and do not materially and adversely interfere with, interrupt or impede access to and from any of the Lots and Corporate Parkway.

#### 4. **Improvements to Access Drive.**

(a) If, as a condition to the City's approval of the resubdivision of Lot 11C into two (2) Lots, the City requires that any Improvements be made to the Easement Property or the Access Drive, then the Owner of Proposed Lot 11C-1 shall be solely responsible for making all such required Improvements. Any Improvements to be made to the Easement Property by the Owner of Proposed Lot 11C-1 shall be diligently prosecuted and undertaken in accordance with following terms and conditions:

(i) Prior to commencement of construction of any Improvements on the Easement Property, the Owner of Proposed Lot 11C-1 shall, at its sole cost and expense, cause Plans and Specifications for the Improvements and a construction schedule for the Improvements to be prepared and submitted to Grantor for review and approval, which approval shall not be unreasonably withheld or delayed by Grantor. In addition, the Owner of Proposed Lot 11C-1 shall also be solely responsible for obtaining all necessary approvals of the Plans and Specifications from the City and any boards or bodies under the Declaration



whose approval is required prior to the making of any of the Improvements. The Owner of Proposed Lot 11C-1 shall also be responsible for satisfying all Governmental Requirements, including, without limitation, obtaining all licenses and permits requirement to be obtained from any Governmental Authorities, in connection with the construction of the Improvements;

(ii) Following approval of the Plans and Specifications by Grantor, the Owner of Proposed Lot 11C-1 shall, at its sole cost and expense, cause the Improvements to be constructed on or within the Easement Property in accordance with the Plans and Specifications approved by Grantor and the remaining terms and provisions of this Paragraph 4;

(iii) Any widening of the Access Drive shall occur on that portion of the Easement Property lying closest to the Lots (*i.e.*, west of the Access Drive) and shall not interfere with or otherwise adversely affect any of the Building 1200 Improvements or any landscaping situated on the Building 1200 Lot;

(iv) All construction activities undertaken by the Owner of Proposed Lot 11C-1 on any portion of the Easement Property in connection with the construction of the Improvements shall be prosecuted in a good, workmanlike and first-class manner in accordance with the Plans and Specifications approved by Grantor and all applicable Governmental Requirements and in such a manner so as to cause as little interference with pedestrian and vehicular access, ingress and egress to and the use of the Access Drive by Grantor and Grantor's Authorized Parties. The Owner of Proposed Lot 11C-1 will implement and enforce prudent safety and traffic control measures at all times during the construction of the Improvements on the Easement Property so as to minimize any risk of personal injury or property damage resulting from any such construction activities;

(v) During the construction of the Improvements, the Owner of Proposed Lot 11C-1 shall provide and maintain, at its sole cost and expense, and shall require its general contractor who is constructing the Improvements to also provide and maintain, commercial general liability insurance coverage (including contractual liability coverage regarding the indemnification obligations hereinafter set forth) for bodily injury or property damage with a combined single limit of not less than \$2,000,000.00 for each occurrence, which commercial general liability insurance policy shall name the then owner of the Building 1200 Property as an additional insured thereunder. All insurance required to be maintained hereunder shall be issued by companies having a Best rating of A-/X or higher and shall be issued on the current ISO form. Certificates of insurance evidencing the foregoing coverages shall be delivered to the then owner of the Building 1200 Property prior to the commencement of any construction activities on or within any portion of the Easement Property;



(vi) The Owner of Proposed Lot 11C-1 shall and does indemnify, agree to defend and hold Grantor harmless from and against any and all claims, demands, damages, costs, liabilities and expenses, including reasonable attorneys' fees, which Grantor may suffer, pay or incur as a result of:

(1) any injury or damage to person (including death) or property occurring in, on or upon the Easement Property arising during the construction of any Improvements on the Easement Property or caused by or resulting from any negligent acts or omissions or willful or intentional acts or omissions of the Owner of Proposed Lot 11C-1 or any of its respective agents, employees, contractors or invitees in connection with the construction of any such Improvements on the Easement Property; and

(2) any mechanics', materialmen's, and/or laborers' liens arising from or related to any work performed or labor or materials provided in connection with the construction of any Improvements on the Easement Property, and, in the event any portion of the Easement Property or the Building 1200 Property shall become subject to any lien as a result of such work, then the Owner of Proposed Lot 11C-1 shall promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or posting such bond or other security as shall be required by law to obtain such release and discharge;

(vi) All costs and expenses relating to the construction of any Improvements, including, without limitation, the costs and expenses of associating professionals and the costs associated with obtaining all necessary licenses or permits to undertake any such construction work, shall be paid for solely by the Owners, which costs and expenses shall be divided among the Owners on the basis that the gross acreage of the Lot owned by each Owner bears to the gross acreage of all of the Lots;

(vii) The Owners shall promptly repair and replace any improvements on the Building 1200 Property, including, specifically, landscaping, which may be damaged or destroyed in connection with the construction of any of the Improvements;

(viii) Construction of the Improvements on the Easement Property must commence within six (6) months from the date of this Agreement and must be completed on or before six (6) months following commencement of such construction work, subject, in each case, to extensions thereof resulting from matters of Force Majeure; and



(ix) Following completion of the Improvements on the Easement Property, (1) ownership of all of the Improvements shall be deemed vested in Grantor, (2) no further improvements of any nature may be made by Grantee (including the Owners of the Lots) to the Easement Property or Access Drive without the prior written consent and approval of Grantor, which may be withheld or conditioned in Grantor's sole discretion, and (3) the terms and provisions of Paragraphs 4(a)(i) through 4(a)(viii) shall confer no further construction rights upon Grantee or the Owners.

(b) To the extent the Plans and Specifications approved by Grantor reflect that any Improvements will be made to portions of the Building 1200 Property lying outside of the Easement Property and lying west of the Access Drive, then Grantor agrees, subject to its approval of the Plans and Specifications, to modify and amend this Agreement to add additional portions of the Building 1200 Property to the Easement Property.

5. **Maintenance of Access Drive and Improvements.**

(a) Grantor covenants and agrees, subject to its receipt of the pro rata share of Maintenance Costs from the Owners of the Lots to at all times maintain the Access Drive (and any Improvements thereto) in good condition and repair, reasonable wear and tear and damage by fire, casualty and condemnation excepted, so that, subject to the terms and provisions of Paragraph 3 above, the Owners of the Lots and their respective Authorized Parties have the right to full use and enjoyment of the easement to the Access Drive as granted herein.

(b) The Owner of each Lot covenants and agrees with Grantor to pay its prorata share of all Maintenance Costs, which prorata share shall be equal to a fraction, the numerator of which shall be the gross square footage of all buildings situated on such Owner's Lot and the denominator of which shall be the combined gross square footage of all buildings situated on the Building 1200 Property and all of the Lots. For the purposes of this Agreement, (i) the building currently situated on the Building 1200 Property shall be deemed to contain 134,000 gross square feet, (ii) the building to be constructed on Proposed Lot 11C-1 shall be deemed to contain 8,000 gross square feet and (iii) the building to be constructed on Proposed Lot 11C-2 shall be deemed to contain 24,000 gross square feet; provided, however, that if at any time after the date hereof, (1) any additional buildings are constructed on the Building 1200 Property or the Lots or any existing buildings situated on the Building 1200 Property or the Lots are altered or otherwise improved to add additional gross square footage to any buildings situated thereon or (2) the actual gross square footage of any buildings situated on either of the Lots is different from that set forth above, then, in either event, the prorata share of Maintenance Costs payable by the Owners of the Lots shall be recalculated on the basis of the actual gross square footage of the buildings situated on the Building 1200 Property and the Lots.

(c) In the event the Owner of any Lot fails to pay its prorata share of the Maintenance Costs within thirty (30) days following written notice from Grantor, which notice shall specify the amount of Maintenance Costs payable by such Owner, then such failure to pay by such Owner shall constitute a default hereunder and the unpaid balance thereof which remains unpaid after said 30-day period shall bear simple interest at the Applicable Rate until such amount has been paid in full to Grantor. Furthermore, in the event Grantor elects to take any



legal action to collect any amounts due from any such delinquent Owner, then such delinquent Owner agrees to pay all attorneys' fees and expenses, court costs and all other costs and expenses paid or incurred by Grantor in collecting any amounts due and owing from such defaulting Owner to Grantor.

6. **Default.**

(a) In the event any Owner fails to perform any of its respective obligations under this Agreement, which failure to perform continues for more than 30 days following the giving of written notice by Grantor (or such longer period of time to the extent performance by any Owner is delayed by reasons of Force Majeure), then Grantor shall have the right, at its option, to undertake any of the following actions:

(i) Perform, on behalf of such Owner, those obligations of such Owner which created such default, in which event all reasonable costs and expenses paid or incurred by Grantor in curing any such default shall be due and payable in full by the defaulting Owner on written demand from Grantor. Any amounts due and payable by any defaulting Owner to Grantor which are not paid in full within ten (10) days following written demand from Grantor shall bear interest at the Applicable Rate until such amounts are paid in full; and/or

(ii) Exercise all other rights and remedies available to Grantor at law or in equity including, without limitation, seeking injunctive relief to enjoin such action or inaction.

(b) In the event Grantor fails to perform any of its obligations under this Agreement, which failure to perform continues for more than 30 days (the "Grantor Cure Period") following the giving of written notice by any Owner to Grantor (or such longer period of time to the extent performance by Grantor is delayed by reasons of Force Majeure), then any Owner shall have the right, at its option, to undertake any of the following actions:

(i) To the extent Grantor's failure to perform any of its obligations hereunder results in a loss of reasonable access to either of the Lots, then the Owners of the Lots, jointly or severally, shall have the right, at their option, to perform, on behalf of Grantor, those obligations of Grantor which are reasonably necessary to restore reasonable access to the Lots so long as (1) any Owner who desires to exercise the rights granted to the Owners pursuant to this Paragraph 6(b)(i) has provided to Grantor an additional written notice at any time after the expiration of the Grantor Cure Period (subject to extensions thereof to the extent performance by Grantor is delayed by reasons of Force Majeure) indicating that Grantor is in default hereunder and specifying the nature of the work which such Owner will undertake to cure such default by Grantor and (2) Grantor has not, within two (2) business days following the giving of such additional notice, commenced in good faith to cure such default. All reasonable costs and expenses paid or incurred by any Owner in curing any such default by Grantor shall be due and payable in full by Grantor on written demand from any



Owner. Any amounts due and payable by Grantor to any Owner which are not paid in full within ten (10) days following written demand from any Owner shall bear interest at the Applicable Rate until such amounts are paid in full; and/or

(ii) Exercise all other rights and remedies available to any Owner at law or in equity including, without limitation, seeking injunctive relief to enjoin such action or inaction.

(c) All reasonable costs and expenses paid or incurred by any non-defaulting party as a result of any default hereunder by a defaulting party, including, without limitation, attorneys' fees and expenses and court costs, shall be paid by the defaulting party to the non-defaulting party.

7. **Indemnity.** Grantee shall and does indemnify, agree to defend and hold Grantor harmless from and against any and all claims, demands, damages, costs, liabilities and expenses, including reasonable attorneys' fees, which Grantor may suffer, pay or incur as a result of any injury or damage to person (including death) or property occurring in, on or upon the Easement Property arising out of the use of the Access Drive by Grantee or any of Grantee's Authorized Parties to the extent caused by or resulting from any negligent acts or omissions or willful or intentional acts or omissions of Grantee or any of Grantee's Authorized Parties; provided, however, that (a) the foregoing indemnification obligations of Grantee shall not apply or extend to any claims, demands, damages, costs, liabilities and expenses, including reasonable attorneys' fees, to the extent caused by or resulting from the default, breach or non-performance by Grantor of any of its obligations under this Agreement or the negligence or willful misconduct of Grantor or any of Grantor's Authorized Parties and (b) at such time as any of the Lots are transferred and conveyed to any third party, then the grantor/transferor of such Lot shall be released from any further obligations under this Paragraph 7 to the extent first accruing following the effective date of such a transfer or conveyance.

8. **Miscellaneous.**

(a) This Agreement may not be modified, amended or terminated except by written instrument executed by the then Owner of the Building 1200 Property and the then Owners of all of the Lots.

(b) Time is of the essence in the performance by each party hereto of its respective obligations hereunder.

(c) Whenever a period of time is prescribed herein for action to be taken by any party to this Agreement, the party taking the action shall not be liable or responsible for, and there shall be excluded from the computation for any such period of time, any delays due to or resulting from matters of Force Majeure.

(d) This Agreement embodies the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior written or oral agreements and undertakings of the parties relating to the subject matter of this Agreement.



(e) The paragraph headings and captions used herein are for convenience of reference only and shall in no way define, limit, describe or restrict the scope or intent of this Agreement or in any way affect the terms or provisions hereof.

(f) Whenever the context requires or permits, the use of the masculine gender shall be deemed to include the feminine, the singular shall include the plural and vice versa.

(g) If any provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(h) This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.

(i) Any and all notices required or permitted to be given hereunder shall be deemed to have been given upon the deposit of the same in the United States mail, first-class mail, postage prepaid and addressed to Grantor or Grantee at the following addresses (or to such other addresses or to such other persons as may be designated in writing from time to time by either party pursuant to the terms and provisions of this Paragraph 8(i)):

If to Grantor: Meadow Brook North, L.L.C.  
c/o Daniel Realty Services, L.L.C.  
3595 Grandview Parkway, Suite 400  
Birmingham, Alabama 35243  
Attention: Meadow Brook

With a copy to: The Prudential Insurance Company of America  
Arbor Circle South  
8 Campus Drive, 4th Floor  
Parsippany, New Jersey 07054  
Attention: Asset Manager – Meadow Brook

If to Grantee: Daniel Realty Company, LLC  
3595 Grandview Parkway, Suite 400  
Birmingham, Alabama 35243  
Attention: Chief Financial Officer

(j) Grantor does not make any representations to Grantee regarding whether the City will approve the resubdivision of Lot 11C into two (2) Lots or whether any applicable approvals for the Improvements will be granted by the City or under the Declaration.




IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement as of the day and year first above written.

**GRANTOR:**

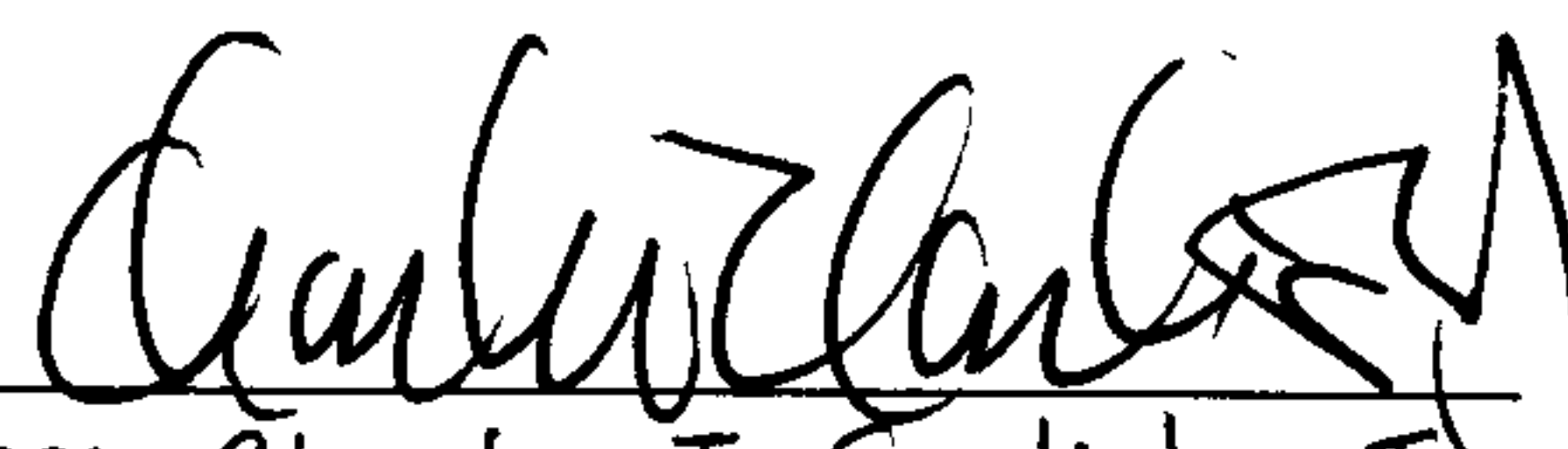
**MEADOW BROOK NORTH, L.L.C., a**  
Delaware limited liability company

By: **THE PRUDENTIAL INSURANCE  
COMPANY OF AMERICA, a New Jersey  
corporation, Its Member**

By:   
Name: Allen J. Green  
Title: VP

By: **DANIEL REALTY COMPANY, LLC, an**  
Alabama limited liability company formerly  
known as Daniel Realty Company, an  
Alabama general partnership, Its Member

By: Daniel Realty Corporation, an  
Alabama corporation, Its Manager


By:   
Name: Charles T. Carlisle, Jr.  
Title: Sr. Vice President



**GRANTEE:**

**DANIEL REALTY COMPANY, LLC**, an Alabama limited liability company formerly known as Daniel Realty Company, an Alabama general partnership, Its Member

By: Daniel Realty Corporation, an Alabama corporation, Its Manager

By:   
Name: Charles T. Carlisle, Jr.  
Title: Sr. Vice President

STATE OF New Jersey )  
COUNTY OF Morris )

I, the undersigned, a notary public in and for said county, in said state, hereby certify that, Allen J. Green, whose name as Vice President of PRUDENTIAL INSURANCE COMPANY OF AMERICA, a New Jersey corporation, as a Member of MEADOW BROOK NORTH, L.L.C., a Delaware limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation in its capacity as a Member of the aforesaid limited liability company.

Given under my hand and official seal this 6 day of December, 2004.

  
Notary Public

[NOTARIAL SEAL]

My commission expires: 3/6/07



STATE OF ALABAMA     )  
                                     :  
COUNTY OF JEFFERSON   )

I, the undersigned, a notary public in and for said county, in said state, hereby certify that Charles T. Carlisle, Jr., whose name as Sr. Vice President of DANIEL REALTY CORPORATION, an Alabama corporation, as Manager of DANIEL REALTY COMPANY, LLC, an Alabama limited liability company, as a Member of MEADOW BROOK NORTH, L.L.C., a Delaware limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation in its capacity as Manager of the aforesaid limited liability company.

Given under my hand and official seal this 1st day of December, 2004.

Chris Tortorici

Notary Public

[NOTARIAL SEAL]

My commission expires: March 3, 2008

STATE OF ALABAMA     )  
                                     :  
COUNTY OF JEFFERSON   )

I, the undersigned, a notary public in and for said county, in said state, hereby certify that Charles T. Carlisle, Jr., whose name as Sr. Vice President of DANIEL REALTY CORPORATION, an Alabama corporation, as Manager of DANIEL REALTY COMPANY, LLC, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation in its capacity as Manager of the aforesaid limited liability company.

Given under my hand and official seal this 1st day of December, 2004.

Chris Tortorici

Notary Public

[NOTARIAL SEAL]

My commission expires: March 3, 2008

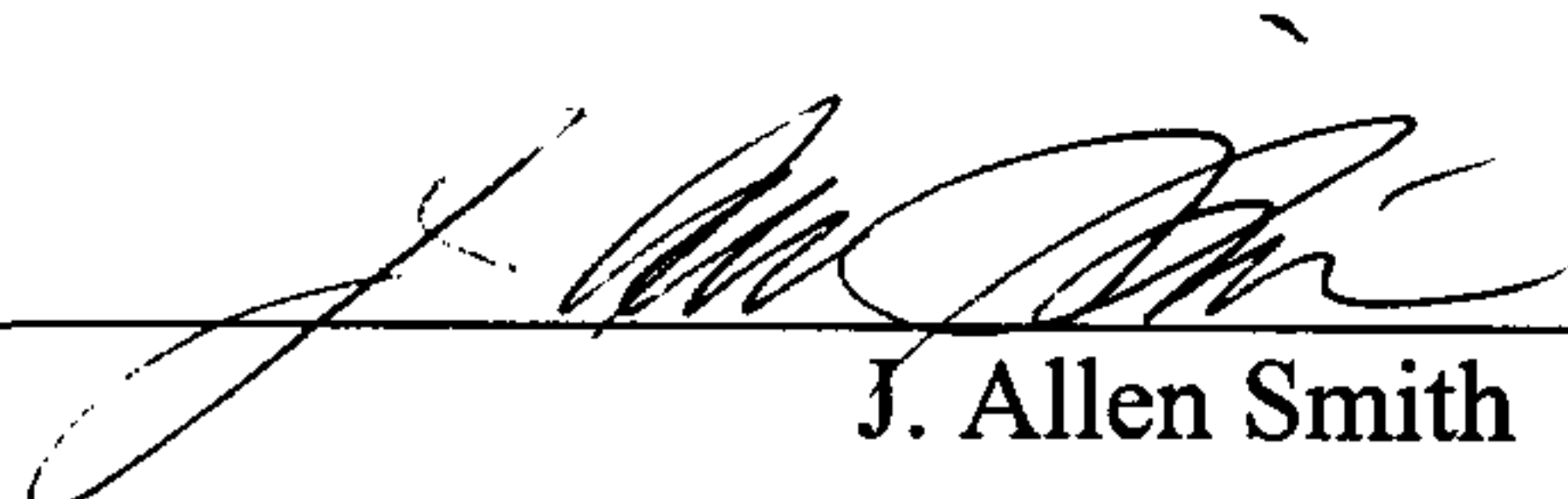
This instrument prepared by  
Stephen R. Monk  
Bradley Arant Rose & White LLP  
One Federal Place  
1819 Fifth Avenue North  
Birmingham, AL 35203-2104  
(205) 521-8000

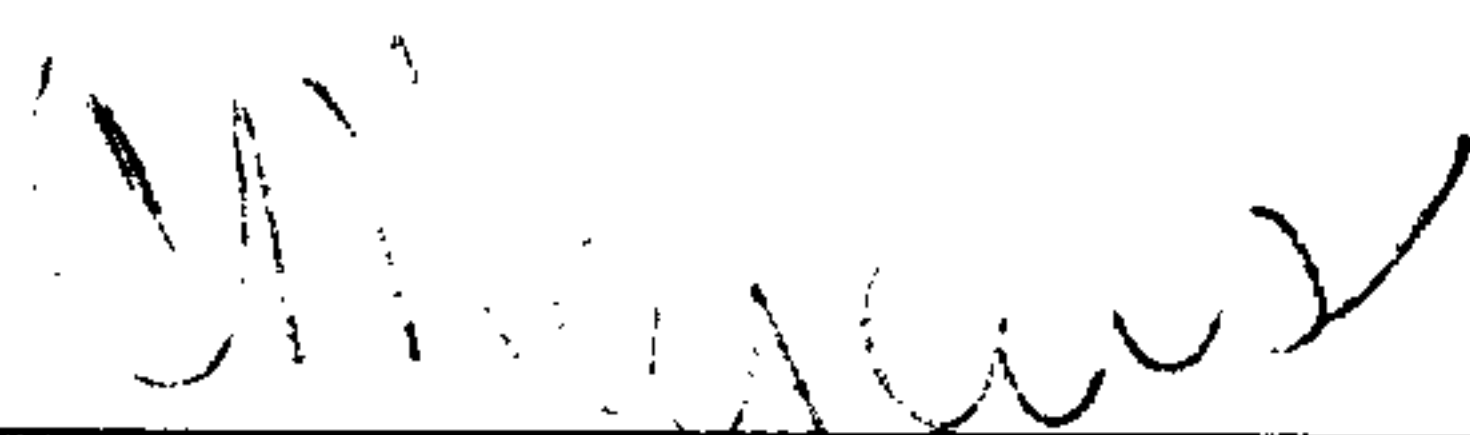


**CONSENT AND APPROVAL OF EXECUTIVE COMMITTEE**

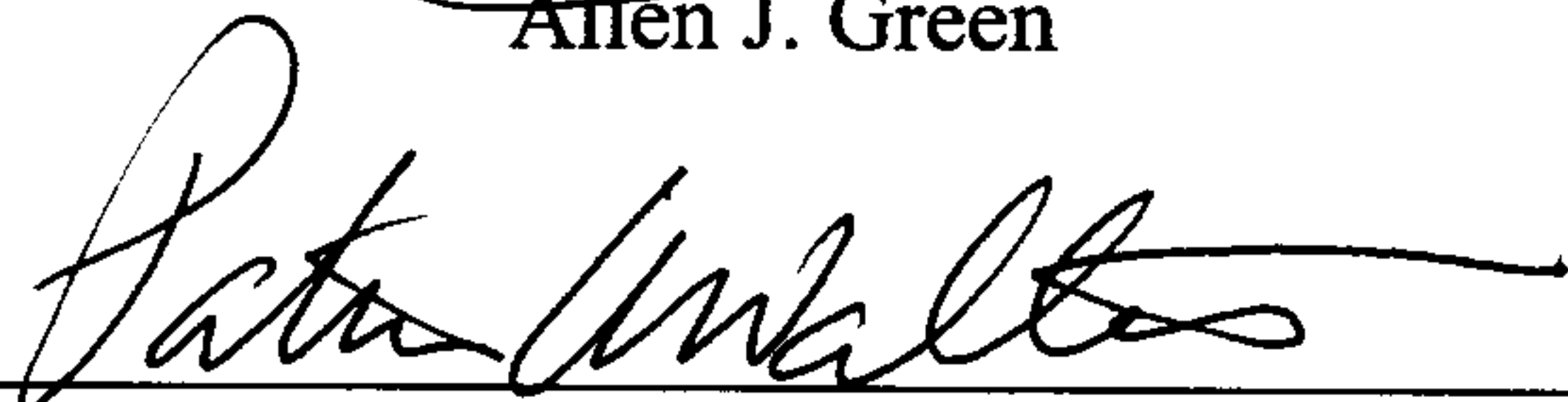
The undersigned, constituting all of the members of the Executive Committee of MEADOW BROOK NORTH, L.L.C., a Delaware limited liability company, have joined in the execution of this Easement Agreement in order to acknowledge their consent to and approval of the foregoing Easement Agreement.

Dated as of the 6<sup>th</sup> day of December, 2004.

  
\_\_\_\_\_  
J. Allen Smith

  
\_\_\_\_\_  
Catherine S. Marcus

  
\_\_\_\_\_  
Allen J. Green

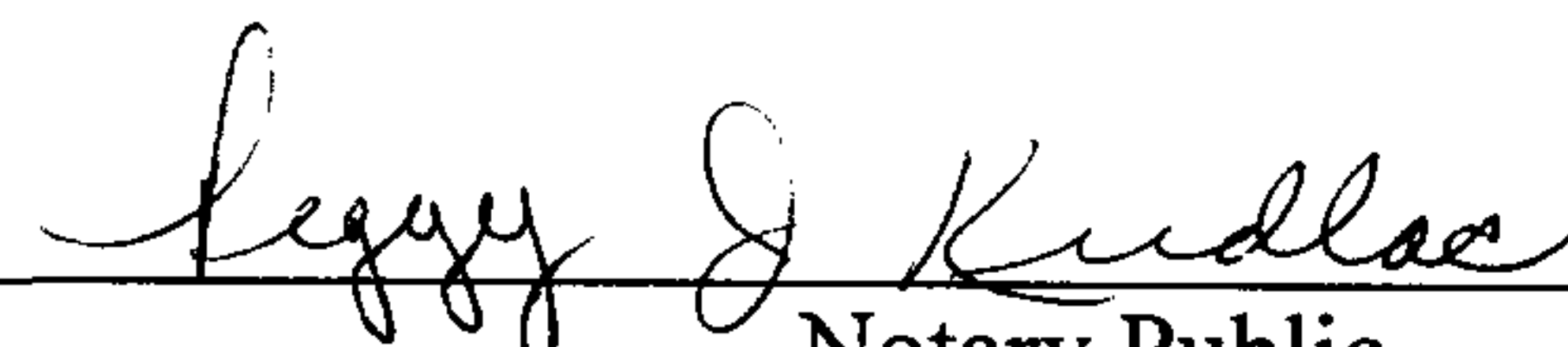
  
\_\_\_\_\_  
Patrick A. Walters

\_\_\_\_\_  
John C. Gorecki

STATE OF New Jersey )  
COUNTY OF Morris )

I, the undersigned, a notary public in and for said county, in said state, hereby certify that J. ALLEN SMITH, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 6 day of December, 2004.

  
\_\_\_\_\_  
Notary Public  
My commission expires: 3/6/07

[NOTARIAL SEAL]



## **CONSENT AND APPROVAL OF EXECUTIVE COMMITTEE**

The undersigned, constituting all of the members of the Executive Committee of MEADOW BROOK NORTH, L.L.C., a Delaware limited liability company, have joined in the execution of this Easement Agreement in order to acknowledge their consent to and approval of the foregoing Easement Agreement.

Dated as of the                      day of December, 2004.

J. Allen Smith

Catherine S. Marcus

## Allen J. Green

Patrick A. Walters

## John C. Gorecki

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

I, the undersigned, a notary public in and for said county, in said state, hereby certify that J. ALLEN SMITH, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

**Notary Public**

**My commission expires:**

[NOTARIAL SEAL]



STATE OF New Jersey )  
COUNTY OF Morris )

I, the undersigned, a notary public in and for said county, in said state, hereby certify that CATHERINE S. MARCUS, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 6 day of December 2004.

Leggy J Kudlac  
Notary Public  
My commission expires: 3/6/07

[NOTARIAL SEAL]

STATE OF New Jersey )  
COUNTY OF Morris )

I, the undersigned, a notary public in and for said county, in said state, hereby certify that ALLEN J. GREEN, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 6 day of December 2004.

Leggy J Kudlac  
Notary Public  
My commission expires: 3/6/07

[NOTARIAL SEAL]

STATE OF ALABAMA     )  
                                     :  
COUNTY OF JEFFERSON   )

I, the undersigned, a notary public in and for said county, in said state, hereby certify that PATRICK A. WALTERS, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 1st day of December, 2004.

Chris Tortorelli

Notary Public

My commission expires: March 3, 2008

[NOTARIAL SEAL]

STATE OF ALABAMA     )  
                                     :  
COUNTY OF JEFFERSON   )

I, the undersigned, a notary public in and for said county, in said state, hereby certify that JOHN C. GORECKI, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 1<sup>st</sup> day of December, 2004.

Chris Tortorelli

Notary Public

My commission expires: March 3, 2008

[NOTARIAL SEAL]



## CONSENT OF MORTGAGEE

THIS CONSENT OF MORTGAGEE (this "Consent") is made and entered into as of the 1<sup>st</sup> day of December, 2004 by **SOUTHTRUST BANK**, an Alabama banking corporation (as successor to SouthTrust Bank, National Association, a national banking association) ("Mortgagee").

### R E C I T A L S:

Mortgagee is the holder of that certain Mortgage dated as of July 28, 1999 (the "Mortgage") executed by Meadow Brook North, L.L.C., a Delaware limited liability company ("Mortgagor"), recorded as Instrument # 1999-31559 in the Office of the Judge of Probate of Shelby County, Alabama. The Mortgage encumbers all of the Building 1200 Property, as defined and described in the Easement Agreement (as defined below).

Mortgagee desires to consent to the execution and delivery by Mortgagor and Daniel Realty Company, LLC, an Alabama limited liability company, of that certain Easement Agreement dated as of the date hereof to which this Consent is attached (the "Easement Agreement") and to also agree that, following the foreclosure of the Mortgage, the rights and interests of all of the parties to the Easement Agreement shall not be affected thereby. *Capitalized terms not otherwise expressly defined herein shall have the same meanings given to them in the Easement Agreement.*

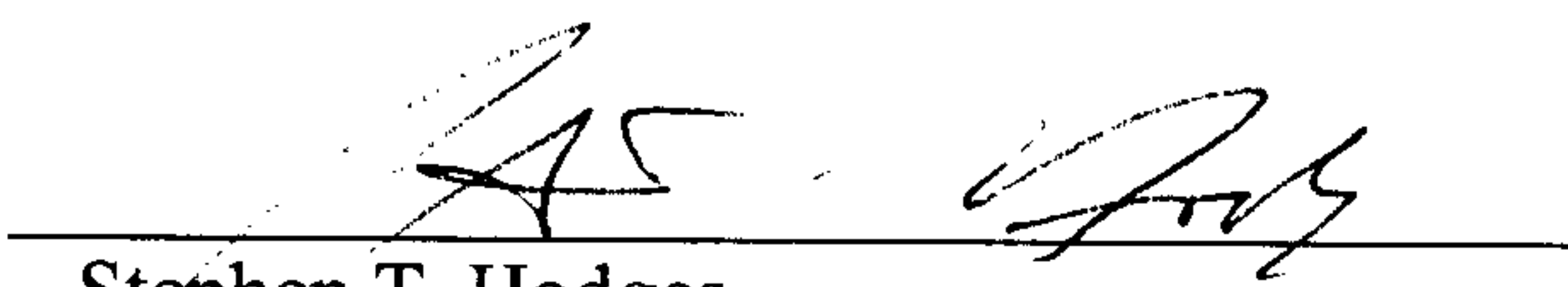
NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagee does hereby covenant and agree as follows:

1. Mortgagee does hereby consent to the execution of the Easement Agreement and the grant of the easement and other rights set forth therein.
2. Mortgagee does hereby agree that, upon and after a foreclosure of the Mortgage, the granting of any deed in lieu of foreclosure or the taking of any other action by Mortgagee under the Mortgage which results in Mortgagee acquiring title to or any interest in the Building 1200 Property or the Easement Property (collectively, a "Foreclosure Action"), then (a) the Easement Agreement and all of the rights and privileges under the Easement Agreement shall not be affected or disturbed by virtue of such Foreclosure Action, but shall continue in full force and effect, (b) each and every party to the Easement Agreement and their respective successors and assigns shall continue to have the right to enjoy all of the rights and privileges set forth in the Easement Agreement without any interference by any person claiming by, through or under Mortgagee, (c) Mortgagee or any purchaser at foreclosure, as applicable, shall succeed to the interests of Mortgagor under the Easement Agreement and Mortgagee shall be bound by all of the terms and provisions of the Easement Agreement; provided, however, that in no event shall Mortgagee (or any purchaser at foreclosure) be bound by any amendments or modifications to the Easement Agreement not consented to in writing by Mortgagee and (d) Mortgagee (or any purchaser at foreclosure) shall execute any documents or instruments reasonably requested by any of the parties to the Easement Agreement and their respective successors and assigns to

confirm that all of the terms and provisions of the Easement Agreement shall continue in full force and effect following any such Foreclosure Action.

1<sup>st</sup> IN WITNESS WHEREOF, Mortgagee has executed this Consent of Mortgagee as of the day of December, 2004.

**SOUTHTRUST BANK**, an Alabama banking corporation

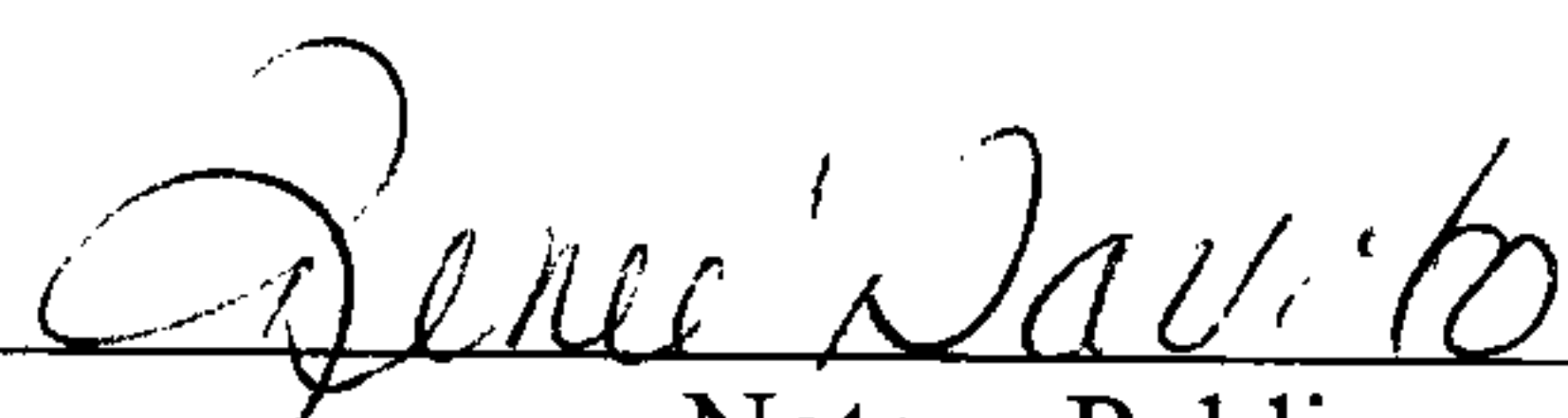
By:   
Stephen T. Hodges  
~~Group~~ Vice President  
*Senior*

STATE OF ALABAMA )  
:  
COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Stephen T. Hodges, whose name as Group Vice President of **SOUTHTRUST BANK**, an Alabama banking corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily, for and as the act of said banking corporation.

Given under my hand and official seal this the 1<sup>st</sup> day of December, 2004.



  
Notary Public  
My Commission Expires: 5/08/07



**EXHIBIT A**

**Proposed Resubdivision Plat for Lot 11C**

See Attached.





## EXHIBIT B

### Legal Description of Easement Property

An ingress and egress easement situated in Lot 1, Meadow Brook Corporate Park South Phase I, as recorded in Map Book 11, on Page 72, in the Office of the Judge of Probate, Shelby County, Alabama, being more particularly described as follows:

Begin at the Southwest corner of said Lot 1, point also being on the East right-of-way line of Corporate Parkway, as recorded in said Meadow Brook Corporate Park South Phase I also being on a curve to the left, having a central angle of 10 degrees, 07 minutes, 17 seconds and a radius of 373.84 feet; thence run in a Northeasterly direction along the arc of said curve and along the East right-of-way line of Corporate Parkway for a distance of 66.04 feet to a point; thence turn an angle to the right from the chord of said curve of 84 degrees, 56 minutes, 22 seconds and run in a Southeasterly direction for a distance of 25.83 feet to a point on a curve to the left, having a central angle of 52 degrees, 09 minutes, 45 seconds and a radius of 60.23 feet; thence run in a Southeasterly to Northeasterly direction along the arc of said curve for a distance of 54.83 feet to a point on a compound curve, having a central angle of 04 degrees, 55 minutes, 48 seconds and a radius of 163.33 feet; thence run in a Northeasterly direction along the arc of said curve for a distance of 14.05 feet to a point; thence turn 90 degrees to the right from the tangent of last stated curve and run in a Southeasterly direction for a distance of 64.38 feet to a point on the South line of said Lot 1, said point also on a curve to the right, having a central angle of 04 degrees, 55 minutes, 48 seconds and a radius of 227.71 feet; thence run along the arc of said curve and along the South line of said Lot 1 in a Southwesterly direction for a distance of 19.59 feet to a point on a compound curve, having a central angle of 52 degrees, 09 minutes, 45 seconds and a radius of 124.61 feet; thence run in a Southwesterly to Northwesterly direction along the arc of said curve and along the South line of said Lot 1 for a distance of 113.44 feet to a point; thence run tangent to last stated curve in a Northwesterly direction along the South line of said Lot 1 for a distance of 34.25 feet to the point of beginning; said easement containing 8,387 square feet, more or less.