


This instrument was prepared by and
upon recording should be returned to:


20080501000179700 1/19 \$84065.00
Shelby Cnty Judge of Probate, AL
05/01/2008 04:14:44PM FILED/CERT

R. Mike Yarbrow, Esq.
Burr & Forman LLP
420 N. 20th Street
3400 Wachovia Tower
Birmingham, AL 35203

**STATE OF ALABAMA
COUNTY OF SHELBY**

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (this "Mortgage"), made as of May 1, 2008, is between **DANIEL SENIOR LIVING OF INVERNESS I, LLC**, an Alabama limited liability company (hereinafter called the "Borrower"), Mortgagor, whose address is 3595 Grandview Parkway, Suite 400, Birmingham, Alabama 35243, Attention: John D. Gunderson, and **THE TEACHERS' RETIREMENT SYSTEM OF ALABAMA**, a body corporate of the State of Alabama (the "TRS") and **THE EMPLOYEES' RETIREMENT SYSTEM OF ALABAMA**, a body corporate of the State of Alabama (the "ERS") (the TRS and the ERS are sometimes herein referred to collectively as the "Lenders"), Mortgagees, whose address is 135 South Union Street, Montgomery, Alabama 36130, Attention: Private Placement Department.

W I T N E S S E T H:

Pursuant to those certain Promissory Notes of even date herewith, and as hereinafter described (said Promissory Notes, as the same may hereafter be renewed, extended or modified, being herein called the "Notes"), Borrower is or will become justly indebted to Lenders in the aggregate principal sum of up to Fifty Six Million and No/100 Dollars (\$56,000,000). The loan evidenced by the Notes is governed by that certain Loan Agreement dated of even date herewith each executed between Borrower and Lenders (as the same may hereafter be further modified or amended, the "Loan Agreement"), for the purpose of financing the costs of the acquisition, construction, furnishing and equipping of a retirement housing and related services project to be commonly known as Danberry at Inverness and located on the Property described below (the "Loan"). The Loan is and will be evidenced by the Loan Agreement and the Loan Documents described in the Loan Agreement. *All capitalized terms not otherwise defined in this Mortgage shall have the meanings given to them in the Loan Agreement.*

Payment and performance of the Borrower's obligations under the Loan Documents are guaranteed by Daniel Corporation, an Alabama corporation ("DC") and Daniel Realty Company, LLC, an Alabama limited liability company (the "Guarantor") pursuant to those certain Guaranty Agreements of even date herewith and payment and performance of certain of the Borrower's obligations under the Loan Documents are guaranteed by Guarantor pursuant to that certain Limited Guaranty Agreement of even date herewith (all such guaranty agreements, as the same may hereafter be modified or amended, being hereinafter collectively referred to as the "Guaranty").

As a condition precedent to making the Loan the Lenders have required that the Borrower execute and deliver this Mortgage as security for the Loan and the other Loan Obligations.

NOW, THEREFORE, in consideration of the indebtedness evidenced by the Notes and the other Loan Obligations, and to secure the prompt payment of same, including future advances up to such principal sum, with the interest thereon, and any extensions or renewals of same, and further to secure the performance of the covenants, conditions, and agreements as set forth in the Loan Documents and as hereinafter set forth, Borrower does hereby irrevocably grant, bargain, sell, convey, assign, transfer, mortgage, pledge and set over unto the Lenders, their successors and assigns, and grant to Lenders a security interest in, the following described land, real estate, buildings, improvements, appurtenances, fixtures, equipment, furnishings, furniture, and other personal property, all whether now owned or hereafter acquired, and including replacements, additions, accessions, substitutions, and products thereto (which, together with any additional such property hereafter acquired by the Borrower and subject to the lien of this Mortgage, or intended to be so, as the same may be from time to time constituted, is hereinafter sometimes referred to as the "Mortgaged Property") to-wit:

(a) All the tract(s) or parcel(s) of land more particularly described in Exhibit A attached hereto and by this reference made a part hereof (the "Property"); and

(b) All buildings, structures, and improvements of every nature acquired or paid for with the proceeds of the Loans and/or funds advanced by the Borrower pursuant to the Loan Agreement, including, but not limited to, all site work, mechanical systems, electrical systems, landscaping, 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 the Property or said buildings, structures or improvements, together with all items acquired in substitution therefor or as a renewal or replacement thereof; and

(c) All fixtures, personal property, furniture and equipment acquired with the proceeds of the Loan and/or funds advanced by Borrower pursuant to the Loan Agreement, including, but not limited to, beds, linens, televisions, telephones, carpeting, cash registers, computers, lamps, rehabilitation equipment, glassware, restaurant and kitchen equipment, recreation equipment and maintenance equipment, together with all equipment, personal property and fixtures acquired in substitution therefor or as a renewal or replacement thereof, and the Proceeds thereof; provided, however, that with respect to any items which are leased and not owned, the Mortgaged Property shall include the leasehold interest only, together with any options to purchase any of said items and any additional or greater rights with respect to such items hereafter acquired (but nothing herein shall permit the leasing of any such items except as otherwise expressly permitted in the Loan Agreement unless the Lenders' written consent is first obtained) ;

(d) All accounts (including accounts receivable) owned by Borrower and/or its Affiliates and arising from the operation of the Property, including but not limited to rights to payment for goods sold or leased or for services rendered not evidenced by any Instrument, and rights to payment from Reimbursement Contracts, and the Proceeds thereof received from the sale, exchange, transfer, collection or other disposition or substitution thereof;

(e) All general intangibles and other intangible property of Borrower arising out of or connected with the Property (other than Accounts, Rents, Instruments, Inventory and Permits);

(f) All instruments, chattel paper, documents or other writings obtained by Borrower from or in connection with the operation of the Property (including, without limitation, all ledger sheets, computer records and printouts, data bases, programs, books of account and files relating thereto);

(g) All leases or occupancy agreements between the Borrower and residents of the Property, the leases or occupancy agreements between the Borrower and the Operator, and all other leases with respect to any space in the Project;

(h) All licenses, permits and certificates of Borrower and any of its Affiliates used or useful in connection with the ownership, operation, use or occupancy of the Property including, without limitation, business licenses, state health department licenses, food service licenses, licenses to conduct business, certificates of need and all other permits, licenses and rights, obtained from any governmental, quasi-governmental or private person or entity whatsoever concerning the ownership, operation, use or occupancy of the Property and the Project; and

(i) All proceeds (whether cash or non-cash, moveable or immovable, tangible or intangible), including proceeds of insurance and condemnation, from the sale, exchange, transfer, collection, loss, damage, disposition, substitution or replacement of any of the Mortgaged Property.

All of the foregoing shall be deemed real property and conveyed by this Mortgage.

TOGETHER with all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Borrower, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, property, possession, claim, and demand whatsoever at law, as well as in equity, of the Borrower of, in and to the same, including but not limited to:

(a) All rent and other payments of whatever nature from time to time payable pursuant to the Leases and any other operating agreements, leases, subleases or other agreements for occupancy of any portion of the Project, or for retail space or other space at the Project (including, without limitation, rights to payment earned under leases or subleases for space in the Project for the operation of ongoing retail businesses such as newsstands, barbershops, beauty shops, physicians' offices, pharmacies and specialty shops) and all rents, profits, issues, and revenues of the Mortgaged Property from time to time accruing, whether under leases or tenancies now existing or hereafter created, reserving to Borrower, however, so long as Borrower is not in default hereunder, the right to receive and retain the rents, issues, and profits thereof; and

(b) All judgments, awards of damages, and settlements hereafter made resulting from condemnation proceedings or the taking of the Mortgaged Property or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Mortgaged Property or any part thereof, or to any rights appurtenant thereto, including any award for change of grade or streets.

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto the Lenders, their successors and assigns forever, subject however to the terms and conditions herein:

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Borrower shall pay or cause to be paid to the Lenders the principal and interest and other indebtedness (including future advances) payable in respect to the Notes and the other Loan Obligations, this Mortgage, and the other Loan Documents at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Borrower, and shall keep, perform, and observe all and singular the covenants and promises in the Notes, this Mortgage, and the other Loan Documents

expressed to be kept, performed, and observed by and on the part of the Borrower, all without fraud or delay, then this Mortgage, and all the properties, interest, and rights hereby granted, bargained, and sold shall cease, determine, and be void, and shall be discharged of record at the cost of the Borrower, which cost the Borrower agrees to pay, but shall otherwise remain in full force and effect.

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

ARTICLE 1

COVENANTS, AGREEMENTS, AND REPRESENTATIONS OF BORROWER

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

1.2 Warranty of Title. The Borrower represents and warrants that it is lawfully seized of an indefeasible estate in fee simple in the Property hereby mortgaged. The Borrower further represents and warrants that it has good and absolute title to all existing personal property hereby mortgaged, and that the Borrower has good right, full power and lawful authority to sell, convey, mortgage and grant a security interest in the Mortgaged Property in the manner and form set forth herein; that, except as otherwise set forth on Exhibit B Permitted Encumbrances attached hereto and by this reference made a part hereof, the Mortgaged Property 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, leases and anything of a similar nature, and that Borrower shall and will warrant and forever defend the title thereto unto the Lenders, their successors and assigns, against the lawful claims of all persons whomsoever.

1.3 Taxes, Utilities and Liens.

(a) Borrower shall pay, on or before the delinquency date thereof, all taxes, assessments, levies, license fees, permit fees and all other charges (in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen) of every character whatsoever (including all penalties and interest thereon) now or hereafter levied, assessed, confirmed or imposed on, or in respect of, or which may be a lien upon the Mortgaged Property, or any part thereof, or any estate, right or interest therein, or upon the rents, issues, income or profits thereof, and shall submit to Lenders satisfactory evidence of the due and punctual payment of all such taxes, assessments and other fees and charges. Borrower shall have the right before they become delinquent to contest or object to the amount or validity of any such tax, assessment, fee or charge by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving, modifying or extending Borrower's covenant to pay any such tax, assessment, fee or charge at the time and in the manner provided herein, unless Borrower has given prior written notice to Lenders of Borrower's intent to so contest or object, and unless (i) Borrower shall demonstrate to Lenders' satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Mortgaged Property, or any part thereof, to satisfy such tax, assessment, fee or charge prior to final determination of such proceedings; and (ii) if required by Lenders, Borrower shall furnish a good and sufficient bond and/or other surety as requested by and satisfactory to Lenders in an amount sufficient to fully pay the contested amount, with penalties, interest and other charges if Borrower should be unsuccessful in such contest; and (iii) Borrower shall diligently pursue such contest.

(b) Borrower shall pay, on or before the due date thereof, all taxes, assessments, charges, expenses, costs and fees which may now or hereafter be levied upon, or assessed or charged against, or incurred in connection with, the Notes, this Mortgage or any other Loan Documents.

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

(d) The Borrower shall pay promptly all charges for labor and materials and will not suffer any mechanic's, laborer's, statutory, or other lien to be filed against any of the Mortgaged Property, provided, however, that Borrower may contest any such lien in good faith by appropriate legal proceedings provided the lien is bonded off and removed as an encumbrance upon the Mortgaged Property. Lenders have not consented and will not consent to the performance of any work or the furnishing of any materials which might be deemed to create a lien or liens superior to the lien hereof.

(e) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes so as to affect adversely the Lenders, the entire balance of the principal sum secured by this Mortgage and all interest accrued thereon shall, at the option of the Lenders, become due and payable upon one hundred twenty (120) days written notice to Borrower.

1.4 Insurance. The Borrower will procure and pay for, deliver to, and maintain for the benefit of, the Lenders insurance policies and evidence of insurance covering, affecting or relating to the Mortgaged Property as required by the Loan Agreement. In the event of the foreclosure of this Mortgage or any other transfer of title to the Mortgaged Property in extinguishment of the indebtedness secured hereby, all right, title and interest of the Borrower in and to all insurance policies then in force shall pass to the purchaser or grantee.

Lenders are hereby authorized and empowered, at their option, to adjust or compromise any loss under any insurance policies on the Mortgaged Property, and Lenders are hereby authorized and empowered, at their option, to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses directly to the Lenders, instead of to the Borrower and Lenders jointly. After deducting from said insurance proceeds any reasonable costs and expenses incurred by them in the collection or handling of said fund, the Lenders shall apply the net proceeds in accordance with the terms of the Loan Agreement.

1.5 Quarterly Deposits. Borrower shall deposit with Lenders or a trustee or escrow agent selected by Lenders (all fees and expenses of such trustee or escrow agent to be paid by Borrower), on the due date of each payment under the Notes, an amount equal to one-fourth (1/4) of the yearly taxes and assessments and insurance premiums, all as reasonably estimated by the Lenders to be sufficient to pay such charges; said deposits to be held by the Lenders, the trustee or the escrow agent and to be used by Lenders to pay current taxes and assessments, insurance premiums, rents and other charges on the Mortgaged Property as the same accrue and are payable. Payment from said sums for said purposes shall be made by Lenders at their discretion and may be made even though such payments will benefit subsequent owners of the Mortgaged Property. Said deposits shall not be, nor be deemed to be, trust funds. Lenders agree to deposit or cause such funds to be deposited in an interest bearing account acceptable to Lenders, and to pay or cause to be paid such interest to Borrower upon the payment in full of the sums secured by this Mortgage. If said deposits are insufficient to pay the taxes and assessments, insurance premiums and other charges in full as the same become payable, Borrower will deposit such additional sum or sums as may be required in order for Lenders to pay such taxes and assessments, insurance premiums and other charges in full. Upon any Event of Default, Lenders may, at their option,

apply any money in the fund (including any interest earned thereon) relating from said deposits to the payment of the Loan Obligations in such manner as they may elect.

1.6 Condemnation. If all or any Material Portion (as hereinafter defined) of the Mortgaged Property shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire indebtedness secured hereby shall, at the Lenders' option, become immediately due and payable. A taking of the Mortgaged Property shall be deemed a taking of a "Material Portion" of the Mortgaged Property if such taking affects (i) any portion of the Improvements, (ii) any access from the Improvements to public roads, or (iii) any portion of the parking area of the Mortgaged Property which causes the remaining parking spaces to be less than the minimum parking spaces required by applicable law (and provided that Borrower may provide replacement spaces necessary to meet such minimum required parking).

The Borrower, immediately upon obtaining knowledge of the institution, or any proposed, contemplated or threatened institution, of any action or proceeding for the taking through condemnation of the Mortgaged Property or any portion thereof (a "Proceeding"), will notify the Lenders, and Lenders are hereby authorized, at their option, to commence, appear in and prosecute, through counsel selected by Lenders, in their own or in Borrower's name, any Proceeding relating to any condemnation. Subject to the terms hereof and the terms of the Loan Agreement, the Lenders shall be entitled to all compensation, awards, and other payments or relief therefor. So long as no Default or Event of Default exists, Borrower shall have the right to settle or compromise any claim for compensation; provided, however, that Lenders have rights of reasonable approval with respect to such settlement or compromise and provided further that all awards shall be paid direct to Lenders. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by the Borrower to the Lenders, and the Borrower agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as the Lenders may require. The Lenders, after deducting therefrom all their reasonable costs and expenses, including reasonable attorney's fees, may release any moneys so received by them from a Proceeding for the repair or restoration of the Mortgaged Property so taken in the manner set forth in Section 6.27 of the Loan Agreement or may apply the same in such manner as the Lenders shall determine to the reduction of the sums secured hereby in such order as Lenders may elect, whether or not then due, and without affecting the lien of this Mortgage as security for a remaining Loan Obligations, and any balance of such moneys shall be paid to the Borrower.

1.7 Care of the Mortgaged Property.

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

(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 Lenders. The Borrower may sell or otherwise dispose of, free from the lien of this Mortgage, furniture, furnishings, equipment, tools, appliances, machinery, fixtures or appurtenances, subject to the lien hereof, which may become worn out, undesirable, obsolete, disused or unnecessary for use in the operation of the Mortgaged Property, upon replacing the same by, or substituting for the same, other furniture, furnishings, equipment, tools, appliances, machinery, fixtures, or appurtenances not necessarily of the same character, but of at least equal value to the Borrower and costing not less than the amount realized from the property sold or otherwise disposed of, which shall forthwith become, without further action, subject to the lien of this Mortgage.

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

(d) The Lenders and their agents are hereby authorized to enter upon and inspect the Mortgaged Property at all reasonable times.

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

(f) Subject to Section 6.27 of the Loan Agreement, if all or any part of the Mortgaged Property shall be damaged by fire or other casualty, the Borrower will promptly restore the Mortgaged Property to the equivalent of its original condition, regardless of whether or not there shall be any insurance proceeds therefor. Subject to Section 6.27 of the Loan Agreement, if a part of the Mortgaged Property shall be physically damaged through condemnation, the Borrower will restore promptly, repair or alter the remaining portions of the Mortgaged Property in a manner satisfactory to the Lenders.

1.8 Further Assurances; After Acquired Property. At any time, and from time to time, upon request by the Lenders, the Borrower will make, execute and deliver or cause to be made, executed and delivered to the Lenders 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 Lenders any and all such other and further mortgages, instruments of further assurance, certificates and other documents as may, in the opinion of the Lenders, be necessary or desirable in order to effectuate, complete, enlarge, or perfect, or to continue and preserve the obligation of the Borrower under the Notes, this Mortgage and the other Loan Documents, and the lien of this Mortgage as a first and prior lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by the Borrower. Upon any failure by the Borrower so to do, the Lenders may make, execute, and record any and all such mortgages, instruments, certificates, and documents for and in the name of the Borrower and the Borrower hereby irrevocably appoints the Lenders the agent and attorney-in-fact of the Borrower so to do. The lien hereof will automatically attach, without further act, to all after acquired property attached to and/or used or useful in the operation of the Mortgaged Property or any part thereof.

1.9 Leases and Management Agreements Affecting Mortgaged Property. The Borrower will comply with and observe its obligations as landlord under all leases affecting the Mortgaged Property or any part thereof. If requested by Lenders, Borrower will furnish Lenders with executed copies of all leases now or hereafter created with respect to all or any part of the Mortgaged Property; and the form of all leases now or hereafter entered into must be approved by Lenders in advance of Borrower becoming obligated upon any such leases. Borrower will not accept payment of rent in advance for periods in excess of thirty (30) days. Borrower shall not enter into any lease or permit any tenancy (except for residents of the Projects), or enter into or permit any management agreement, of or affecting the Mortgaged Property without the prior written consent of the Lenders.

1.10 Appraisals. At the Lenders' request, Borrower will permit the Lenders or their agents to enter upon and appraise the Mortgaged Property at any time and from time to time, and Borrower will cooperate with and provide any information requested in connection with such appraisals. Borrower will reimburse Lenders for the cost of any such appraisals (provided that Borrower shall only be required to reimburse Lenders for any appraisal of the Mortgaged Property obtained by Lenders after the occurrence of an Event of Default or otherwise not more than once each calendar year).

1.11 Expenses; Indemnity. Borrower will pay or reimburse the Lenders for all reasonable attorneys' fees, costs and expenses incurred by the Lenders in any suit, action, legal proceeding or dispute of any kind in which the Lenders are made a party or appear as party plaintiff or defendant, affecting the Loan Obligations, this Mortgage or the interest created herein, or the Mortgaged Property, or any appeal thereof, including, but not limited to, any foreclosure action, any condemnation action involving the Mortgaged Property or any action to protect the security hereof, any bankruptcy or other insolvency proceeding commenced by or against the Borrower, any lessee of the Mortgaged Property (or any part thereof), or any Guarantor of any of the Loan Obligations, and any such amounts paid by the Lenders shall be added to the Loan Obligations and shall be secured by this Mortgage. Borrower will indemnify and hold Lenders harmless from and against all claims, damages, and expenses, including reasonable attorneys' fees and court costs, resulting from any action by a third party against Lenders relating to this Mortgage or the interest created herein, or the Mortgaged Property, including, but not limited to, any action or proceeding claiming loss, damage or injury to person or property, or any action or proceeding claiming a violation of any national, state or local law, rule or regulation, including Applicable Environmental Laws, provided Borrower shall not be required to indemnify Lenders for matters directly and solely caused by Lenders' misconduct or negligence. Borrower acknowledges that it has undertaken the obligation to pay all intangibles taxes and documentary taxes now or hereafter due in connection with the Loan Obligations and the Loan Documents, and Borrower agrees to indemnify and hold Lenders harmless from any intangibles taxes and documentary stamp taxes, and any interest or penalties, which the Lenders may hereafter be required to pay in connection with the Loan Obligations or the Loan Documents. The agreements of this Section shall expressly survive satisfaction of this Mortgage and repayment of the Loan Obligations.

1.12 Performance by Lenders of Defaults by Borrower. Subject to the giving of any applicable notice and the expiration of any applicable cure periods expressly set forth in herein or in the other Loan Documents, if the Borrower shall default in the payment of any tax, lien, assessment, or charge levied or assessed against the Mortgaged Property; in the payment of any utility charge, whether public or private; in the payment of any 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 or the other Loan Documents, then the Lenders, at their option, may perform or observe the same, and all payments made for costs or incurred by the Lenders in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by the Borrower to the Lenders with interest thereon at a rate equal to two percent (2%) in excess of the rate then borne by the Notes. The Lenders shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium; of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. The Lenders are 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 Borrower or any person in possession holding under the Borrower.

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

1.14 Estoppel Affidavits. The Borrower within ten (10) days after written request from the Lenders shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Loan Obligations and whether or not any offsets or defenses exist against the Loan Obligations, and if such offsets or defenses exist, stating in detail the specific facts relating to each such offset or defense.

1.15 Representations and Warranties. In addition to the representations and warranties contained in Article 5 of the Loan Agreement, Borrower represents and warrants to Lenders, knowing that Lenders will rely on such representation and warranty as incentive to make the Loans to Borrower, that:

(a) The Mortgaged Property complies, or will comply, with all applicable laws, ordinances, rules and regulations, including, without limitation, the Americans with Disabilities Act and regulations thereunder, and all laws, ordinances, rules and regulations relating to zoning, building codes, and set back requirements.

1.16 Compliance with Applicable Environmental Laws. Borrower represents and warrants to Lenders that the Mortgaged Property and the Borrower are not in violation of or subject to any existing, pending or, to the best of Borrower's knowledge, threatened investigation or inquiry by any governmental authority or any response costs or remedial obligations under any Applicable Environmental Laws 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; that Borrower has not obtained and is not required to obtain any permits, licenses or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures or equipment forming a part of the Mortgaged Property by reason of any Applicable Environmental Laws (other than Alabama Department of Environmental Management and U.S. Army Corps of Engineers permits, which have been obtained by Borrower prior to the date of this Mortgage); that Borrower has taken all steps necessary to determine and has determined that no petroleum products, oil, hazardous substances, or solid wastes have been disposed of or otherwise released on the Mortgaged Property; and that the use which Borrower has made, makes or intends to make of the Mortgaged Property will not result in the location on or disposal or other release of any petroleum products, oil, hazardous substances or solid waste on or to the Mortgaged Property. Borrower agrees to notify Lenders in the event that any governmental agency or other entity notifies Borrower that it may not be in compliance with any Applicable Environmental Laws. Borrower agrees to permit Lenders to have access to the Mortgaged Property at all reasonable times in order to conduct, at Borrower's expense, any tests which Lenders deem are necessary to ensure that Borrower and the Mortgaged Property are in compliance with all Applicable Environmental Laws. Borrower and Guarantor have executed and delivered to Lenders a separate Indemnity Agreement with respect to environmental matters, the terms and conditions of which are incorporated herein by this reference.

ARTICLE 2 EVENTS OF DEFAULT; REMEDIES

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

(a) The occurrence of an Event of Default under the Loan Agreement which is not cured within applicable cure periods (if any) specified therein; or

(b) The sale, transfer, lease, assignment, or other disposition, voluntary or involuntary, of all or any portion of the Mortgaged Property or any interest therein in violation of the Loan Agreement, unless the prior written consent of the Lenders is obtained (which consent may be withheld in Lenders' sole discretion); or

(c) The creation or suffering to exist by the Borrower of any lien or encumbrance on the Mortgaged Property, other than liens permitted under Section 7.1 of the Loan Agreement and permitted encumbrances, if any, set forth on Exhibit B to which this Mortgage is subject; or

(d) Any representation or warranty provided herein, in any other Loan Document, or in any document or instrument evidencing, securing, or guaranteeing the indebtedness secured hereby or in any document, instrument, financial statement or other material given or provided by or on behalf of Borrower in connection with the Loans, is false in any material respect at the time when the facts therein set forth were stated or certified.

Notwithstanding anything herein, any requirement of notice specified above shall be deemed deleted if Lenders are prevented from giving notice by bankruptcy or other applicable law, and the cure period (if any) shall be measured from the date of the event or failure rather than from the date of notice. Nothing herein shall require notice except where expressly set forth herein or in the Loan Agreement.


2.2 Acceleration of Maturity. If an Event of Default shall have occurred, then the entire principal amount of the indebtedness secured hereby with interest accrued thereon, and all other Loan Obligations from Borrower to Lenders under the Loan Agreement, shall, at the option of the Lenders, become due and payable without notice or demand, time being of the essence; and any omission on the part of the Lenders to exercise such option when entitled to do so shall not be considered as a waiver of such right.

2.3 Right of Lenders to Enter and Take Possession.

(a) If an Event of Default shall have occurred, the Borrower, upon demand of the Lenders, shall forthwith surrender to the Lenders the actual possession of the Mortgaged Property, and if and to the extent permitted by law, the Lenders or their agents may enter and take possession of all or any part of the Mortgaged Property, and may exclude the Borrower and its agents and employees wholly therefrom, and take possession of the books, papers and accounts of the Borrower.

(b) Upon every such entering upon or taking of possession, the Lenders may hold, store, use, operate, manage, and control the Mortgaged Property and conduct the business thereof, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments, and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty, and other property; (ii) insure or keep the Mortgaged Property insured; (iii) manage and operate the Mortgaged Property and exercise all the rights and powers of the Borrower in Borrower's name or otherwise with respect to the same; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted to the Lenders, all as the Lenders from time to time may determine to be to their best advantage; and the Lenders may collect and receive all the income, revenues, rents, issues and profits 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 charges as the Lenders may determine to pay; (E) other proper charges upon the Mortgaged Property or any part thereof; and (F) the reasonable compensation, expenses, and disbursements of the attorneys and agents of the Lenders; shall apply the remainder of the moneys so received by the Lenders to the payment of accrued interest, to the payment of tax and insurance deposits as required in this Mortgage, and to the payment of overdue installments of principal and any other unpaid Loan Obligations, all in such order and priority as the Lenders may determine. Anything in this Section to the contrary notwithstanding, Lenders 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 Lenders of their rights under this Mortgage, and Lenders shall be liable to account only for the rents, incomes, issues and profits actually received by Lenders.

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


20080501000179700 11/19 \$84065.00
Shelby Cnty Judge of Probate, AL
05/01/2008 04:14:44PM FILED/CERT

2.4 Receiver.

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

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

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

2.6 Power of Sale. If an Event of Default shall have occurred, Lenders, either in person or by auctioneer, shall have the right to sell the Mortgaged Property (or such part or parts thereof as Lenders may from time to time elect to sell), at the front or main door to the courthouse of the county (or division thereof) where the Mortgaged Property, or any substantial and material part of the Mortgaged Property, is located, at public outcry for cash to the highest bidder, after first giving notice of the description of the property to be sold and the time, place and terms of such sale by publication once a week for three (3) consecutive weeks prior to said sale in some newspaper published in the county or counties in which the property to be sold is located (or if no newspaper is published in any such county, then in a newspaper published in an adjoining county), or as otherwise required by applicable law; and, upon payment of the purchase money, Lenders or any person conducting the sale for Lenders are authorized to execute to the purchaser at said sale, for and in the name of the Borrower, a good and sufficient deed or other conveyance to the property so purchased. Lenders may bid at said sale (and may apply such bid as a credit against the indebtedness then due and owing from Borrower to Lenders secured by this Mortgage) and purchase the Mortgaged Property, or any part thereof, if the highest bidder therefor. Borrower hereby waives any requirement that the Mortgaged Property be sold in separate tracts or any other manner, and agrees that Lenders may, at their election, sell the Mortgaged Property en masse regardless of the number of parcels included in the Mortgaged Property. The power of sale granted herein is a continuing power and shall not be fully exercised until all of the Mortgaged Property not previously sold shall have been sold or all the indebtedness and other Loan Obligations have been satisfied in full.

2.7 Application of Foreclosure Proceeds. 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 as follows:

(a) First, to the expenses of making the sale, including a reasonable attorney's fee for such services as may be necessary in the collection of said indebtedness or the foreclosure of this Mortgage (and attorneys' fees and expenses shall become absolutely due and payable whenever foreclosure is commenced);

(b) Second, to the repayment of any money, with interest thereon at a rate equal to two percent (2%) in excess of the rate borne by the Notes, which Lenders may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided;

(c) Third, to the payment and satisfaction of the Loan Obligations in such order of priority as Lenders shall determine in their sole discretion; and

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

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

2.9 Waiver of Exemption. Borrower waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this Mortgage, and Borrower waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the Mortgaged Property be set off against any part of the indebtedness secured hereby.

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

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

2.12 Delay or Omission No Waiver. No delay or omission of the Lenders or of any holder of the Notes to exercise any right, power, or remedy accruing upon any Default or Event of Default shall exhaust or impair any such right, power, or remedy or shall be construed to be a waiver of any such

Default or Event of Default, or acquiescence therein; and every right, power, and remedy given by this Mortgage to the Lenders may be exercised from time to time and as often as may be deemed expedient by the Lenders.

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

If the Lenders (a) grant forbearance or an extension of time for the payment of any sums secured hereby; (b) take other or additional security for the payment thereof; (c) waive or do not exercise any right granted herein or in the Notes or the other Loan Documents; (d) release any part of the Mortgaged Property from the lien of this Mortgage or otherwise change any of the terms of the Notes or this Mortgage or the other Loan Documents; (e) consent to the filing of any map, plat, or replat thereof; (f) consent to the granting of any easement thereon; or (g) make or consent to any agreement subordinating the lien or charge hereof, any such act or omission shall not release, discharge, modify, change, or affect the original liability under the Notes, this Mortgage or otherwise of the Borrower or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety, or guarantor; nor shall any such act or omission preclude the Lenders from exercising any right, power, or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Lenders, shall the lien of this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, the Lenders, at their option, without notice to any person or corporation hereby are authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as they might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

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

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

ARTICLE 3 SECURITY INTEREST; MISCELLANEOUS

3.1 Security Agreement; Lien on Personal Property. This Mortgage creates a lien on and grants a security interest in that part of the Mortgaged Property which constitutes personal property under any applicable Uniform Commercial Code, and it shall constitute a security agreement under the Alabama Uniform Commercial Code (the "UCC") or other law applicable to the creation of liens on personal property. Borrower covenants and agrees to execute, file, and refile such financing statements, continuation statements or other documents as Lenders shall require from time to time with respect to such personal property. This Mortgage shall constitute a financing statement under the UCC with Borrower as the "debtor" and Lenders as the "secured party", and their respective addresses are set forth

in the heading to this instrument. If an Event of Default occurs, the Lenders shall have all rights and remedies of a secured party under the UCC.

3.2 Non-recourse Loan. Except as hereinafter provided and as set forth in the Guaranty, the indebtedness secured hereby will be nonrecourse as to, and Lenders hereby waive any right to any money judgment against, the Borrower and each of its members (except as provided in the Guaranty) (the "Exculpated Parties") whether the money judgment arises from an action brought upon the Notes or by an action brought for a deficiency judgment. Lenders hereby agree that the liability on the part of the Exculpated Parties is limited to the Mortgaged Property and the rents and revenues thereof, and the other security granted to Lenders under this Mortgage and the other Loan Documents, including without limitation, any proceeds of insurance or condemnation, and Lenders agree to look solely to the Mortgaged Property and the other security granted to Lenders under the other Loan Documents and the rents, revenues, security, policies, proceeds and awards in satisfaction of the indebtedness evidenced hereby in the case of an Event of Default hereunder or under any of the other Loan Documents. Notwithstanding the foregoing, the Borrower and, with respect to items (i), (ii), (iii), (iv), (v), (vii), (viii), (ix) and (x) below, the Guarantor, shall at all times be subject to personal liability to the Lenders, as applicable, for all costs, liabilities, charges, claims and damages for or arising out of any of the following: (i) the rents, issues, profits and proceeds of the Mortgaged Property or any of the other Projects are received by the Borrower or Guarantor after an Event of Default and are not applied to the payment of ordinary and customary operating expenses of the Mortgaged Property or to the Loan; (ii) the rents, issues, profits and proceeds of the Mortgaged Property or any of the other Projects are received by the Borrower and Guarantor after acceleration of the maturity of the indebtedness evidenced by the Notes pursuant to a right on the part of Lenders so to accelerate the same, and are not applied to the payment of ordinary and customary operating expenses of the Projects or to the Loan; (iii) the rents or other income arising from the occupancy of the Mortgaged Property or any other Projects are collected for more than each current month in advance or to the extent payments in the nature of security for the performance of any of lessee's obligations under any lease of all or a part of the Mortgaged Property or any of the other Projects are held by the Borrower at the time of the occurrence of a breach of condition or covenant referred to in clause (i) above or acceleration referred to in clause (ii) above, and are not delivered to Lenders; (iv) any material misrepresentation by the Borrower or the Guarantor or on behalf of either of them or by any of their Affiliates made in the Lender's Commitment Letter, herein, in any of the Loan Documents or in any other document executed by the Borrower or the Guarantor in connection with the Loans; provided, however, that the Guarantor's liability shall be limited to any material misrepresentation made by the Borrower or the Guarantor which is willful and intentional or which constitutes gross negligence on the part of the Borrower or the Guarantor; (v) any condemnation proceeds or insurance proceeds available from the Mortgaged Property or any of the other Projects shall be applied by the Borrower or the Guarantor other than as permitted or required in the Loan Agreement or herein or as otherwise approved in writing by Lenders; (vi) to the failure to keep the Mortgaged Property or the other Projects insured in compliance with the Loan Documents; (vii) the indemnities contained in the Loan Documents as to violations of Applicable Environmental Laws arising after the date of the environmental report delivered to the Lenders on the Mortgaged Property and the other Properties as a condition of the closing of each of the Loans; (viii) the Borrower or any of its Members or Affiliates receive fees, distributions or other payments which are prohibited by the Loan Documents; (ix) the Project is sold, transferred or otherwise disposed of in violation of the provisions of the Loan Documents; or (x) the failure to timely complete any of the Projects as required in the Loan Agreement by the Scheduled Completion Date. Moreover, nothing contained herein shall in any way limit or impair the liability of the Guarantor as set forth in the Guaranty.

3.3 Successors and Assigns Included in Parties. Whenever in this Mortgage one of the parties hereto is named or referred to, the heirs, administrators, executors, successors, and assigns of such party shall be included, and all covenants and agreements contained in this Mortgage by or on behalf of the

Borrower or by or on behalf of Lenders shall bind and inure to the benefit of its permitted respective heirs, administrators, executors, successors, and assigns, whether so expressed or not.

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

3.5 Invalid Provisions to Affect No Others. If any one or more of the covenants, agreements, terms, or provisions contained in this Mortgage or in the Notes shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining covenants, agreements, terms, and provisions contained herein and in the Notes shall in no way be affected, prejudiced, or disturbed thereby and shall be enforced to the greatest extent permitted by law.

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

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

3.8 Applicable Law. This mortgage shall be governed by the laws of the State of Alabama.

3.9 Waiver of Jury Trial. BORROWER HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (I) ARISING OUT OF OR IN ANY WAY PERTAINING OR RELATED TO THIS MORTGAGE OR THE LOANS, OR (II) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF LENDERS AND BORROWER WITH RESPECT TO THIS MORTGAGE, THE LOAN DOCUMENTS, OR THE LOANS, OR IN CONNECTION WITH THE TRANSACTIONS RELATED HERETO OR CONTEMPLATED HEREBY OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES HEREUNDER, OR THE CONDUCT OF THE RELATIONSHIP OF THE PARTIES HERETO, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. BORROWER AGREES THAT LENDERS MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED AGREEMENT OF BORROWER IRREVOCABLY TO WAIVE ITS RIGHTS TO TRIAL BY JURY, AND THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN BORROWER AND LENDERS SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

3.10 Assignment. This Mortgage is assignable by Lenders and any assignment hereof by Lenders shall operate to vest in the assignee all rights and powers herein conferred upon and granted to Lenders.


3.11 Time of the Essence. Time is of the essence with respect to each and every covenant, agreement and obligation of Borrower under this Mortgage, the Notes and all other Loan Documents.

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

BORROWER:

DANIEL SENIOR LIVING OF INVERNESS I, LLC,
an Alabama limited liability company

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

By: 
Name: JOHN D. GUNDERSON
Title: SR. VICE PRESIDENT

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that John D. Gunderson, whose name as Sr. Vice President of Daniel Management Corporation, an Alabama corporation, whose name as Manager of Daniel Senior Living of Inverness I, 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 the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation and limited liability company, on the day the same bears date.


Given under my hand and seal this 1st day of ~~April~~ ^{May}, 2008.

NOTARY SEAL


Notary Public

My commission expires: MY COMMISSION EXPIRES FEBRUARY 15, 2009

EXHIBIT A


20080501000179700 17/19 \$84065.00
Shelby Cnty Judge of Probate, AL
05/01/2008 04:14:44PM FILED/CERT

Legal Description



20080501000179700 18/19 \$84065.00
Shelby Cnty Judge of Probate, AL
05/01/2008 04:14:44PM FILED/CERT

Parcel 1:

Lot 1, according to the Final Plat of Danberry Village, as recorded in Map Book 39, Page 139, in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

Parcel 2:

A tract of land situated in the South 1/2 of the Southwest 1/4 of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at a found 1 inch crimp iron, being the Northeast Corner of the SE 1/4 of the SW 1/4 of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama and run in a Southerly direction along the East line of said 1/4 - 1/4 Section a distance of 237.22 feet to a point; thence 90°00'00" to the right in a Westerly direction a distance of 1260.66 feet to a set Walter Schoel Engineering Company, Inc. capped 5/8 inch iron (CA# 003), being the Point of Beginning of the parcel herein described, said point being a P.O.C. (Point on Curve) of a curve to the right having a radius 225.00 feet and a central angle of 7°24'19"; thence 84°13'39" to the left (angle measured to tangent) in a Southerly direction along the arc of said curve a distance of 29.08 feet to the P.T. (Point of Tangent), being a set Walter Schoel Engineering Company, Inc. capped 5/8 inch iron (CA# 003); thence tangent to said curve in a Southerly direction a distance of 107.11 feet to a set Walter Schoel Engineering Company, Inc. capped 5/8 inch iron (CA# 003), being the P.C. (Point of Curve) of a curve to the left having a radius of 1255.00 feet and a central angle of 0°04'50"; thence in a Southerly direction along the arc of said curve a distance of 1.76 feet to a P.O.C. (Point on Curve), being a set Walter Schoel Engineering Company, Inc. capped 5/8 inch iron (CA# 003); thence 90°04'50" to the right (angle measured from tangent) in a Westerly direction a distance of 125.06 feet to a set Walter Schoel Engineering Company, Inc. capped 5/8 inch iron (CA# 003); thence 90°00'00" to the right in a Northerly direction distance of 116.87 feet to a set Walter Schoel Engineering Company, Inc. capped 5/8 inch iron (CA# 003); thence 90°00'00" to the right in a Easterly direction a distance of 60.30 feet to a set Walter Schoel Engineering Company, Inc. capped 5/8 inch iron (CA# 003); thence 39°11'11" to the left in a Northeasterly direction a distance of 33.24 feet to a set Walter Schoel Engineering Company, Inc. capped 5/8 inch iron (CA# 003); thence 39°11'11" to the right in a Easterly direction a distance of 37.12 feet to the Point of Beginning.

Along with the Beneficial Rights to the Easement Agreement, by and between Daniel Senior Living of Inverness II, LLC, and Daniel Senior Living of Inverness I, LLC, dated May 1, 2008, to be recorded in the Probate Office.

NOTE: Instrument to be properly executed and recorded in the Probate Office, before closing.

EXHIBIT B

Permitted Encumbrances

All items set forth on Schedule B - Section II to First American Title Insurance Company commitment for title insurance, File No. 157835, as marked by or on behalf of Lenders in connection with the closing of the Loan.