



STATE OF ALABAMA )

SHELBY COUNTY )

1331

**MORTGAGE  
AND SECURITY AGREEMENT**

THIS INDENTURE is being executed by DANIEL PROPERTIES, XV, a Virginia limited partnership as Mortgagor (hereinafter referred to as "Borrower") to AMSOUTH BANK N.A. (herein referred to as "Lender").

The Lender is making a loan to Borrower in the principal amount of \$5,600,000 (the "Loan"), evidenced by a Promissory Note of even date herewith in the amount of \$5,300,000, which Promissory Note will be amended and restated by that certain Restated Note in the amount of up to \$5,600,000 on the date of Conversion specified in the Term Loan Agreement between the parties of even date herewith and an additional advance of up to \$300,000 will be made under and secured by the Restated Note, the said date of Conversion and additional advance being subject to fulfillment of the conditions of the Term Loan Agreement. The said Promissory Note and the Restated Note and any extensions, renewals, modifications, or substitutions of either are referred to as the "Note." In consideration of the Loan, to induce the Lender to make the Loan, and to secure the prompt payment of same, with the interest thereon, and any extensions, amendments, restatements, or renewals of same, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth, the Borrower has this day executed an Assignment of Rents, Additional Interest Agreement, Assignment of Borrower's Interest in Contract Documents, Term Loan Agreement, and various other loan documents (all of the foregoing, together with the abovesaid Note, being referred to herein sometimes as the "Loan Documents"), and Borrower hereby does irrevocably grant, bargain, sell, alien, remise, release, confirm and convey to Lender, and to its successors and assigns, in fee simple, with right of entry and possession as provided below, the following described property (all of which as described in (A) through (H) below, is referred to herein as the "Mortgaged Property"):

(A) The real property (the "property") described in the attached Exhibit A which is incorporated into this Mortgage by reference, and all minerals, oil, gas and other hydrocarbon substances on the property, as well as all development rights, air rights, water, water rights, and water stock relating to the property, and all estates, rights, titles, interest, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever in any way belonging, relating or appertaining to any of the property, and the reversion and reversions, remainder and remainders, rents, issues, profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law and in equity of the Borrower of, in and to the same, including but not limited to the other rights herein enumerated.

(B) All present and future structures, buildings, improvements, septic systems, sewage lines and equipment, appurtenances and fixtures of any kind on the property, whether now owned or hereafter acquired by Borrower, including but not limited to all apparatus, equipment and appliances used in connection with the operation or occupancy of the property, such as heating and air-conditioning systems and facilities used to provide any utility services (including sewage services), refrigeration, ventilation, laundry, drying, dishwashing, garbage disposal, recreation or other services on the property, including without limitation all swimming pools, tennis courts, and related facilities, and all window coverings, and pumping stations and other equipment used in connection with the existing septic system and any sewage line to be constructed on the property, it being intended and agreed that all such items will be conclusively considered to be a part of the real property conveyed by this Mortgage, whether or not attached or affixed to the property (the "Improvements").

(C) All appurtenances of the property and all rights of the Borrower in and to any streets, roads or public places, easements or rights of way, relating to the property, including but not limited to all rights of the Borrower to any septic system, sewer line, agreements, permits, easements, equipment, licenses, resolutions, and related rights pertaining to any sewer and septic system constructed on the property.

Please return this instrument to  
GUY V. MARTIN, JR.

NORTH HASKELL SLAUGHTER YOUNG & LEWIS  
800 First National - Southern Natural Bldg.  
BIRMINGHAM, ALABAMA 35203

This instrument was prepared by  
GUY V. MARTIN, JR.  
800 First National - Southern Natural Bldg.  
BIRMINGHAM, ALABAMA 35203

(D) All of the rents, royalties, profits and income of the property, and all rights of the Borrower under all present and future leases affecting the property, including but not limited to any security deposits.

(E) All proceeds and claims arising on account of any damage to or taking of the property or any Improvements thereon or any part thereof, and all causes of action and recoveries for any loss or diminution in the value of the property or any Improvements.

(F) All building materials, equipment, fixtures and fittings of every kind or character now owned or hereafter acquired by the Borrower for the purpose of being used or useful in connection with the Improvements located or to be located on the property, whether such materials, equipment, fixtures and fittings are actually located on or adjacent to the property or not, and whether in storage or otherwise, wheresoever the same may be located. Property herein conveyed and mortgaged shall include, but without limitation, all lumber and lumber products, bricks, building stones and building blocks, sand and cement, roofing material, paint, doors, windows, hardware, nails, wires and wiring, plumbing and plumbing fixtures, sewer lines and pumping stations and fixtures and equipment, heating and air conditioning equipment and appliances, electrical and gas equipment and appliances, pipes and piping, ornamental and decorative fixtures, furniture, ranges, refrigerators, dishwashers, disposals, and in general all building materials and equipment of every kind and character used or useful in connection with said Improvements.

(G) All general intangibles relating to the development or use of the property, including but not limited to all governmental permits relating to construction on the property, all names under or by which the property or any Improvements on the property may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, and all trademarks and goodwill in any way relating to the property; and

(H) All water stock relating to the property, all shares of stock or other evidence of ownership of any part of the property that is owned by the Borrower in common with others, and all documents of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the property.

This instrument secures:

(1) Payments and performance of the Borrower's indebtedness and obligations under the Note evidencing the Loan (the "Note"), including all extensions, renewals, amendments, restatements, substitutions and modifications of and to the Note, and further specifically including the Restated Note described above, which Restated Note is included in the term "Note" wherever such term is used herein.

(2) The payment and performance of the Borrower's obligations under this Mortgage, the Additional Interest Agreement, and under all of the other Loan Documents.

(3) The payment of all sums advanced or paid out by the Lender under any provision of this Mortgage or the other Loan Documents or to protect the security of this Mortgage.

(4) The payment of the principal and interest on all other future loans or advances made by the Lender to the Borrower (or any successor in interest to the Borrower as the owner of all or any part of the Mortgaged Property) when the promissory note evidencing the loan or advance specifically states that it is secured by the Mortgage ("FUTURE ADVANCES"), including all extensions, renewals and modifications of any Future Advances.

(5) The payment and performance of the Borrower's obligations under all other present and future agreements executed by the Borrower in favor of the Lender and relating to the Note or any one or more of the Loan Documents; and the payment of any and all other indebtedness owing by the Borrower to the Lender.

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

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PROVIDED, HOWEVER, that these presents are upon the condition that, if the Borrower shall pay or cause to be paid to the Lender the principal and interest payable in respect to the Note and Additional Interest Agreement, 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 pay all other indebtedness due from Borrower to Lender, and shall keep, perform and observe all and singular the covenants and promises in the Note, this Mortgage, and in all of the other Loan Documents, and any renewal, extension or modification thereof, expressed to be kept, performed, and observed by and on the part of the Borrower, all without fraud or delay, then this Mortgage, and all the properties, interest and rights hereby granted, bargained, and sold shall cease, determine and be void, but shall otherwise remain in full force and effect.

## ARTICLE I

### COVENANTS OF BORROWER

In addition to covenants contained elsewhere herein, the Borrower covenants and agrees with the Lender as follows:

1. To pay and perform all indebtedness and obligations that are secured by this Mortgage in accordance with its terms.

2. Borrower covenants and represents that all of the Loan Documents have been duly executed and delivered and are valid and enforceable obligations of Borrower in accordance with the terms thereof. Borrower agrees to execute and deliver to the Lender on demand and at Borrower's cost and expense any documents, further required mortgages, and instruments of further assurance required or desired by Lender to effectuate, complete, or perfect, or to continue and preserve (a) the obligations of the Borrower under the Note, this Mortgage, all of the other Loan Documents, and (b) 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 of Borrower to do so, Lender may execute and record any such instruments for and in the name of Borrower and Borrower irrevocably appoints Lender the agent and the attorney-in-fact of Borrower to do so. The lien hereof will automatically attach, without further act, to all after-acquired property attached to and/or used in the operation of the Mortgaged Property.

3. (a) All of the existing and future rents, royalties, income and profits of the Mortgaged Property that arise from its use or occupancy are hereby absolutely and presently assigned to the Lender. Upon any default by the Borrower, Lender may in its discretion at any time without notice to the Borrower collect the rents, royalties, income and profits itself or by an agent or receiver. No action taken by the Lender to collect any rents, royalties, income or profits will make the Lender a "mortgagee-in-possession" of the Mortgaged Property. Possession by a court-appointed receiver will not be considered possession by the Lender. All rents, royalties, income and profits collected by the Lender or a receiver will be applied first to pay all expenses of collection, and then to the payment of all costs of operation and management of the Mortgaged Property, and then to the payment of the indebtedness and obligations secured by this Mortgage in whatever order the Lender directs in its absolute discretion and without regard to the adequacy of its security.

(b) Borrower will not execute any leases, or occupancy agreements affecting any of the Mortgaged Property (other than leases executed in the ordinary course of Borrower's business) without first having received the prior written approval from Lender of the form of the same (to be used in the ordinary course of leasing activities). After any default by Borrower under this Mortgage or any of the Loan Documents, any managing, leasing, or similar fees shall be subordinated to the lien of this Mortgage.

(c) Without the prior written consent of the Lender, the Borrower shall not accept prepayments of rent exceeding one month under any leases or occupancy agreements affecting any of the Mortgaged Property, nor in any manner impair the Borrower's interest in the rents, royalties, income and profits of the Mortgaged Property. The Borrower will perform all covenants of the lessor under any such leases or occupancy agreements. Upon the Lender's request, the Borrower will execute and deliver to Lender for recordation an Assignment of Leases on the Lender's form.

(d) If required by the Lender, each lease or occupancy agreement affecting any of the Mortgaged Property must provide, in a manner approved by the beneficiary, that the lease or occupancy agreement is junior and subordinate to the lien of this mortgage, and that the tenant will recognize as its lessor any person succeeding to the interest of the Borrower upon any foreclosure of this Mortgage.

(e) Nothing herein shall render Lender liable under any existing or future lease, regardless of the collection of rents thereunder, for any of the covenants or agreements of Borrower under such leases.

4. Without the prior written consent of the Lender, (a) the Borrower shall not encumber any interest in the Mortgaged Property or sell, contract to sell, lease with an option to purchase, or otherwise transfer any interest in the Mortgaged Property, and (b) the General Partner of Borrower (executing this instrument) shall not contract to sell, lease with option to purchase, or otherwise transfer any interest it has in Borrower as general partner of Borrower. Lender shall not be obligated to consent to any such encumbrance, sale, contract, lease, or other transfer [all said encumbrances, sales, contracts, leases, and other transfers described in subparagraphs (a) and (b) above being collectively referred to as a "Prohibited Transfer"], and Lender's consent may be withheld regardless of whether any Prohibited Transfer may or may not impair Lender's security or whether or not it may or may not be reasonable (commercially or otherwise) for Lender to consent to any Prohibited Transfer. Without limiting the foregoing, Lender's consent may, at the sole option of Lender, be conditioned upon (by way of illustration only and not being limited to): an increase in the interest rate, an approval of the credit of any such grantee, vendee, optionee, or transferee, a management contract acceptable to Lender with a manager acceptable to Lender, an assignment to Lender of any security given to Borrower in connection with the transaction, including without limitation, any purchase money second mortgage, and/or a change in any of the other terms and conditions of this Mortgage or in any of the related loan documents. Any Prohibited Transfer made without the consent of Lender shall be void. Provided, however, that Lender hereby consents to the execution by Borrower of a note or notes secured by a second and third mortgage on the Property in favor of Daniel Realty Corporation and/or Daniel International Corporation in the aggregate principal amount of \$585,600.00, executed solely for the purposes of securing payment of the balance of the purchase money for the property and in funding the difference between the Term Loan and the Construction Loan as such terms are defined in the letter Commitment giving rise to this loan dated August 10, 1984. The said mortgage shall be subordinated to this Mortgage in a subordination agreement acceptable to the Lender. Provided further, that no Prohibited Transfer shall occur upon merger, sale, consolidation, or other transfer of the stock ownership of the Fifteenth Daniel Realty Investment Corporation so long as the surviving or transferee corporation is wholly owned by Daniel International Corporation and/or by Daniel Realty Corporation or by wholly-owned subsidiaries of Daniel International Corporation and/or Daniel Realty Corporation.

5. (a) Borrower will not commit any waste on the Mortgaged Property or take any actions that might invalidate any insurance carried on the Mortgaged Property. Borrower will maintain the Mortgaged Property and all Improvements thereon in good condition and repair; no Improvements may be removed, demolished or materially altered without the prior written consent of Lender; and no personal property in which the Lender has a security interest may be removed from the Mortgaged Property unless it is immediately replaced by similar property of at least equivalent value on which Lender will immediately have a valid first lien and security interest. On breach of any such agreements contained in this subparagraph, Lender shall have all rights available under law, this Mortgage, and under the other Loan Documents, including but not being limited to injunctive relief and damages.

(b) Without the prior written consent of Lender, Borrower will not seek, make or consent to any change in the zoning or conditions of use of the Mortgaged Property. Borrower will comply with and make all payments required under the provisions of any covenants, conditions or restrictions affecting the Mortgaged Property, and shall not without Lender's prior written consent file any declaration and constituent documents of any condominium, cooperative or planned development project for the Mortgaged Property. Borrower will comply with all existing and future requirements of all governmental authorities having jurisdiction over the Mortgaged Property.



6. Borrower will keep at all times full, true, and accurate books and records of account of the Mortgaged Property and its own financial affairs sufficient to reflect correctly the results of all operations, leasing, and other income-producing activities by Borrower on the Mortgaged Property, and to permit the preparation of financial statements therefrom in accordance with generally accepted accounting principles. Lender will have the right to examine, copy and audit Borrower's records and books of account at all reasonable times. In addition to other financial reporting requirements as may be provided in the Additional Interest Agreement, Borrower will deliver to Lender, on or before 120 days after the end of every fiscal year of Borrower, whether or not requested by Lender, financial statements reflecting the foregoing information, including but not limited to balance sheets, profit-and-loss statements, and all schedules and exhibits thereto as are customarily required by sound accounting practices. Such statements and information shall be provided for Borrower and for the Mortgaged Property, and shall be prepared in accordance with generally accepted accounting principles, by an independent certified public accountant.

7. Borrower will, at its own expense, appear in and defend any action or proceeding that might affect Lender's security or the rights or powers of the Lender or that purports to affect any of the Mortgaged Property. If the Borrower fails to perform any of its covenants or agreements contained in this Mortgage, or if any action or proceeding of any kind (including but not limited to any bankruptcy, insolvency, arrangement, reorganization or other debtor-relief proceeding) is commenced which might affect the Lender's interest in the Mortgaged Property or the Lender's right to enforce its security, then the Lender may, at its option, make any appearances, disburse any sums and take any actions as may be necessary or desirable to protect or enforce this Mortgage or to remedy the failure of Borrower to perform its covenants (without, however, waiving any default of the Borrower). Borrower agrees to pay all reasonable expenses of the Lender thus incurred (including but not limited to fees and disbursements of counsel). Any sums disbursed by the Lender will be additional indebtedness of the Borrower secured by this Mortgage, will bear interest at the after-maturity interest rate specified in the Note, and will be payable by the Borrower upon demand. This paragraph will not be construed to require Lender to incur any expenses, make any appearances, or take any actions.

8. This Mortgage constitutes a SECURITY AGREEMENT with respect to all personal property in which Lender is granted a security interest thereunder, and Lender shall have all of the rights and remedies of a secured party under the ALABAMA UNIFORM COMMERCIAL CODE as well as all other rights and remedies available at law or in equity. Borrower hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Lender the attorney-in-fact of Borrower, to execute, deliver and, if appropriate, to file with the appropriate filing officer or office such security agreements, financing statements, continuation statements or other instruments as Lender may request or require in order to impose, perfect or continue the perfection of, the lien or security interest created hereby. Upon the occurrence of any default hereunder, Lender shall have the right to cause any of the Mortgaged Property which is personal property and subject to the security interest of Lender hereunder to be sold at any one or more public or private sales as permitted by applicable law, and Lender shall further have all other rights and remedies, whether at law, in equity, or by statute, as are available to secured creditors under applicable law. Any such disposition may be conducted by an employee or agent of Lender. Any person, including both Borrower and Lender, shall be eligible to purchase any part or all of such property at such disposition.

Expenses of retaking, holding, preparing for sale, selling or the like shall be borne by Borrower and shall include Lender's attorneys' fees and legal expenses. Borrower, upon demand of Lender, shall assemble such personal property and make it available to Lender at the Premises, a place which is hereby deemed to be reasonably convenient to Lender and Borrower. Lender shall give Borrower at least five (5) days' prior written notice of the time and place of any public sale or other disposition of such property or of the time of or after which any private sale or other intended disposition is to be made, and if such notice is sent to Borrower, as the same is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to Borrower.

9. The Borrower covenants that it is lawfully seized of an indefeasible estate in fee simple in the land and real property hereby mortgaged and has good and absolute title to all existing personal property hereby mortgaged and has good

right, full power and lawful authority to sell, convey and mortgage the same in the manner and form aforesaid; that, except as provided in Exhibit "B" attached hereto, the same is free and clear of all liens, charges, and encumbrances whatsoever, including, as to the personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature; and that Borrower shall and will warrant and forever defend the title thereto unto the Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

10. The Borrower will pay or reimburse the Lender for all reasonable attorney's fees, costs and expenses incurred by the Lender in any proceeding involving the estate of a decedent or an insolvent, or in any action, proceeding or dispute of any kind in which the Lender is made a party, or appears as party plaintiff or defendant, affecting the Note, Mortgage, and other Loan Documents, Borrower or Mortgaged Property, including but not limited to the foreclosure of this Mortgage, any condemnation action involving the Mortgaged Property, or any action to protect the security hereof and in any situation where Lender employs an attorney to protect the Lender's rights hereunder, whether or not legal proceedings are commenced or involved; and any such amounts paid by the Lender shall be added to the indebtedness and secured by the lien of this Mortgage.

11. Borrower understands that any septic system or sewage treatment facility or sewer line on the property or to be constructed from the property to a public or private sewer line and all personal property and rights therein are conveyed to Lender hereunder as part of the Mortgaged Property, whether located on the property described in Exhibit A or adjacent to or connected with the same. Borrower covenants not to allow any tie-ons or connections to any such sewer facility or sewer line situated on the property or to allow any person to use the sewer facility or sewer line situated on the property or to make any modifications in the plans and specifications or construction contract for the construction of any such sewer facility or sewer line without the written consent of Lender. Borrower understands that such consent may be withheld and/or conditioned upon receipt of documentation and assurances acceptable to the Lender, and that the Lender will have the first right and lien as secured hereby to any moneys or revenues arising from any such tie-ons, connections, or use.

## ARTICLE II

### EVENTS OF DEFAULT

Borrower will be in default under this Mortgage if:

(a) Borrower fails to make any payment required by the Note, the Additional Interest Agreement, or the Loan Documents, within five (5) days after written notice that such payment is overdue, except that, notwithstanding the foregoing, no more than three said written notices shall be required in any consecutive 24-month period, regardless of any such default; or

(b) Borrower fails to perform any other covenant or agreement contained in this Mortgage and the other Loan Documents, and does not cure that failure within ten (10) days after receipt of notice of such default; or

(c) Borrower terminates or suspends its business, or permits an attachment or judicial seizure of any substantial part of its assets; or

(d) Borrower, or any general partner of the Borrower having an interest in any of the Mortgaged Property or any trustee of the Borrower, files a petition in bankruptcy or for an arrangement, reorganization or any other form of debtor-relief under any present or future law relating to bankruptcy or debtor-relief, or such a petition is filed against the Borrower, or against any general partner of the Borrower having an interest in any of the Mortgaged Property or any trustee of the Borrower, and Borrower does not oppose that filing or the petition is not dismissed within 60 days after filing, or Borrower makes an assignment for the benefit of its creditors; or

(e) There has occurred a breach of, or default under, or failure of, any term, covenant, agreement, condition, provision, representation, or warranty contained in any Loan Document or under any agreement which guarantees any part of the indebtedness or obligations secured by this Mortgage; or

(f) Any representation or disclosure made to the Lender by the Borrower or by any guarantor of any indebtedness or obligations secured by this Mortgage, proves to be materially false or misleading on the date as of which made, whether or not that representation or disclosure appears in this Mortgage or in any of the other Loan Documents, or in the loan application; or

(g) Any other event occurs which, under the Note or under any other Loan Document, constitutes a default by the Borrower or gives the Lender the right to accelerate the maturity of any part of the indebtedness secured by this Mortgage.

### ARTICLE III

#### REMEDIES

1. If the Borrower is in default, the Lender may, at its continuing option, and without notice to or demand upon the Borrower:

a. Declare any or all indebtedness secured by this Mortgage to be due and payable immediately;

b. Enter onto the Mortgaged Property, in person or by agent or by court-appointed receiver, and take any and all steps which may be desirable in the Lender's judgment to manage and operate the Mortgaged Property, and the Lender may apply any rents, royalties, income or profits collected against the indebtedness secured by this Mortgage without in any way curing or waiving any default to the Borrower;

c. Bring a court action at law or in equity (1) to foreclose this Mortgage (2) or to enforce its provisions or any of the indebtedness or obligations secured by this Mortgage, either or both, concurrently or otherwise, and one action or suit shall not abate or be a bar to or waiver of Lender's right to institute or maintain the other, provided that Lender shall have only one payment and satisfaction of the indebtedness;

d. Cause any or all of the Mortgaged Property to be sold under the power of sale granted by this Mortgage in any manner permitted by applicable law;

e. Exercise any other right or remedy available under law or in equity or under the Loan Documents;

f. Sell the Mortgaged Property at public outcry to the highest bidder for cash in front of the Court House door in the county where said property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county, and, upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the premises so purchased. Lender may bid at said sale and purchase said premises, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Lender may elect in its sole discretion.

g. Lender may bid at any foreclosure sale and purchase said premises, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Lender may elect in its sole discretion.

2. The proceeds of any sale under this Mortgage will be applied in the following manner:

FIRST: Payment of the costs and expenses of the sale, including but not limited to Lender's fees, legal fees and disbursements, title charges and transfer taxes, and payment of all expenses, liabilities and advances of the Lender, together with interest at the rate provided under the Note on all advances made by the Lender.



**SECOND:** Payment of all sums expended by the Lender under the terms of this Mortgage and not yet repaid, together with interest on such sums at the rate provided under the Note.

**THIRD:** Payment of the indebtedness and obligations of the Borrower secured by this Mortgage (including without limitation all amounts due under the Note, Additional Interest Agreement, and other Loan Documents) in any order that the Lender chooses.

**FOURTH:** The remainder, if any, to the person or persons appearing of record to be the owner of the premises.

3. Borrower waives all rights to direct the order or manner in which any of the Mortgaged Property will be sold in the event of any sale under this Mortgage, and also any right to have any of the Mortgaged Property marshalled upon any sale. Lender may in its discretion sell all the personal and real property together or in parts, in one or more sales, and in any sequence Lender selects.

4. All remedies contained in this Mortgage are cumulative, and the Lender also has all other remedies provided by law or in any other agreement between the Borrower and the Lender. No delay or failure by the Lender to exercise any right or remedy under this Mortgage will be construed to be a waiver of that right or remedy or of any default by the Borrower. The Lender may exercise any one or more of its rights and remedies at its option without regard to the adequacy of its security.

5. Borrower will pay all of the Lender's expenses incurred in any efforts to enforce any terms of this Mortgage, whether or not any lawsuit is filed, including but not limited to legal fees and disbursements, foreclosure costs and title charges.

#### ARTICLE IV

#### GENERAL PROVISIONS

4.1 Partial Invalidity. The invalidity or unenforceability of any one or more provisions of this Mortgage will in no way affect any other provision.

4.2 Monthly Tax Deposits. (The provisions of this Paragraph shall only be applicable after default by Borrower hereunder, and then at the option of Lender). The Borrower will pay to the Lender on the first day of each month together with and in addition to the regular installment of principal and interest, until the Note is fully paid, an amount equal to one-twelfth (1/12) of the yearly taxes and assessments as estimated by the Lender to be sufficient to enable the Lender to pay, at least thirty (30) days before they become due, all taxes, assessments, and other similar charges against the Mortgaged Property or any part thereof. Such funds shall be held in trust, without interest, by the Lender for the benefit of Borrower and shall be applied for the purposes and in the manner prescribed herein. Such amounts shall be used by Lender to pay ad valorem taxes and assessments when due, or before they become delinquent. Upon demand of the Lender the Borrower agrees to deliver to the Lender such additional moneys as are necessary to make up any deficiencies in the amounts necessary to enable the Lender to pay such taxes, assessments and similar charges. In the event of a default by the Borrower in the performance of any of the terms, covenants or conditions in the Note or Mortgage, the Lender may apply to the reduction of the sums secured hereby, in such manner as the Lender shall determine, any amount under this Paragraph remaining to the Borrower's credit.

#### 4.3 Other Taxes, Utilities and Liens.

(a) The Borrower will pay promptly, when and as due, and will promptly exhibit to the Lender receipts for the payment of, all taxes, assessments, water rates, dues, charges, fines and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon the interest of the Lender in the Mortgaged Property as well as all income taxes, assessments and other governmental charges lawfully levied and imposed by the United States of America or any state, county, municipality, borough or other taxing authority upon the Borrower or in respect of the Mortgaged Property or any part thereof, or any charge which, if

unpaid, would become a lien or charge upon the Mortgaged Property prior to or equal to the lien of the Mortgage for any amounts secured hereby or would have priority or equality with the Mortgage in distribution of the proceeds of any foreclosure sale of the Mortgaged Property or any part thereof.

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

(c) The Borrower shall promptly pay and will not suffer any mechanic's, laborer's, statutory or other lien which might or could be prior to or equal to the lien of the Mortgage to be created or to remain outstanding upon any of the Mortgaged Property.

(d) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes so as to affect adversely the Lender with respect to the Loan, the entire balance of the principal sum secured by the Mortgage and all interest accrued thereon shall without notice become due and payable forthwith at the option of the Lender.

**4.4 Insurance.** The Borrower will procure for, deliver to, and maintain for the benefit of, the Lender during the life of this Mortgage, insurance policies, in such amounts as the Lender shall require, but in no event less than the greater of (a) the aggregate amount of the Note, or (b) the full replacement cost of the Mortgaged Property, and with no more than \$1,000 deductible from the loss payable for any casualty, insuring the Mortgaged Property against fire, extended coverage, flood, liability, vandalism and malicious mischief, tornado, war damage (if available), collapse, loss of rents or rental value (with coverage in an amount to cover a minimum of six months of projected gross annual rentals at 100% occupancy of the Mortgaged Property), business interruption, and such other insurable hazards, casualties and contingencies as the Lender may reasonably require. The policies shall include without being limited to a "Replacement Cost Endorsement," boiler and machinery insurance covering pressure vessels, sewage treatment facilities, air tanks, boilers, machinery, pressure piping, heating, air conditioning and elevator equipment, and insurance against loss of occupancy or use arising from any such breakdown. The form of such policies and the companies issuing them shall be acceptable to the Lender. All policies shall contain a New York standard, non-contributory mortgagee endorsement making losses payable to the Lender. At least fifteen (15) days prior to the expiration date of all such policies, renewals thereof satisfactory to the Lender shall be delivered to the Lender. The Borrower shall deliver to the Lender receipts evidencing the payment of all such insurance policies and renewals. In the event of the foreclosure of this Mortgage or any other transfer of title to the Mortgaged Property in extinguishment of the indebtedness secured hereby, all right, title and interest of the Borrower in and to all insurance policies then in force shall pass to the purchaser or grantee.

The Lender is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies on the Mortgaged Property, and 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 Lender, instead of to the Borrower and Lender jointly. After deducting from said insurance proceeds any expenses incurred by it in the collection or handling of said fund and any amount due Lender under the Additional Interest Agreement, the Lender may apply the net proceeds, at its option, either toward restoring the improvements, or as a credit on any portion of the mortgage indebtedness selected by it, whether then matured or to mature in the future. Lender shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

**4.5 Condemnation.** If all or any part of the Mortgaged Property in excess of twenty-five percent (25%) of the real property or twenty percent (20%) of the total square feet of buildings constructed on the real 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 option of the Lender become immediately due and payable. The Lender shall be entitled to all compensation, awards and other payments or relief thereof and is hereby authorized, at its option, to commence, appear in and

prosecute, in its own or the Borrower's name, any action or proceedings relating to any condemnation. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by the Borrower to the Lender, who, after deducting therefrom all its expenses, including attorney's fees, and any amount due Lender under the Additional Interest Agreement, may release any moneys so received by it without affecting the lien of this Mortgage or may apply the same in such manner as the Lender shall determine to the reduction of the sums secured hereby, and any balance of such moneys then remaining shall be paid to the Borrower. The Borrower agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as the Lender may require.

#### 4.6 Care of the Property.

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

(b) Except as otherwise provided herein, no buildings, fixtures, personal property, or other part of the Mortgaged Property shall be removed, demolished or substantially altered without the prior written consent of the Lender. The 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, not exceeding in value at the time of disposition thereof Ten Thousand Dollars (\$10,000.00) for any single transaction, or a total of Thirty-Five Thousand Dollars (\$35,000.00) in any one year, upon replacing the same by, or substituting for the same, other furniture, furnishings, equipment, tools, appliances, machinery, fixtures, or appurtenances not necessarily of the same character, but of at least equal value to the Borrower and costing not less than the amount realized from the property sold or otherwise disposed of, which shall forthwith become, without further action, subject to the lien of this Mortgage.

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

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

(e) The Borrower will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Mortgaged Property or any part thereof.

(f) If all or any part of the Mortgaged Property shall be damaged by fire or other casualty, the Borrower will promptly restore the Mortgaged Property to the equivalent of its original condition, regardless of whether insurance proceeds exist, are made available, or are sufficient. Except as provided in Paragraph 4.5 above, if a part of the Mortgaged Property shall be physically damaged through condemnation, all condemnation awards will be paid to Borrower and the Borrower will promptly restore, repair or alter the remaining property in a manner reasonably satisfactory to the Lender.

4.7 Performance by Lender of Defaults by Borrower. If the Borrower shall default in the payment of any tax, lien, assessment or charge levied or assessed against the premises; in the payment of any utility charge, whether public or private; in the payment of insurance premiums; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any other covenant, condition or term of this Mortgage or under any prior lien or junior lien or in any lease, then the Lender, at its option, may perform or observe the same, and all payments made for costs paid or incurred by the Lender in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by the Borrower to the Lender with interest thereon at the after-maturity rate set forth in the Note. The Lender shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium; of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. The Lender is hereby empowered to

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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.

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

4.9 Receiver.

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

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

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

4.11 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 except as may otherwise provide herein, Borrower waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the premises be set off against any part of the indebtedness secured hereby.

4.12 Delay or Omission No Waiver. No delay or omission of the Lender or of any holder of the Note to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power and remedy given by this Mortgage to the Lender may be exercised from time to time and as often as may be deemed expedient by the Lender.

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

If the Lender (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted herein or in the Note; (d) releases any part of the Mortgaged Property from the lien of this Mortgage or otherwise changes any of the terms of the Note or this Mortgage; (e) consents to the filing of any map, plat or replat thereof; (f) consents to the granting of any easement thereon; (g) makes or consents to any agreement subordinating the lien or change hereof; or (h) enters into any agreement with the Borrower or any partner or stockholder thereof or any one or more of them changing any term of the Note or documents relating to the Loan or releasing any partner or stockholder of Borrower or any security or respecting any matter whatsoever, any such act or omission shall not release, discharge, modify, change, or affect the original liability under the Note, this Mortgage or otherwise of the Borrower or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor; nor shall any such act or omission preclude the Lender from

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exercising any right, power or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Lender shall the lien of this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, the Lender, without notice to any person or corporation is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

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

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

4.16 Notices. All notices given under this Mortgage must be in writing and will be effectively served upon personal delivery or, by mailing in United States mail, postage prepaid, sent to the Lender at Lender's address at AmSouth Bank N.A., Post Office Box 11007, Birmingham, Alabama 35288, and sent to the Borrower at its address appearing below its signature, which addresses may be changed by written notice. However, the service of any notice of default or notice of sale under this Mortgage as required by law will, if mailed, be effective on the date of mailing.

4.17 Entries.

a. The Lender and its respective agents and representatives, will have the right at any reasonable time to enter the Property and inspect all parts thereof. The Lender will also have the right to examine, copy and audit the books, records, accounting data and other documents of the Borrower relating to the Mortgaged Property.

b. The Lender is under no duty to supervise or inspect the Mortgaged Property, or operation of the Mortgaged Property, or examine any books and records. Any inspection or examination by the Lender is for the sole purpose of protecting the Lender's security and preserving the Lender's rights under this Agreement. No default of the Borrower will be waived by any inspection by the Lender.

4.18 Corporate or Partnership Status and Authority. If Borrower has executed this mortgage as a corporation or as a partnership, (a) the Borrower warrants that (i) it is duly organized and validly existing, in good standing under the laws of the State of Virginia, (ii) it is duly qualified to do business and is in good standing in the State of Alabama, (iii) it has the power, authority and legal right to carry on the business now being conducted by it and to engage in the transactions contemplated by the Loan Documents and (iv) the execution and delivery of the Loan Documents and the performance and observance of the provisions thereof have been duly authorized by all necessary actions of the Borrower.

(b) The Borrower agrees that so long as any of its obligations hereunder, or under the Loan Documents remain unsatisfied, it will not dissolve or liquidate (in whole or in part) its corporate or partnership existence, that it will maintain its corporate or partnership existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another corporation or partnership, without the prior express written consent of the Lender, except as permitted in the last sentence of Paragraph 4 of Article I.

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(c) The Borrower agrees that it will keep proper books and records of account in accordance with generally accepted accounting principles and will furnish to the Lender such information respecting the business, affairs, operations and financial condition on a consolidated basis of the Borrower as may be reasonably requested.

**4.19 Miscellaneous/Actions By Lender.** The term "Borrower" includes both the original Borrower and any subsequent owner or owners of any of the Mortgaged Property, and the term "Lender" includes the original Lender, and also any future owner or holder, including pledgees, assignees and participants, of the Note or any interest therein. Whenever the context requires, the singular includes the plural and vice versa and each gender includes each other gender. The headings of the articles of this Mortgage are for convenience only and do not limit its provisions.

**4.20 Successors.** The terms of this Mortgage will bind and benefit the heirs, legal representatives, successors and assigns of the Borrower and the Lender. If the Borrower consists of more than one person or entity, each will be jointly and severally liable to perform the obligations of the Borrower.

**4.21 Waiver of Jury Trial.** To induce each party to execute this Agreement, for due good and adequate consideration, and to avoid delays in time and any prejudices that may result from trial by jury, each party hereto irrevocably waives trial by jury in any action or proceeding or counter-claim or crossclaim brought by or against either party arising from or relating to this agreement or any other agreement relating to this loan transaction.

**4.22 Construction Loan.** The provisions of this paragraph shall become null and void upon the date of "Conversion" of the Construction Loan into the Term Loan, as such terms are described in the Term Loan Agreement, but until such date of Conversion, the provisions of this Paragraph shall be in full force and effect and shall prevail over any other provisions contained in this mortgage in the event of default.

This is a combined Construction Loan and Term Loan mortgage and \$5,300,000 of the said \$5,600,000 is being advanced to the Borrower by the Lender in accordance with a Construction Loan Agreement dated this date. For purposes of this Mortgage, "Loan Documents" shall also include the said Construction Loan Agreement. The Lender may at its option declare the entire indebtedness secured hereby, and all interest thereon and all advances made by Lender hereunder, immediately due and payable in the event of a breach by the Borrower of any covenant contained in this Mortgage, the Note secured hereby, or in the Construction Loan Agreement, or in any other Loan Documents.

**4.23 Survival of Lien.** Notwithstanding any other provision of this Mortgage or the other Loan Documents to the contrary, this Mortgage and all representations and covenants of Borrower herein contained and the lien of this Mortgage and the Assignment of Rents and Leases executed herewith, shall survive the maturity of and the repayment in full of all amounts due under the Note and the Additional Interest Agreement, and this Mortgage and all other Loan Documents shall continue in full force and effect and Borrower shall not have the right to the release of the Mortgaged Property from the encumbrance of either thereon or release of any other security for the Loan until all Borrower's obligations under the Note, Additional Interest Agreement, and other Loan Documents have been paid and performed in full.

**4.24 Relationship of Lender and Borrower as Creditor and Debtor Only.** Lender and Borrower intend that the relationship between them shall be solely that of creditor and debtor. Nothing contained in the Additional Interest Agreement or in any other Loan Document or instrument made in connection with the Loan, including without limitation Lender's right to receive Net Operating Income Interest and Appreciation Interest under the Additional Interest Agreement, shall be deemed or construed to create a partnership, tenancy-in-common, joint tenancy, joint venture or co-ownership by or between Lender and Borrower, or any relationship other than that of creditor and debtor. Lender shall not be in any way responsible or liable for the debts, losses, obligations or duties of Borrower with respect to the Property or otherwise. All obligations to pay real property or other taxes, assessments, insurance premiums, and all other fees and charges arising from the ownership, operation or occupancy of the Property and to perform all leases and other agreements and contracts relating to the Property shall be the sole

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responsibility of Borrower. Borrower, at all times consistent with the terms and provisions of this Agreement and the other documents and instruments evidencing, securing or otherwise relating to the Loan, shall be free to determine and follow its own policies and practices in the conduct of its business on the Property.

4.25 Limitation of Liability. The provisions of this Paragraph shall apply only after the full execution and delivery of the Restated Note to be executed and delivered on the date of Conversion specified in the Term Loan Agreement, and shall be inoperable and ineffective prior to said date of Conversion and the execution and delivery of said Restated Note. Anything herein or in any other instrument referenced herein to the contrary notwithstanding (except for the last sentence of this Paragraph), the Lender agrees to look solely to the Property and/or to the other collateral encumbered hereby and by the other Loan Documents given in connection herewith for the payment of all sums due hereunder and under the Note and other Loan Documents, and neither the Borrower nor any general or limited partner of the Borrower shall be liable for any deficiency or other personal money judgment with respect to the payment of such sums. The foregoing exclusion of liability shall not apply if and to the extent Borrower misappropriates, wastes or converts any collateral serving as security for the Borrower's obligations to the holder of the Note, in which event the Borrower shall be liable to the holder of the Note only for the amount misappropriated, wasted or converted plus interest on said sum at the default rate of interest provided for in the Note and the cost of collection, including reasonable attorney's fees. Provided, however, and notwithstanding the foregoing, Borrower shall be personally liable to the extent of \$750,000 under the Note, together with any costs of collection of the same, including reasonable attorneys' fees and court costs; and Lender shall have the right to enforce Borrower's liability as aforesaid, including the liability for the said \$750,000, in accordance with all the provisions of the Note and the other Loan Documents, including but not being limited to, the right to proceed against other collateral and to exercise any other right or remedy available to Lender (prior to, simultaneously with, or after, at Lender's option, any action or proceeding by Lender to enforce the obligation of Borrower to pay the \$750,000), it being agreed that the recourse liability of Borrower to repay such \$750,000 (and any cost of collection therefor) shall not be decreased by amounts received by the Lender resulting from Lender's realization against other collateral, including this Mortgage, or by any payments made by Borrower under the Note, unless and until the Note is paid in full.

IN WITNESS WHEREOF, the Borrower by its duly authorized officers has hereunto set its hand and seal this 23rd day of October, 1984.

DANIEL PROPERTIES XV, a Virginia  
limited partnership  
By The Fifteenth Daniel Realty  
Investment Corporation,  
Its General Partner

ATTEST:

By

Its

By

Its

Address: 1900 Daniel Building  
Birmingham, Alabama 35223

STATE OF ALABAMA )

JEFFERSON COUNTY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Bernard Shepard as Asst. Secretary of The Fifteenth Daniel Realty Investment Corporation whose name as General Partner of Daniel Properties XV, a Virginia limited partnership, is signed to the foregoing agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the agreement, he, as Asst. Secretary of The Fifteenth Daniel Realty Investment Corporation, General Partner and with full authority, executed the same voluntarily for and as the act of said Corporation and said partnership.

Given under my hand this 23<sup>rd</sup> day of October, 1984.

[SEAL]

Judith H. Vea  
Notary Public

My Commission Expires on: 1/17/88

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EXHIBIT A

A parcel of land situated in the east half of the northeast quarter of Section 1, Township 19 South, Range 2 West, Shelby County, Alabama, and being more particularly described as follows:

Begin at a capped iron pipe found at the northeast corner of said Section 1 and run thence in a southerly direction along the east line thereof for a distance of 436.03 feet to a point located in a curve to the right in the northwesterly right-of-way line of a proposed, public right-of-way leading from an existing, stubbed right-of-way lying between Lots 13 and 14 of Meadow Brook Third Sector, as recorded in the Office of the Judge of Probate, Shelby County, Alabama, in Map Book 7, Page 66, to a point in the westerly right-of-way line of Meadow Brook Road located 750.38 feet southwesterly of the intersection thereof with the southerly right-of-way line of U.S. Highway 280, said curve being concave to the northwest, having a radius of 1598.48 feet, a central angle of 4°-10'-47" and a chord which forms an interior or counterclockwise angle of 120°-10'-53" with the preceding course; thence turn an angle to the right and run in a southwesterly direction with said proposed right-of-way line and along the arc of said curve for a distance of 116.61 feet to the end of said curve; thence continue to run with said proposed right-of-way line in a southwesterly direction along a line tangent to said curve for a distance of 337.88 feet to the beginning of a curve to the left, said curve being concave to the southeast, having a radius of 827.77 feet and subtending a central angle of 33°-45'-00"; thence continue to run with said proposed right-of-way line in a southwesterly direction along the arc of said curve for a distance of 487.60 feet to a point of reverse curvature located at the beginning of a curve to the right; said curve being concave to the northwest, having a radius of 966.13 feet, and subtending a central angle of 18°-15'-00"; thence continue to run with said proposed right-of-way line in a southwesterly direction along the arc of said curve for a distance of 307.73 feet to the end of said curve; thence turn an angle to the right of 67°-07'-30", as measured from the chord of said curve and, leaving said proposed right-of-way line, run in a northwesterly direction for a distance of 415.95 feet to a point located in the west line of the northeast quarter of

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the northeast quarter of the aforesaid Section 1; thence turn an angle to the right of 75°-38'-10" and run in a northerly direction along said west line of said quarter-quarter section for a distance of 1187.54 feet to a capped iron pipe found at the northwest corner thereof; thence turn an angle to the right of 92°-17'-01" and run in an easterly direction along the north line of said quarter-quarter section for a distance of 1327.59 feet to the point of beginning;

TOGETHER WITH all of the right, title and interest of the Mortgagor in and to that certain Non-Exclusive Access Easement Agreement dated May 1, 1984, executed by Daniel U.S. Properties, Ltd. a Virginia limited partnership, and Daniel International Corporation, a South Carolina corporation, which has been recorded in Book 356, Page 288, in the Office of the Judge of Probate of Shelby County, Alabama, with respect to the following described real property (the "Easement Property"):

Description of 2 abutting strips or parcels of land to be dedicated for the purposes of a public right-of-way, said strips of land being situated in the east half of the northeast quarter of Section 1, Township 19 South, Range 2 West, and in the west half of the northwest quarter of Section 6, Township 19 South, Range 1 West and running from the northwesterly limit of an existing stubbed public right-of-way lying between Lots 13 and 14 of Meadow Brook - Third Sector as recorded in the Office of the Judge of Probate, Shelby County, Alabama, in Map Book 7, Page 66, to

the westerly right-of-way line of Meadow Brook Road at a point located 750.88 feet southerly of the intersection thereof with the southerly right-of-way line of U.S Highway 280; said strips or parcels being more particularly described as follows:

Parcel No. 1

A strip of land 60.00 feet in perpendicular width lying 30.00 feet on either side of the following described centerline:

Commence at the southwesternmost corner of Lot 13 of the aforementioned Meadow Brook - Third Sector and run thence in a southwesterly direction along a projection of the northwesterly line thereof for a distance of 30.00 feet to the point of beginning of the centerline herein described; from the point of beginning thus obtained turn an angle to the right and run in a northwesterly direction along the arc of a curve to the right, said curve being concave to the northeast, having a radius of 257.31 feet, a central angle of 14°-00' and constituting an extension of the abutting curve alignment of the dedicated right-of-way, for a distance of 62.87 feet to the end of said curve; thence run in a northwesterly direction for a distance of



413.09 feet to the beginning of a curve to the right, said curve being concave to the east, having a radius of 248.24 feet and subtending a central angle of  $77^{\circ}-30'-00''$ , thence run in a northerly to northeasterly direction along the arc of said curve for a distance of 335.78 feet to a point of reverse curvature of a curve to the left, said curve being concave to the northwest, having a radius of 996.13 feet, and subtending a central angle of  $18^{\circ}-15'-00''$ ; thence run in a northeasterly direction along the arc of said curve for a distance of 317.29 feet to a point of reverse curvature of a curve to the right, said curve being concave to the southeast, having a radius of 797.77 feet and subtending a central angle of  $33^{\circ}-45'-00''$ ; thence run along the arc of said curve in a northeasterly direction for a distance of 469.92 feet to the end of said curve; thence run in a northeasterly direction tangent to said curve for a distance of 337.88 feet to the beginning of a curve to the left, said curve being concave to the northwest, having a radius of 1628.48 feet and subtending a central angle of  $21^{\circ}-53'-43''$ ; thence run in a northeasterly direction along the arc of said curve for a distance of 622.31 feet to the end of said curve and the end of the centerline herein described.

Parcel No. 2

A strip of land of varying width abutting the northeasterly limit of the hereinabove described Parcel No. 1 and extending therefrom in a northerly and easterly direction to the northwesterly right-of-way line of Meadow Brook Road as shown on a map entitled Meadow Brook, Second Sector, First Phase and recorded in the aforesaid Office of said Judge of Probate in Map Book 7, Page 65 and being more particularly described as follows:

Begin at a point located at the end of the centerline of the hereinabove described Parcel 1 and run thence in a northwesterly direction with a portion of the northeasterly limit thereof for a distance of 30.00 feet to a point; thence turn an angle to the right of  $90^{\circ}-00'-00''$  and run in a northeasterly direction for a distance of 224.87 feet to the beginning of a curve to the right, said curve being concave to the southeast, having a radius of 330.00 feet, and subtending a central angle of  $80^{\circ}-14'-39''$ ; thence run in a northeasterly to southeasterly direction along the arc of said curve for a distance of 462.17 feet to the end of said curve and the beginning of a reversed curve return to the left, said curve being concave to the northeast, having a radius of 20.00 feet and subtending

a central angle of  $81^{\circ}-22'-31''$ ; thence running in a southeasterly to easterly direction along the arc of said curve for a distance of 28.41 feet to a point located in a curve to the left in the aforementioned northwesterly right-of-way line of the Meadow Brook Road 750.88 feet south of the intersection thereof with the southerly right-of-way line of U.S. Highway 280; thence turn an angle to the right and run in a southwesterly direction along the arc of said curve in said Meadow Brook Road right-of-way line, said curve being concave to the southeast, having a radius of 479.54 feet, subtending a central angle of  $13^{\circ}-36'-42''$  and a chord which forms an interior or counter-clockwise angle of  $47^{\circ}-29'-37''$  with the chord of the last mentioned curve, for a distance of 137.70 feet to a point located at the beginning of return curve to the left, said return curve being concave to the west, having a radius of 20.00 feet, subtending a central angle of  $86^{\circ}-15'-20''$  and having a chord which forms an interior or counter-clockwise angle of  $49^{\circ}-56'-01''$  with the chord of the last mentioned curve; thence turn an angle to the right and leaving said right-of-way line of said Meadow Brook Road, run in a northeasterly to northwesterly direction along the arc of said curve for a distance of 30.11 feet to a point of compound curvature of a curve to the left, said curve being concave to the southwest, having a radius of 228.00 feet and subtending a central angle of  $53^{\circ}-50'-00''$ ; thence run in a westerly direction along the arc of said curve for a distance of 214.22 feet to a point of compound curvature of a curve to the left, said curve being concave to the southeast, having a radius of 545.00 feet and subtending a central angle of  $12^{\circ}-00'-00''$ ; thence run in a southwesterly direction along the arc of said curve for a distance of 114.14 feet to the end of said curve; thence run in a southwesterly direction tangent to said curve for a distance of 30.41 feet to the beginning of a curve to the left, said curve being concave to the southeast, having a radius of 734.27, and subtending a central angle of  $13^{\circ}-10'-06''$ ; thence run in a southwesterly direction along the arc of said curve for a distance of 168.76 feet to the end of said curve; thence run in a southwesterly direction tangent to said curve for a distance of 17.33 feet to a point located normal to and 30.00 feet southeasterly of the aforesaid point at the northeasterly end of the hereinabove described centerline of Parcel 1; thence turn an angle to the right of  $90^{\circ}-00'-00''$  and run in a northwesterly direction with a portion of the aforesaid northeasterly limit of said Parcel 1 for a distance of 30.00 feet to the point of beginning.

EXHIBIT "B"  
PERMITTED TITLE EXCEPTIONS

1. Title to all minerals underlying the NW 1/4 of the NW 1/4 of Section 6, Township 19 South, Range 1 West, with mining rights and privileges belonging thereto, as conveyed in Deed Book 66, Page 34, in the Probate Office of Shelby County, Alabama (with respect to Easement Property only).
2. Title to all minerals underlying the E 1/2 of NE 1/4, Section 1, Township 19 South, Range 2 West, with mining rights and privileges belonging thereto, as reserved in Deed Book 32, Page 48, in the Probate Office of Shelby County, Alabama.
3. Title to all minerals underlying the SW 1/4 of SW 1/4, Section 31, Township 18 South, Range 1 West, with mining rights and privileges belonging thereto, as reserved in Deed Book 28, Page 581, in the Probate Office of Shelby County, Alabama (with respect to Easement Property only).
4. Transmission line permits to Alabama Power Company as recorded in Deed Book 109, Page 490, in the Probate Office of Shelby County, Alabama, affecting the S 1/2 of SW 1/4, Section 31, Township 18 South, Range 1 West (with respect to Easement Property only).
5. Easement to South Central Bell, as recorded in Deed Book 311, Page 432 in the Probate Office of Shelby County, Alabama, affecting the S 1/2 of SW 1/4, Section 31, Township 18 South, Range 1 West (with respect to Easement Property only).
6. Easement to South Central Bell Telephone & Telegraph recorded in Deed Book 299, Page 703, in the Probate Office of Shelby County, Alabama, affecting the S 1/2 of SW 1/4, Section 31, Township 18 South, Range 1 West (with respect to Easement Property only).
7. Right-of-way granted to Alabama Power Company recorded in Book 2, Page 792 and Book 2, Page 797, in the Probate Office of Shelby County, Alabama.

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STATE OF ALA. SHELBY CO.  
I CERTIFY THIS  
INSTRUMENT WAS FILED

1984 OCT 24 AM 11:02

*Thomas J. [Signature]*  
Clerk

RECORDING FEES

Mortgage Tax	\$ 8,400.00
Deed Tax	
Mineral Tax	
Recording Fee	47.50
Index Fee	1.00
TOTAL	\$ 8,448.50

