

PREPARED BY AND AFTER
RECORDING RETURN TO:

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MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT is made this 31st day of October, 1985, by DANIEL PROPERTIES XV, a Virginia limited partnership, having its principal office at Birmingham, Alabama (the "Mortgagor"), in favor of LAND OF LINCOLN SAVINGS AND LOAN, an Illinois chartered savings and loan association, having its principal office at Hoffman Estates, Illinois (the "Mortgagee").

WITNESSETH, that to secure the payment of an indebtedness in the amount of FIVE MILLION EIGHT HUNDRED THOUSAND AND NO/100 (\$5,800,000.00) DOLLARS lawful money of the United States, to be paid with interest thereon according to a certain note bearing even date herewith, and any amendments, modifications, renewals or replacements thereof (the "Note"), and pursuant to authority heretofore granted by its Partnership Agreement, the Mortgagor hereby grants, bargains, sells and conveys the Premises (as defined herein) to the Mortgagee.

WITNESSETH, that the Note provides, in part, for an accrual and capitalization of interest in the first five loan years, which accrual (together with the unpaid principal balance) shall not exceed the sum of SIX MILLION TWO HUNDRED FIFTY THOUSAND AND NO/100 (\$6,250,000.00) DOLLARS.

TO HAVE AND TO HOLD unto the Mortgagee, its successors and assigns forever.

And the Mortgagor covenants, represents and warrants with the Mortgagee as follows:

1. Definitions. Whenever used in this Mortgage, the following terms, when capitalized, shall have the following respective meanings unless the context shall clearly indicate otherwise:

A. "Default Rate" shall mean that rate defined in the Note and shall be charged on any amount payable herein unless promptly paid, and shall constitute additional indebtedness secured by this Mortgage and shall be immediately due and payable.

B. "Event of Default" shall mean those occurrences described in paragraph 14 hereof.

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C. "Fixtures" shall mean all materials, supplies, equipment, apparatus and other items owned by Mortgagor, and now or hereafter attached to, installed in or used in connection with, temporarily or permanently, the Premises, including but not limited to any and all partitions, window screens and shades, drapes, rugs and other floor coverings, motors, engines, boilers, furnaces, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, heating, ventilating, plumbing, laundry, incinerating, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, disposals, dishwashers, refrigerators and ranges, freezers, storm shutters and awnings, whether detached or detachable, and recreational equipment and facilities of all kinds.

D. "Full Insurable Value" shall mean the replacement cost of the Premises, exclusive of costs of the Property, excavation, foundations and footings below the lowest basement floor, or the principal balance on the Note, whichever is greater.

E. "Impositions" shall mean all real estate and personal property taxes, water, gas, sewer, electricity, and other utility rates and charges, charges for any easement, license or agreement maintained for the benefit of the Premises, and all other liens with respect thereto, of any kind and nature whatsoever which at any time prior to or after the execution hereof may be assessed, levied or imposed upon the Premises or the rents, issues and profits or the ownership, use, occupancy or enjoyment thereof.

F. "Loan Documents" shall mean the following documents, together with all amendments, modifications, renewals and replacements:

- (i) Note;
- (ii) This Mortgage and Security Agreement;
- (iii) Assignment of Rents and Leases;
- (iv) UCC Financing Statements - state and county;
- (v) Subordination Agreement;
- (vi) Such other documentation as reasonably required by Mortgagee as required by Mortgagee's commitment letter.

G. "Permitted Encumbrances" shall mean this Mortgage and Security Agreement and other matters (if any) as set forth in the Schedule of Permitted Encumbrances attached hereto as Exhibit "B"

and incorporated herein by reference, and the lien and security interests created by the Loan Documents.

H. "Personalty" shall mean all of the right, title and interest of the Mortgagor, in and to all Fixtures, furniture, furnishings, and all other personal property of any kind or character, temporary or permanent, now or hereafter located upon, within or about the Premises (excluding personal property owned by tenants in possession), together with any and all accessions, replacements, substitutions, and additions thereto or therefor, and the proceeds thereof.

I. "Premises" shall mean all of the Mortgagor's present or future estates in the Property, together with any buildings and improvements located thereon, rights of way, privileges, rights, easements and mineral rights appertaining thereto, and all tenements, hereditaments and appurtenances thereto, the Personalty, and all rents, issues and profits of such Premises.

J. "Prohibited Transfer" shall mean a transfer as defined in paragraph 10 herein.

K. "Property" shall mean that real property commonly known as Morning Sun Villas, Highway 280 South in Meadow Brook, 1. Morning Sun Drive, Shelby County, Alabama, and legally described on Exhibit "A" which is attached hereto and made a part hereof by reference.

2. Payment of Indebtedness. The Mortgagor shall pay the indebtedness, as provided in the Note and shall otherwise duly comply with the terms thereof.

3. Representations as to the Premises. Mortgagor represents and covenants that: A. It is the owner of the fee simple title to the Premises subject only to the Permitted Encumbrances; B. Mortgagor has full legal power, right and authority to mortgage and convey the Premises; C. This Mortgage creates a valid lien on the Premises.

4. Impositions. The Mortgagor shall, subject to the provisions of this Mortgage, pay all Impositions when due, and in default thereof the Mortgagee may, at its option, pay the same. Any sums paid by Mortgagee on account of Impositions shall bear interest at the Default Rate.

5. Maintenance of Mortgaged Premises; Changes and Alterations.

A. The Mortgagor shall maintain or cause to be maintained the Premises in good repair, working order, and condition and make or cause to be made, when necessary, all repairs, renewals, and replacements, structural, non-structural, exterior, interior,

ordinary and extraordinary. The Mortgagor shall refrain from and shall not permit the commission of waste in or about the Premises and shall not remove, demolish, alter, change or add to the structural character of any improvement at any time erected on the Premises without the prior written consent of the Mortgagee, except as hereinafter otherwise provided.

B. The Mortgagor may, in its discretion and without the prior written consent of the Mortgagee, from time to time, make or cause to be made reasonable changes, alterations or additions, structural or otherwise, in or to the Premises, which do not adversely affect the Premises or Mortgagor's ability to repay the Note.

C. The Mortgagor may, in its discretion and without the prior written consent of the Mortgagee, any time and from time to time, remove and dispose of any Personalty, now or hereafter constituting part of the Premises which becomes inefficient, obsolete, worn out, unfit for use or no longer useful in the operation of the Premises or the business conducted thereon, if any, provided the Mortgagor promptly replaces such Personalty with personalty of equal or better value, and provided that title to such replacements are subject only to the Permitted Encumbrances and this Mortgage.

6. Insurance.

A. The Mortgagor shall maintain the following insurance coverage with respect to the Premises:

(i) Insurance against loss of or damage to the Premises by fire and such other risks, including but not limited to, risks insured against under extended coverage policies with "all risk" endorsements, in each case in amounts at all times sufficient to prevent the Mortgagor from becoming a co-insurer under the terms of applicable policies and, in any event, in amounts not less than the Full Insurable Value, as determined from time to time;

(ii) Comprehensive general liability insurance against any and all claims (including all costs and expenses of defending the same) for bodily injury or death and for property damage occurring upon, in or about the Premises and the adjoining streets or passageways in amounts not less than TEN MILLION AND NO/100 (\$10,000,000.00) DOLLARS;

(iii) Rental insurance equal to the annual gross rentals from the Premises;

(iv) Explosion insurance in respect of boilers, heating apparatus or other pressure vessels, if any, located on the Premises in such amounts as shall from time to time be reasonably satisfactory to the Mortgagee; and

(v) Such other insurance as is customarily purchased in the area for similar types of business, in such amounts and against such insurable risks as from time to time may reasonably be required by the Mortgagee.

B. Any insurance purchased by Mortgagor relating to the Premises, whether or not required under this Mortgage, shall be for the benefit of the Mortgagee and the Mortgagor, as their interests may appear, and shall be subject to the provisions of this Mortgage.

C. If the Mortgagor fails to keep the Premises insured in accordance with the requirements of the Loan Documents, the Mortgagee shall have the right, at its option, to provide for such insurance and pay the premiums thereof, and any amounts paid thereon by the Mortgagee shall bear interest at the Default Rate and shall be secured hereby.

D. All policies of insurance required by the Loan Documents shall be in forms and with companies reasonably satisfactory to the Mortgagee, with standard mortgage clauses attached to or incorporated in all policies in favor of the Mortgagee, including a provision requiring that coverage evidenced thereby shall not be terminated or materially modified without thirty (30) days' prior written notice to the Mortgagee. Such insurance may be provided for under a blanket policy or policies. All such insurance proceeds shall be applied in accordance with paragraph 7 below.

E. The Mortgagor shall deliver to the Mortgagee the originals of all insurance policies (or certificates thereof), including renewal or replacement policies, and in the case of insurance about to expire, shall deliver renewal or replacement policies (or certificates thereof) not less than thirty (30) days prior to the expiration date.

F. Notwithstanding any damage, loss or casualty and in any event, the Mortgagor shall continue to pay the principal and interest due on the Note.

7. Damage or Destruction.

A. In case of any damage to or destruction of the Premises or any part thereof from any cause whatsoever, other than a Taking (as defined herein), the Mortgagor shall promptly give written notice thereof to the Mortgagee. In any event, but subject to the provisions of this paragraph 7, Mortgagor shall restore, repair, replace, or rebuild the same or cause the same to be restored, repaired, replaced or rebuilt to substantially the same value, condition and character as existed immediately prior to such damage or destruction. Such restoration, repair, replacement or rebuilding (herein collectively called "Restoration") shall be commenced promptly and completed with diligence by the Mortgagor, subject only to delays beyond the control of the Mortgagor.

B. All insurance proceeds shall be paid to Mortgagee and held by it in an interest bearing escrow account and shall be made available to the Mortgagor for the Restoration required hereby in the event of damage or destruction on account of which such insurance proceeds are paid. If at any time the insurance proceeds which are payable to the Mortgagor in accordance with the terms of this Mortgage shall be insufficient to pay the entire cost of the Restoration, the Mortgagor shall pay the deficiency. In such an event, Mortgagor shall make all payments from its own funds to the contractor making such Restoration until the amount of said deficiency has been satisfied; thereafter, Mortgagee shall make subsequent payments from the insurance proceeds to Mortgagor or to the contractor, whichever is appropriate. All payments hereunder shall be made only upon a certificate or certificates of a supervising architect appointed by the Mortgagor and reasonably satisfactory to the Mortgagee. To the extent approved by such supervising architect, all payments hereunder shall be made to such contractor, provided that the Premises are free of all liens of record for work, labor or materials, and that the work conforms to the legal requirements hereof.

C. Upon completion of the Restoration, the excess net insurance proceeds, if any, shall be paid to the Mortgagor.

D. Mortgagor, in case of damage or destruction to all or substantially all of the Premises, shall, at the option of Mortgagee, prepay the remaining balance of the Note together with accrued interest thereon. In such an event, any insurance proceeds received and held by Mortgagee pursuant to the terms of this Mortgage, shall be applied by Mortgagee as provided for in the Note. To exercise this option, Mortgagee shall give written notice to Mortgagor of its intent to do so within ten (10) days of any such election.

E. If an Event of Default shall occur, all insurance proceeds received by the Mortgagee may be retained by the Mortgagee and applied, at its option, in payment of the mortgage indebtedness and any excess repaid to or for the account of Mortgagor.

8. Condemnation.

A. The term "Taking" as used herein shall mean a taking of all or part of the Premises under the power of condemnation or eminent domain. Promptly upon the receipt by Mortgagor of notice of the institution of any proceeding for the Taking of the Premises or any part thereof, Mortgagor shall give written notice thereof to Mortgagee and Mortgagee may, at its option, appear in any such proceeding. Mortgagor will promptly give to Mortgagee copies of all notices, pleadings, awards, determinations and other papers received by Mortgagor in any such proceeding. Mortgagor shall not adjust or compromise any claim for award or other proceeds of a Taking without having first given at least fifteen (15) days' prior written notice to Mortgagee of the proposed basis of adjustment or compromise and without first having received the written consent of Mortgagee. Any award or other proceeds of a Taking, after allowance for expenses incurred in connection therewith, are herein referred to as "Condemnation Proceeds".

B. In the event of a Taking of all or substantially all of the Premises, or a Taking of less than all or substantially all of the Premises and the Premises are not susceptible to restoration, the Condemnation Proceeds shall be paid to Mortgagee and applied as provided for in the Note.

C. Subject to paragraph 8.D. below, in the event of a Taking of less than all or substantially all of the Premises which leaves the Premises susceptible and suitable to restoration, the Condemnation Proceeds shall be paid to Mortgagee and shall be held in an interest bearing escrow account, and shall be applied to reimburse the Mortgagor for such repair or restoration in conformity with and subject to the conditions specified in paragraph 7 hereof relating to damage or destruction. In either of the foregoing events Mortgagor, whether or not the Condemnation Proceeds which are applicable thereto shall be sufficient for the purpose, shall promptly repair or restore the Premises as nearly as practicable to substantially the same value, condition and character as existed immediately prior to the Taking.

D. If an Event of Default shall occur, any Condemnation Proceeds to which Mortgagee is entitled pursuant to the Loan Documents, shall be retained by Mortgagee and shall be applied as provided for in the Note.

9. Indemnification. Mortgagor agrees to indemnify and hold the Mortgagee harmless from any and all claims, demands, losses, liabilities, actions, lawsuits and other proceedings, judgments, awards, decrees, costs and expenses (including reasonable attorney's fees), arising directly or indirectly, in whole or in part, out of the acts and omissions whether negligent, willful or otherwise, of Mortgagor, or any of its officers, directors, agents, subagents, or employees, in connection with this Mortgage or the other Loan Documents or as a result of: A. ownership of the Premises or any interest therein or receipt of any rent or other sum therefrom; B. any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Premises or any part thereof or on the adjoining sidewalks, curbs, vaults and vault space, if any, adjacent parking areas, streets or ways; C. any use, non-use or condition of the Premises or any part thereof or the adjoining sidewalks, curbs, vaults and vault space, if any, the adjacent parking areas, streets or ways; D. any failure on the part of the Mortgagor to perform or comply with any of the terms of this Mortgage; or E. the performance of any labor or services or the furnishing of any materials or other property with respect to the Premises or any part thereof. Any amounts payable to the Mortgagee under this paragraph which are not paid within ten (10) days after written demand therefor by the Mortgagee shall bear interest at the Default Rate. The obligations of the Mortgagor under this paragraph shall survive any termination or satisfaction of this Mortgage.

10. Prohibited Transfer; Due on Sale. Mortgagor shall not create, effect, contract for, agree to, consent to, suffer, or permit any conveyance, sale, lease (other than an apartment lease in the ordinary course of Mortgagor's business), assignment, transfer, lien, pledge, mortgage, grant a security interest, or other encumbrance or alienation of any interest in the following properties, rights or interests without the prior written consent of Mortgagee ("Prohibited Transfer"):

- A. the Premises or any part thereof or interest therein, excepting only sales or other dispositions of Personalty pursuant to paragraph 5 herein;
- B. all or any portion of the beneficial interest or power of direction in or to the trust under which Mortgagor is acting, if Mortgagor is a Trustee;
- C. any shares of capital stock of a corporate Mortgagor, a corporation which is a beneficiary of a trustee Mortgagor, a corporation which is a general partner in a partnership Mortgagor, a corporation which is a general partner in a partnership beneficiary of a trustee Mortgagor, or a corporation which is the owner of substantially all of the capital stock of any

corporation described in this subparagraph (other than the shares of capital stock of a corporate trustee or a corporation whose stock is publicly traded on national securities exchange or on the National Association of Securities Dealer's Automated Quotation System); or

- D. any general partner's interest, if Mortgagor is a general or limited partnership;

in each case whether any such Prohibited Transfer is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided, however, that the foregoing provisions of this paragraph 10 shall not apply: (i) to this Mortgage, (ii) the Permitted Encumbrances; (iii) to the lien of current taxes and assessments not in default; and (iv) any transfer of the general partnership interests of any general partner of Mortgagor or of the capital stock of any corporate general partner of Mortgagor if such transfer is made to any affiliate of such corporate general partner (for the purposes hereof, an "affiliate" is defined as any entity in which Daniel Realty Corporation, an Alabama corporation, DRIC Holdings, Ltd., a South Carolina corporation, or Fluor Corporation, a Delaware corporation, or any of their wholly-owned subsidiaries owns at least 51% in interest).

Notwithstanding anything to the contrary contained in this paragraph, Mortgagor shall be permitted to place a subordinate mortgage against the Premises in favor of The Fifteenth Daniel Realty Investment Corporation ("DRIC") to secure repayment of any advances made pursuant to section 5.10 of Mortgagor's First Amended and Restated Certificate and Agreement of Limited Partnership dated September 15, 1984 ("Partnership Agreement"), provided that the mortgage loan documents are submitted to Mortgagee for its prior review and approval.

11. Priority of Lien; After-Acquired Property.

A. Subject to paragraph 23, the Mortgagor shall keep and maintain the Premises free from all liens for moneys due and payable to persons or entities supplying labor for and providing materials used in the construction, modification, repair or replacement of the Premises.

B. In no event shall Mortgagor do or permit to be done, or omit to do or permit the omission of any act or thing the doing or omission of which would impair the lien of this Mortgage. The Mortgagor shall not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restriction or agreement materially changing the uses which may be made of the Premises or any part thereof without the express written consent of the Mortgagee.

C. All property of every kind acquired by the Mortgagor after the date hereof which, by the terms hereof, is required or intended to be subjected to the lien of this Mortgage shall, immediately upon the acquisition thereof by Mortgagor, and without any further mortgage, conveyance, assignment or transfer, become subject to the lien and security of this Mortgage. Nevertheless, Mortgagor will do such further acts and execute, acknowledge and deliver such further conveyances, mortgages, loan documents, financing statements and assurances as Mortgagee shall reasonably require for accomplishing the purpose of this Mortgage.

12. Right to Inspect. Mortgagee, its agents and representatives, may at all reasonable times make such inspections of the Premises as Mortgagee may deem reasonably necessary or desirable.

13. Books and Records; Financial Statements.

A. Mortgagor shall maintain or cause to be maintained books of account and records relating to it and to the operation of the Premises, which books of account and records shall, at all reasonable times, be open to the inspection of Mortgagee, its accountants and other duly authorized representatives. Mortgagor shall enter in such books of account and records, on a timely and consistent basis full, true and correct entries of all dealings and transactions relative to it and to the Premises.

B. As soon as practicable (but no less than ninety (90) days after the end of its fiscal year) after the end of each fiscal year of Mortgagor, and from time to time at the request of Mortgagee, Mortgagor shall submit and deliver to Mortgagee Financial Information (as defined herein) on said Mortgagor (and on the general partner of Mortgagor, if available) and on the Premises, signed by Mortgagor's general partner and attested as true and correct. "Financial Information", as used herein, shall mean a balance sheet, statement of income and expenses, statement of changes in financial position, tax returns, and a budget for the next year. In addition, the Mortgagor shall submit upon the request of Mortgagee, quarterly operating statements for the Premises, including a certified rent roll. Mortgagee shall, upon request, be permitted access to the Premises for purposes of inspection of the same and to audit the books and records of the Mortgagor.

14. Events of Default. If any one or more of the following events ("Events of Default") shall occur, to wit:

- A. failure to make prompt payment, when due, of any payment of principal or interest under the Note, and such failure continues for ten (10) days after Mortgagee gives written notice thereof to Mortgagor;

- B. subject to paragraph 23 herein, if Mortgagor fails to make prompt payment, when due, of any Impositions, and such failure continues for ten (10) days after Mortgagee gives written notice thereof to Mortgagor;
- C. any representation, warranty or other information made or furnished to Mortgagee shall prove to have been false or incorrect in any material respect;
- D. if Mortgagor shall make a general assignment for the benefit of creditors, or shall state in writing or by public announcement its inability to pay its debts as they become due, or shall file a petition in bankruptcy, or shall be adjudicated a bankrupt, or insolvent, or shall file a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or shall file an answer admitting or not contesting the material allegations of a petition against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Mortgagor or any material portion of its assets;
- E. if, within sixty (60) days after the commencement of any proceeding against Mortgagor seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed, or if, within sixty (60) days after the appointment without the consent or acquiescence of Mortgagor, or any trustee, receiver or liquidator of Mortgagor or any material portion of its assets, such appointment shall not have been vacated;
- F. the occurrence of a Prohibited Transfer;
- G. failure to promptly perform or observe any other covenant, promise or agreement contained in this Mortgage or in the other Loan Documents, and such failure continues for thirty (30) days after Mortgagee gives written notice;

Then, at any time thereafter, at the sole option of the Mortgagee, without notice to Mortgagor, the principal balance and accrued interest in the Note shall become immediately due and payable, and any other sums secured hereby shall become immediately due and payable. All sums coming due and payable hereunder shall bear interest after acceleration at the Default Rate.

15. Rights, Powers and Remedies of Mortgagee.

A. If an Event of Default shall occur, Mortgagee may, at its election and to the extent permitted by law:

(i) Institute, or cause to be instituted, proceedings for the realization of its rights under this Mortgage or the other Loan Documents.

(ii) Sell the Premises at public outcry to the highest bidder for cash in front of the Courthouse door in the County where said Premises are located, either in person or by auctioneer, having first given notice of the time, place and terms of sale by publication once a week for three successive weeks prior to said sale in some newspaper published in said County, and, upon payment of the purchase money, Mortgagee, or any person conducting the sale for Mortgagee, is authorized to execute to the purchaser at said sale a deed to the Premises so purchased. Mortgagee may bid at said sale and purchase the Premises, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Premises 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 Mortgagee may elect;

(iii) Make application for the appointment of a receiver for the Premises whether such receivership be incident to a proposed sale of the Premises or otherwise, and Mortgagor hereby consents to the appointment of such receiver without bond or surety and agrees not to oppose any such appointment. Further, Mortgagor agrees that Mortgagee may, at its option, be appointed receiver of the Premises without bond or surety.

B. Upon the occurrence of an Event of Default, Mortgagee may to the extent permitted by law, without order of Court or notice to or demand upon Mortgagor, take possession of the Premises. Should Court proceedings be instituted, Mortgagor hereby consents to the entry of an order by agreement to effect and carry out the provisions of this paragraph. While in possession of the Premises, Mortgagee (or a receiver) shall have the following powers:

(i) To collect the rents and manage, lease, alter and repair the Premises, cancel or modify existing leases, obtain insurance and in general

have all powers and rights customarily incident to absolute ownership; and

(ii) To pay out of the rents so collected the management and repair charges, taxes, insurance, commissions, fees and all other expenses and, after creating reasonable reserves, apply the balance (if any) on account of the indebtedness secured hereby.

C. Mortgagee (or receiver) may remain in possession of the Premises, in the event of a foreclosure, until the foreclosure sale and thereafter during the period of redemption (if any). Mortgagee shall incur no liability for, and Mortgagor shall not assert any claim, set-off or recoupment as a result of any action taken while Mortgagee is in possession of the Premises, except only for Mortgagee's own gross negligence or willful misconduct. In the event no foreclosure proceedings are commenced, Mortgagee may remain in possession as long as there exists an Event of Default.

D. In order to facilitate Mortgagee's exercise of the rights, powers and remedies granted herein, Mortgagor hereby irrevocably appoints Mortgagee its true and lawful attorney to act in its name and stead for the purpose of effectuating any sale, assignment, transfer or delivery authorized above, whether pursuant to power of sale or otherwise, and to execute and deliver all such deeds, bills of sale, leases, assignments and other instruments as Mortgagee may deem necessary and appropriate. Notwithstanding the foregoing, if requested by Mortgagee or any purchaser from Mortgagee, Mortgagor shall ratify and confirm any such sale, assignment, transfer or delivery by executing and delivering to Mortgagee or such purchaser all appropriate deeds, bills of sale, leases, assignments and other instruments as may be designated in such request. Further, Mortgagor agrees that Mortgagee may be a purchaser of the Premises or any part thereof or any interest therein at any sale, whether pursuant to power of sale or otherwise, and may apply upon the purchase price the indebtedness secured hereby.

E. The proceeds of any sale of the Premises or part thereof or any interest therein, whether pursuant to power of sale or otherwise hereunder, and all amounts received by Mortgagee by reason of any holding, operation or management of the Premises or any part thereof, together with any other moneys at the time held by Mortgagee, shall be applied in the following order to the extent that funds are so available:

(i) First, to the payment of the costs and expenses of foreclosing the Premises, taking possession of the Premises and of holding, using, leasing, repairing, improving and selling the

same, including, without limitation, (a) trustee's and receivers' fees, (b) court costs, (c) attorneys' and accountants' fees, (d) costs of advertisement, (e) any title premiums or title investigation charges or fees, and (f) payment of any and all Impositions, liens, security interests or other rights, titles or interests equal or superior to the lien and security interest of this Mortgage (except those subject to which the Premises has been sold and without in any way implying Mortgagee's prior consent to the creation thereof);

(ii) Second, to the payment of all amounts, other than the principal balance and accrued but unpaid interest, which may be due to Mortgagee under the Loan Documents, together with interest thereon as provided therein;

(iii) Third, to the payment of all accrued but unpaid interest due on the Note;

(iv) Fourth, to the payment of the principal balance of the Note;

(v) Fifth, to the extent funds are available therefor out of the sale proceeds or the rents and, to the extent known by Mortgagee, to the payment of any indebtedness or obligations secured by a subordinate mortgage on or security interest in the Premises; and

(vi) Sixth, to the Mortgagor or any other party entitled to such proceeds.

16. Change in Tax Laws. If, by the laws of the United States of America, or of any state or municipality having jurisdiction over Mortgagee, Mortgagor or the Premises, any tax is imposed or becomes due in respect of the issuance of the Note or the recording of this Mortgage, Mortgagor shall pay such tax in the manner required by such law. In the event that any law, statute, rule, regulation, order or court decree has the effect of deducting from the value of the Premises for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the interest of Mortgagee in the Premises, or the manner of collection of taxes, so as to affect this Mortgage, the indebtedness hereby secured or Mortgagee, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes, or

reimburse Mortgagee therefor on demand and any amounts paid thereon by Mortgage shall bear interest at the Default Rate, unless Mortgagee determines, in Mortgagee's sole and exclusive judgment, that such payment or reimbursement by Mortgagor is unlawful; in which event the indebtedness hereby secured shall be due and payable within thirty (30) days after written demand by Mortgagee to Mortgagor. Nothing in this paragraph shall require Mortgagor to pay any income, franchise or excise tax imposed upon Mortgagee, excepting only such which may be levied against the income of Mortgagee as a complete or partial substitute for taxes required to be paid by Mortgagor pursuant hereto.

17. Waivers. To the extent permitted under applicable law, Mortgagor hereby waives:

A. All rights of redemption and/or equity of redemption which exist by statute or common law for sale under any order or decree of foreclosure of this Mortgage on its own behalf and on behalf of each and every person, beneficiary or any other entity, except decree or judgment creditors of Mortgagor who may acquire any interest in or title to the Mortgaged Premises or the trust estate subsequent to the date hereof.

B. The benefit of all appraisement, valuation, stay, or extension laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Premises or any part thereof or any interest therein.

C. The benefit of any rights or benefits provided by the Homestead Exemption laws, if any, now or hereafter in force.

18. Remedies are Cumulative. Each right, power and remedy of Mortgagee now or hereafter existing at law or in equity shall be cumulative and concurrent and shall be in addition to every right, power and remedy provided for in the Loan Documents, and the exercise of any right, power or remedy shall not preclude the simultaneous or later exercise of any other right, power or remedy.

19. Compromise of Actions. Any action, suit or proceeding brought by Mortgagee pursuant to the Loan Documents, or otherwise, and any claim made by Mortgagee under the Loan Documents, or otherwise, may be compromised, withdrawn or otherwise settled by Mortgagee without any notice to or approval of Mortgagor, except as otherwise provided in this Mortgage.

20. No Waiver. No delay or failure by Mortgagee to insist upon the strict performance of any term herein or in the other Loan Documents or to exercise any right, power or remedy provided for herein or in the other Loan Documents as a consequence of an Event of Default, and no acceptance of any payment of the principal,

interest or premium if any, on the Note during the occurrence of any such Event of Default, shall constitute a waiver of any such Event of Default. The exercise by Mortgagee of any right, power or remedy conferred upon it herein or any other Loan Document or by law or equity shall not preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

21. Further Assurances. The Mortgagor, at its expense, will execute, acknowledge and deliver such instruments and take such actions as Mortgagee from time to time may reasonably request to carry out the intent and purpose of this Mortgage and the other Loan Documents.

22. Defeasance. If Mortgagor shall pay the principal, interest and premium, if any, and all other amounts due under the Note and other Loan Documents in accordance with the terms thereof, then this Mortgage and the estate and rights hereby created shall cease, terminate and become void, and Mortgagee will execute and deliver to Mortgagor a release of this Mortgage.

23. Permitted Contest.

A. Mortgagor may contest, at its own expense, by appropriate legal actions or proceedings conducted in good faith and with due diligence, the amount, validity or enforceability in whole or in part of any Imposition or lien thereof or the validity of any instrument of record affecting the Premises or any part thereof, provided that:

(i) Such legal actions or proceedings are commenced within 30 days after Mortgagor receives notice of the lien or charge;

(ii) Mortgagor's legal counsel forwards to Mortgagee and Mortgagee's legal counsel, on a quarterly basis, detailed status reports describing the nature of the action or proceeding; the progress of such action or proceeding to date; describing pleadings filed and any settlement negotiations; evaluating the likelihood of an unfavorable outcome and estimating the amount or range of possible loss;

(iii) No adverse final judgment, decree or other final adjudication be entered or rendered against Mortgagor;

(iv) Mortgagor sets aside on its books adequate reserves; and

(v) Neither Mortgagor nor Mortgagee would be in any danger of any additional civil or criminal liability for failure to comply therewith.

B. In the event that such legal actions or proceedings are not concluded or resolved within one (1) year after Mortgagor received notice of the lien or charge, then, at the sole option of Mortgagee, Mortgagee shall have those rights set forth in paragraphs 14 and 15 herein.

24. Amendment. This Mortgage cannot be amended, modified or terminated orally but may only be amended, modified or terminated pursuant to written agreement between Mortgagor and Mortgagee.

25. Tax and Insurance Escrow.

A. In addition to the rights, powers and remedies granted Mortgagee hereunder, Mortgagor shall be required to (i) pay Mortgagee monthly, in addition to each monthly payment required under the Note, an amount equal to 1/12th of the annual amount reasonably estimated by Mortgagee to be sufficient to enable Mortgagee to pay all Impositions, (ii) pay Mortgagee the amount of all Impositions accrued but not due as of the date that this paragraph becomes operative, and (iii) pay Mortgagee such sums as may be necessary, from time to time, to make up any deficiency in the amount required to fully pay all annual Impositions.

B. If Mortgagee, at any time during the term of this Loan waives the requirement for a tax escrow, it is expressly understood that Mortgagee shall retain the right to require reinstatement of said requirement if:

(i) Mortgagor shall at any time (a) fail to pay any Imposition prior to the last day on which such Imposition may be paid without penalty or fail to furnish Mortgagee proof, if such proof shall have been requested by Mortgagee, of payment of premiums payable for the insurance required pursuant to the terms hereof, and (b) Mortgagee shall have given Mortgagor written notice of such default specifying in such notice that Mortgagee intends to require the foregoing monthly payments if such default is not cured, and (c) such default shall not be cured within ten (10) calendar days after receipt of such notice; or

(ii) Any one of the Events of Default shall occur.

C. It is expressly understood that all amounts set forth in this paragraph shall be held by Mortgagee in an interest bearing account with interest paid to Mortgagor from time to time at Mortgagor's request, providing that no default or Event of Default has occurred.

26. Notices. Any notice or demand required pursuant to the terms hereof shall be given pursuant to the terms and conditions contained in the Note.

27. Expense of Enforcement. In any proceeding to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, guarantee policies, Torrens certificates, and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this paragraph mentioned shall bear interest at the Default Rate, when paid or incurred by Mortgagee in connection with (a) any proceeding, including, but not by way of limitation, to probate and bankruptcy proceedings, to which either of them shall be a party, either as plaintiff, claimant or defendant, by reason of this Mortgage or any indebtedness hereby secured; or (b) preparations for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclose whether or not actually commenced; or (c) preparations for the defense of any threatened suit or proceeding which might affect the Premises or the security hereof, whether or not actually commenced.

28. Cross-Default Clause. Any default by Mortgagor in the performance or observance of any covenant or condition hereof shall be deemed an Event of Default under each of the Loan Documents, entitling Mortgagee to exercise all or any remedies available to Mortgagee under the terms of any or all Loan Documents, and any default or Event of Default under any other Loan Document shall be deemed a default hereunder, entitling Mortgagee to exercise any or all remedies provided for herein.

29. Incorporation by Reference. The terms of the Loan Documents are incorporated herein and made a part hereof by reference.

30. Security Agreement.

A. This Mortgage, in the absence of a separate security agreement entered into by Mortgagor and Mortgagee, constitutes a Security Agreement under the Uniform Commercial Code (herein called the "Code") of the state in which this Mortgage is recorded, with respect to any part of the Premises which may or might now or hereafter be or be deemed to be personal property, fixtures or property other than real estate (all for the purposes of this Paragraph called "Collateral"), and Mortgagor hereby grants Mortgagee a security interest in said Collateral. All of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises.

B. This Mortgage is intended to be a financing statement within the purview of Section 9-402(6) of the Code with respect to the Collateral and the goods described at the beginning of this Mortgage which goods are or are to become fixtures relating to the Premises. The addresses of the Mortgagor (Debtor) and Mortgagee (Security Party) are the same as set forth herein for notices to be given to such parties hereunder. This Mortgage is to be filed for record with the Recorder of Deeds of the County where the Premises are located. The Mortgagor is the record owner of the Premises.

C. Upon the occurrence of any Event of Default hereunder, Mortgagee shall have the rights and remedies of a Security Party under the Code and, at Mortgagee's option, Mortgagee shall also have the rights and remedies, to the extent permitted by law, provided in this Mortgage as to said Collateral.

31. Representations and Warranties.

Mortgagor covenants, represents and warrants to Mortgagee as follows:

A. Mortgagor is a limited partnership duly formed, validly existing and in good standing under the laws of the State of Virginia, and that its sole general partner, The Fifteenth Daniel Realty Investment Corporation is a corporation duly formed validly existing and in good standing under the laws of the State of Virginia;

B. Pursuant to the laws of the State of Alabama, Mortgagor has registered with the Secretary of State of Alabama as a foreign limited partnership;

C. The execution and delivery of the Loan Documents and the performance by Mortgagor of its obligations thereunder have been duly authorized by all necessary action and will not violate any provision of law or of Mortgagor's partnership agreement;

D. The execution and delivery of the Loan Documents and the performance by the Mortgagor of its obligations thereunder do not require any consent other than the consent required by section 5.02 of its Partnership Agreement, which Mortgagor has obtained, and will not result in a material breach of or default under any resolution, indenture, note, contract, agreement or other instrument to which the Mortgagor is a party or is otherwise subject or bound, and does not contravene any provision of applicable law or regulation the violation or contravention of which could affect the validity or enforceability of any of the Loan Documents, or any order, decree, writ or injunction or the Mortgagor's organizational documents;

E. Mortgagor uses no trade names or assumed names in the conduct of its business other than "Daniel Properties XV, Ltd." and "Morning Sun Villas," and has not changed its name or been the surviving entity in a merger or acquired any business in the last ten (10) years. No financing statement (other than any which may have been filed on behalf of Mortgagee and DIC) covering the Premises is on file in any public office or is presently in the possession of any third party;

F. All information furnished to Mortgagee concerning the Premises and financial affairs of Mortgagor, and all other written information heretofore or hereafter furnished by Mortgagor to Mortgagee, is and will be true and correct;

G. All financial statements delivered to Mortgagee are true and correct, and fairly present the financial condition of Mortgagor. The Mortgagor does not have any contingent liabilities not disclosed by said financial statements, and at the present time there are no unrealized or anticipated losses from any commitments or obligations of Mortgagor;

H. There are no actions, suits or proceedings pending or threatened, before or by any court, regulatory or governmental agency, or public board or body, against or affecting the Premises, the organization or existence of Mortgagor, or the authority of Mortgagor to execute the Loan Documents or to perform its obligations thereunder;

I. Mortgagor has not received any notice and does not have knowledge of any intention of or actions, suits or proceedings pending or threatened by any regulatory or governmental agency or

public board or body to acquire the Premises by eminent domain or condemnation proceedings;

J. All utility services for the intended use of the Premises are presently in place, including, if necessary, water, sanitary sewers, storm drains, gas, electric and telephone service;

K. There are no leases or other occupancy agreements affecting the Premises except those leases and occupancy agreements, if any, disclosed in writing to the Mortgagee;

L. All representations, covenants and warranties contained herein and in the other Loan Documents are true and correct as of the date hereof and shall remain true and correct until the Note has been satisfied and paid in full. All representations, covenants and warranties contained herein and in the other Loan Documents shall be deemed to have been relied on by Mortgagee notwithstanding any investigation made by Mortgagee or on its behalf.

32. Miscellaneous.

A. Upon request of either party hereto, the other party shall confirm in writing the amount then due hereunder and under the Note.

B. If the time of payment of all indebtedness secured hereby or any part thereof be extended at any time or times, if the Note be renewed, modified or replaced, or if any security for the Note be released, Mortgagor and any other parties now or hereafter liable for payment of such indebtedness in whole or in part or interested in the Premises shall be held to consent to such extensions, renewals, modifications, replacements and releases, and their liability and the lien hereof and the Loan Documents and the rights created hereby and thereby shall continue in full force, the right of recourse against all such parties being reserved by Mortgagee.

C. The Loan proceeds are to be used, along with Mortgagor's other funds, for the refinance of the Premises, which shall occur contemporaneously with the disbursement of the Loan proceeds.

D. This Mortgage shall be binding upon Mortgagor and its successors and assigns, and all persons claiming under or through Mortgagor or any such successor or assign, and shall inure to the benefit of and be enforceable by Mortgagee and its successors and assigns.

E. The various headings used in this Mortgage as headings for sections or otherwise are for convenience only and shall not be

used in interpreting the text of the section in which they appear and shall not limit or otherwise affect the meanings thereof.

F. If any provision in this Mortgage is held by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such provision of this Mortgage to be illegal, invalid, unlawful, void, voidable, or unenforceable as written, then such provision shall be given full force and effect to the fullest possible extent that it is legal, valid and enforceable, that the remainder of this Mortgage shall be construed as if such illegal, invalid, unlawful, void, voidable or unenforceable provision was not contained therein, and that the rights, obligations and interest of the Mortgagor and the holder hereof under the remainder of this Mortgage shall continue in full force and effect.

G. If any action or proceeding shall be instituted to recover possession of the Premises or any part thereof or to accomplish any other purpose which would materially affect this Mortgage or the Premises, Mortgagor will immediately, upon service of notice thereof, deliver to Mortgagee a true copy of each petition, summons, complaint, notice of motion, order to show cause, and all other process, pleadings and papers however designated, served in any such action or proceeding.

H. Regardless of their form, all words shall be deemed singular or plural and shall have such gender as required by the text. Whenever applicable, the term "mortgage" shall also mean "trust deed" or "deed of trust". If there is more than one Mortgagor of this Mortgage, the liability of the undersigned shall be joint and several.

I. This Mortgage and the other Loan Documents shall not be construed more strictly against one party than against another merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both the Mortgagor and Mortgagee have both substantially and materially contributed to the preparation hereof.

33. Notwithstanding anything provided to the contrary in this Mortgage or any of the other Loan Documents, neither Mortgagor nor any general or limited partner thereof shall have any personal liability for the payment of any indebtedness or other sums due hereunder or under the Note for the performance of any obligations, covenants or agreements under any of the Loan Documents and Mortgagee shall not assert or claim any deficiency or other personal judgment against Mortgagor or any general or limited partner thereof for the payment or performance of any of the obligations of Mortgagor under this Mortgage, the Note or any of the other Loan Documents. The

liability and obligation of the Mortgagor to pay the indebtedness evidenced by this Mortgage and to perform any of the obligations, covenants or agreements under this Mortgage or any of the Loan Documents shall be enforced solely by a foreclosure proceeding against the Premises and the other collateral and security given to secure the indebtedness evidenced hereby, but any judgment in such foreclosure proceeding shall be enforceable only against the Premises and such other collateral and security and the income, rents and profits therefrom. The foregoing exclusion of liability shall not apply if and to the extent Mortgagor willfully misappropriates, wastes or converts any collateral serving as security for Mortgagor's obligations hereunder, in which event Mortgagor shall be liable to the Mortgagee for the amount misappropriated, wasted or converted. Nothing herein shall relieve the Mortgagor of the obligation to comply with the covenants, warranties and representations made by the Mortgagor in this Mortgage and the other Loan Documents, nor relieve the Mortgagor of any liability for willful or fraudulent failure to comply with such covenants, warranties and representations. Nothing contained in this paragraph shall be deemed a release or impairment of this Mortgage or of the other Loan Documents.

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed by its General Partner thereunto duly authorized.

WITNESS:

Sue G. Berman

(CORPORATE SEAL)

DANIEL PROPERTIES XV, a Virginia limited partnership


BY: THE FIFTEENTH DANIEL REALTY INVESTMENT CORPORATION, a Virginia corporation, General Partner

BY: [Signature] President
Its Vice

STATE OF ILLINOIS)
) SS.
COUNTY OF C O O K)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, hereby certify that Stephen R. Monk, whose name as a Vice President of THE FIFTEENTH DANIEL REALTY INVESTMENT CORPORATION, a Virginia corporation, General Partner of DANIEL PROPERTIES XV, a Virginia limited partnership, 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 of said General Partner and with full authority, executed the same voluntarily for and as the act of said corporation, acting in its capacity as General Partner of DANIEL PROPERTIES XV, a Virginia limited partnership, and for and as the act of said limited partnership.

Given under my hand and official seal this 3rd day of October, 1985.


Notary Public

My Commission Expires:

My Commission Expires April 26, 1983

EXHIBIT "A"

Description of 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 Meadow Ridge Road, said curve being concave to the northwest, having a radius of 1598.48 feet, a central angle of $4^{\circ}10'47''$ and a chord which forms an interior or counterclockwise angle of $120^{\circ}10'53''$ with the preceeding 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 $33^{\circ}45'00''$; 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 $18^{\circ}15'00''$; 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 $67^{\circ}07'30''$, 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 101.95 feet; thence turn an angle to the left of $90^{\circ}00'$ and run in a southwesterly direction for a distance of 10.00 feet; thence turn an angle to the right of $90^{\circ}00'$ and run in a northwesterly direction for a distance of 20.00 feet; thence turn an angle to the right of $90^{\circ}00'$ and run in a northeasterly direction for a distance of 10.00 feet; thence turn an angle to the left of $90^{\circ}00'$ and run in a northwesterly direction for a distance of 294.00 feet to a point located in the west line of the northeast quarter of the northeast quarter of the aforesaid Section 1; thence turn an angle to the right of $75^{\circ}38'01''$ 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 $92^{\circ}17'01''$ 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; containing 27.7554 acres, more or less.

EXHIBIT "B"

PERMITTED ENCUMBRANCES

1. Taxes for 1986 and subsequent years. 1986 taxes are a lien but not due and payable until October 1, 1986.
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 said Probate Office.
3. Right of way granted Alabama Power Company as recorded Real Book 2, page 792, and Real Book 2, page 797, in said Probate Office.
4. Sewer line easement and connection agreement between Daniel U.S. Properties, Ltd., and Daniel Properties XV, dated September 23, 1985, and recorded in Real Record 043, Page 611.
5. Mortgage from Daniel Properties XV, a Virginia limited partnership, to Daniel International Corporation dated October 23, 1984 and recorded in Real Record 006, Page 337 in said Probate office, PROVIDED THAT SUCH MORTGAGE IS SUBORDINATED TO THE MORTGAGE AND SECURITY AGREEMENT FROM DANIEL PROPERTIES XV TO LAND OF LINCOLN SAVINGS AND LOAN.
6. Rights of tenants in possession under unrecorded leases of no longer than 12 months duration.

BOOK 048 PAGE 695

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

1985 NOV 12 AM 11:43

Thomas A. Swann, Jr.
JUDGE OF PROBATE

RECORDING FEES

Mortgage Tax	\$ <u>9,375.00</u>
Deed Tax	_____
Mineral Tax	_____
Recording Fee	<u>65.00</u>
Index Fee	<u>1.00</u>
TOTAL	\$ <u>9,441.00</u>