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MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT is made as of this 7th day of November, 1989 (together with all amendments and supplements hereto, called the "Mortgage") by and between DANIEL OAK MOUNTAIN LIMITED PARTNERSHIP, an Alabama limited partnership, having an office for business c/o Daniel Corporation, 1201 Corporate Drive, P.O. Box 43250, Birmingham, Alabama 35243-0250 (the "Grantor"), as grantor, and UNITED STATES FIDELITY AND GUARANTY COMPANY, a Maryland corporation, having an office for business at 100 Light Street, Baltimore, Maryland 21202 (the "Mortgagee") as mortgagee.

INTRODUCTION

The defined terms used in this Mortgage, if not elsewhere defined herein, have the meanings set forth in Section 1. Neither the Grantor nor any partner of Grantor, by virtue of the execution and delivery of this Mortgage, is undertaking any personal liability for the payment of the Note or performance of the provisions of the Loan Documents, except as set forth in the Interest Guaranty and Working Capital Guaranty. The Mortgaged Property shall be and remain subject to the lien of this Mortgage, unless released pursuant to a specific provision hereof, and shall constitute security for the Note so long as any part of the Note shall remain outstanding. The Grantor is duly authorized to make the Note and to execute and deliver this Mortgage and has taken all action required by law and all authorizing action and has obtained all necessary consent, approval and other authorization of any person.

NOW, THEREFORE, the Grantor in consideration of the making of a loan by Mortgagee to Grantor in the amount of up to Fourteen Million Seven Hundred Seventy Three Thousand Dollars (\$14,773,000.00) (the "Loan"), evidenced by the Note (which calls for, among other things, the payment by Grantor of additional interest to Mortgagee upon the sale of portions of the Mortgaged Property) and the acceptance of the Note by the Mortgagee, and other good and valuable consideration, the receipt and sufficiency of which the Grantor hereby acknowledges, and in order to secure the payment of all sums payable on the Note (including, without limitation the additional interest), the performance of the obligations

This instrument was prepared by:  
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*Calvin Little*

of the Grantor set forth in this Mortgage, and all future indebtedness of Grantor to Mortgagee, has executed and delivered this Mortgage and has Granted and by this Mortgage does hereby irrevocably Grant, bargain, sell, alien, demise, release, confirm and convey unto the Mortgagee its successors and assigns, with right of entry and possession as provided herein, all of its estate, right, title and interest in all of the property described in the following Granting Clauses.

\*pursuant to this Mortgage

#### GRANTING CLAUSES

(a) The real property described on Exhibit A of this Mortgage (the "Real Property") and all the tenements, hereditaments, easements, rights, privileges and appurtenances in and to the Real Property, including, without limitation, any streets, ways, alleys, vaults, water, water rights, gores or strips of land adjoining the Real Property, all claims or demands in law or in equity, in possession or expectancy of, in and to the Real Property, and all rents, profits, revenues, issues and other income of any kind from and in respect of the property described above in this Granting Clause (a) and the present and continuing right to collect all such items, it being the intention of the parties that, so far as may be permitted by law, all property of the character hereinabove described which is now owned or is hereafter acquired by the Grantor and is affixed, attached or annexed to the Real Property and improvements shall constitute a portion of the Real Property and the security subject to the lien of this Mortgage;

(b) all fixtures, equipment, machinery, apparatus, fittings, appliances, building materials and other articles of personal property now or hereafter ordered for eventual delivery to the Real Property described above, whether or not delivered thereto, or now or hereafter located at, attached to, placed upon or used or usable in connection with any present or future operation or occupancy of such Real Property and now owned or hereafter acquired by Grantor and all proceeds thereof including, without limitation, all heating, lighting, incineration, engines, plumbing, lifting, cleaning, fire prevention, fire-extinguishing, refrigerating, ventilating, and communications, air-conditioning and power equipment; all gas, water and electrical equipment; all pipes, tanks, motors, conduits, switchboards, elevators, escalators, shades, awnings, draperies, curtains, fans, television sets, furniture, furnishings, floor coverings, screens, storm doors and windows, ranges, refrigerators, dishwashers, washers, dryers, cabinets, partitions, ducts, compressors, landscaping, swimming pools, lawn and garden equipment, and security systems; all equipment installed or to be installed or used or useable in the

operation of the building or appurtenant facilities erected or to be erected on the Real Property, and all additions thereto and replacements thereof; all of which shall be deemed to be fixtures and part of the Real Property, but whether or not of the nature of fixtures, shall constitute part of the security under this Mortgage, excluding, only personal property owned by any tenant actually occupying all or part of the Real Property described above;

(c) all proceeds derived from any taking by condemnation or eminent domain proceedings or transfer in place or in anticipation thereof of all or any part of the property described in these Granting Clauses;

(d) all leases and licenses now existing or hereafter made of any property described in these Granting Clauses and the rents therefrom, any award made hereafter to Grantor in any court procedure involving any lessee or licensee of such property in any bankruptcy, insolvency or reorganization proceeding in any court, and any payment made by any lessee or licensee in place of rent for any such property;

(e) all construction or improvement work in progress on any of the property described above;

(f) all present and future accounts, contract rights, general intangibles, chattel paper, documents and instruments including but not limited to licenses, insurance policies, premiums, and proceeds therefrom, construction contracts, service contracts, utility contracts, options, permits, public works agreements, bonds, deposits and payments thereunder, computer records, computer discs relating or appertaining to the Real Property described above and other property and its development, occupancy and use; and

(g) any and all moneys and other property which may from time to time become subject to the lien of this Mortgage or which may come into the possession or be subject to the control of the Mortgagee pursuant to this Mortgage or any instrument included in the Real Property. All property hereafter acquired by the Grantor and required to be subjected to the lien of this Mortgage or intended so to be shall be subject forthwith to the lien of this Mortgage upon the acquisition thereof by the Grantor as if such property were now owned and were specifically described in this Mortgage and granted hereby or pursuant thereto. The Grantor hereby authorizes the Mortgagee to receive any and all such property as and for additional security for the payment of the Note and

all other sums or obligations secured or intended to be secured by this Mortgage.

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof, whether now owned or held or hereafter acquired, unto the Mortgagee, its successors and assigns forever subject, however to the terms and conditions herein.

Provided, however, that these presents are upon the condition that, if Grantor shall pay or cause to be paid to the Mortgagee the principal, interest, additional interest and premium, if any, payable in respect to the Note, 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 Grantor, and shall keep, perform and observe all and singular the covenants and promises in the Note and this Mortgage, and any renewal, extension or modification thereof, expressed to be kept, performed, and observed by and on the part of the Grantor, 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.

1. Definitions. The terms defined in this Section shall have the meanings stated in this Section for all purposes of this Mortgage, except as otherwise expressly provided or unless the context otherwise requires.

"Certificate and Agreement" means the document dated the date of this Mortgage among the partners of Grantor limiting transfer of the interest and control of Grantor.

"Commitment" means the commitment letter dated [ November 6, 1989 ] from United States Fidelity and Guaranty Company to ~~the~~ Daniel Corporation concerning the Loan.

"Development Loan Agreement" means the Agreement entered into the date of this Mortgage by Mortgagee and Grantor and providing for the disbursement of funds for the development of the Mortgaged Property.

"Event of Default" means an event described in Section 14.

"Grantor" means the grantor named in the first paragraph of this Mortgage and its successors and assigns, or the successors and assigns of each named grantor if more than one.

"Impositions" means all taxes, assessments, ground rents, water and sewer charges, excises, license fees, impact fees, and all other fees and charges of any kind which at any time when this Mortgage is in effect may be assessed or imposed on or be a lien upon the Loan or the Mortgaged Property or any part thereof, or any occupancy, use or possession of the Mortgaged Property or any part thereof.

"Indebtedness" means the amounts payable pursuant to the Note and all other amounts secured or to be secured by this Mortgage.

"Interest Guaranty" means that guaranty entered into the date of this Mortgage by Daniel Corporation in favor of Mortgagee.

"Lease" means any lease, license, permit or other agreement permitting use of the Mortgaged Property or any portion thereof by a person or entity other than Grantor as long as such lease is approved by Mortgagee.

"Loan" means the loan from Mortgagee described in the introduction section of this Mortgage.

"Loan Documents" means this Mortgage, the Note, the Development Loan Agreement, the Interest Guaranty, the Working Capital Guaranty and the Certificate and Agreement.

"Mortgaged Property" means all of the property described in the Granting Clauses of this Mortgage.

"Mortgagee" means United States Fidelity and Guaranty Company and any assignee of the Note and this Mortgage or other lawful owner of the Note.

"Note" means the Note identified in the introduction section of this Mortgage, as such Note may be amended from time to time.

"Permitted Exceptions" means:

(a) easements, rights-of-way, encroachments, encumbrances, servitudes, other similar reservations, rights and restrictions and other minor defects and irregularities in the title to the Mortgaged Property, none of which materially lessens the value of the Mortgaged Property or materially impairs the use thereof for the purposes held by the Grantor, and each of which is approved by the Mortgagee;

(b) the right reserved to or vested in any municipality or public authority by the terms of any power,



franchise, grant, license, permit, provision of law, zoning law, use regulation or other right to terminate such right or to condemn, appropriate, recapture or designate a purchaser of the Mortgaged Property;

(c) any liens for taxes, assessments and other governmental charges and any liens of mechanics and materialmen for work or services performed or material furnished in connection with the Mortgaged Property which are not due and payable, for which, as to mechanics or materialmen's liens, Grantor has either removed, or delivered to the Mortgagee a payment bond therefor satisfactory to the Mortgagee within thirty (30) days of notice of filing, or, as to governmental charges, the amount or validity of which are being contested at the time pursuant to Section 4 by appropriate legal proceedings which shall operate to prevent the collection thereof or other realization thereon and the sale or forfeiture of such Mortgaged Property or any interest therein to satisfy such taxes;

(d) the exceptions set forth in the policies of mortgage title insurance, or commitments therefor, delivered to Mortgagee and relating to the Mortgaged Property and each of which is approved by the Mortgagee; and

(e) the lien of this Mortgage and any rights granted hereby.

"Working Capital Guaranty" means that guaranty entered into this date by Daniel Corporation in favor of Mortgagee.

2. Representations. Grantor warrants that at the time of the execution and delivery of this Mortgage, Grantor has good and marketable fee simple title to all of the Mortgaged Property that is being mortgaged hereunder free and clear of all liens, encumbrances, charges and other exceptions to title, except Permitted Exceptions. The Grantor has full power and lawful authority to grant the Mortgaged Property to the Mortgagee as set forth in this Mortgage and shall preserve its title to the respective interests in the Mortgaged Property subject only to Permitted Exceptions. Grantor warrants generally and shall defend the title to the Mortgaged Property to the Mortgagee against all claims and demands by any person or entity. This Mortgage constitutes a valid first lien on the Mortgaged Property subject only to Permitted Exceptions. Grantor shall comply with all the terms, covenants and conditions of all agreements and instruments recorded in the relevant land records affecting the Mortgaged Property. Grantor waives to the extent permitted by law all rights of redemption, equitable and statutory in the Mortgaged Property.

The Grantor at its expense shall take all action necessary to give all further assurances reasonably required by the Mortgagee to Grant the Mortgaged Property hereby granted or to carry out the intention of this Mortgage.

The Grantor shall cause this Mortgage, each supplement and amendment to this Mortgage and financing statements with respect thereto and each instrument of further assurance (collectively called the "Recordable Documents"), to be filed, registered and recorded as may be required by law and if required to publish notice and maintain the lien hereof upon the Mortgaged Property and to publish notice of and protect the validity of the Recordable Documents. The Grantor from time to time, shall perform any other act as required by law and shall execute any and all further instruments reasonably requested by the Mortgagee for such purposes. If the Grantor fails to comply with this Section, the ~~Register~~ \*shall be and is hereby irrevocably appointed the agent and attorney-in-fact of the Grantor to comply therewith. To the extent permitted by law, the Grantor shall pay recording taxes and fees incident thereto and all expenses, taxes (except taxes occasioned by any sale or transfer of the Note by any holder thereof) and other governmental charges incident to or in connection with the preparation, execution, delivery or acknowledgment of the Recordable Documents, any instruments of further assurance and the Note. \*Mortgagee

The representations set forth in the Commitment are correct for Daniel Corporation and Grantor, as applicable, in all material respects as of the date of this Mortgage.

3. Payment. Grantor shall pay the principal, interest and premium, if any, on the Note at the date and place and in the manner provided in the Note.

4. Impositions and Escrow. Grantor shall pay all Impositions when due and payable. Within ~~thirty (30)~~ days following the due date of each such Imposition, Grantor will forward to Mortgagee a copy of the paid receipted bill or such other evidence as is reasonably satisfactory to Mortgagee indicating payment of the required amount. If Mortgagee so requests, Grantor will deposit with Mortgagee on the day of each month on which a payment of interest is due under the Note, beginning with the month following such request, one-twelfth of the annual Impositions next due as reasonably estimated by Mortgagee plus one-twelfth of the annual premiums for fire, hazard, liability and other insurance required under this Mortgage, such deposit to be held by the Mortgagee in trust to pay the Impositions and insurance premiums. Any interest in such account shall accrue in favor of Grantor, and Grantor shall bear all costs in setting up such

\*thirty (30) \*\* in an interest-bearing account to



interest-bearing account. If payments of interest are due under the Note other than monthly, appropriate adjustment shall be made in the amount of the periodic deposits. If fewer than twelve months will elapse from the initiation of such periodic deposits, Grantor shall deposit with Mortgagee an amount which together with the periodic deposits will provide sufficient funds necessary to pay the Impositions and premiums when they come due. If the deposits should be insufficient to pay the Impositions and premiums in full, Grantor will deposit the deficiency before the Impositions and premiums become due.

The Grantor, however, at its own expense, may contest any Imposition (in the case of any item involving more than \$1,000, after prior written notice to the Mortgagee) by an appropriate proceeding conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Imposition or lien therefor, provided that (i) such proceeding shall suspend the collection thereof from the Mortgaged Property, any interest therein, or sums payable under the Leases or any portion of either thereof, (ii) neither the Mortgaged Property nor any interest therein, or sums payable under the Leases or any portion of either thereof, would be in any danger of sale, forfeiture or loss by reason of such proceedings, and (iii) Mortgagee receives a bond or other security acceptable to Mortgagee (however, if Grantor demonstrates to Mortgagee's satisfaction, that no such bond or security is necessary, Mortgagee will waive the requirement of such bond or other security).

5. Maintenance. Grantor (a) shall keep the Mortgaged Property in good order, condition and repair, and shall not permit or suffer any waste thereof; (b) shall make all necessary and proper renewals, replacements and additions to the Mortgaged Property; (c) shall permit Mortgagee or its designee to enter upon and inspect the Mortgaged Property at any time; (d) shall not alter or tear down the improvements made or to be made on the Real Property included in the Mortgaged Property or permit them to be altered or torn down, without the prior written consent of Mortgagee; and (e)\* shall not make any improvements to or on the Mortgaged Property, without the prior written consent of Mortgagee, other than necessary and appropriate repairs and replacements.

6. Non-alienation. Grantor shall not sell (other than sales\*\*as set forth in this Section 6), abandon, cease to own, Lease except pursuant to leases approved by Mortgagee, assign, encumber, transfer or dispose of the Mortgaged Property or any portion thereof, or any interest therein (except as may be permitted in the Certificate and Agreement), voluntarily or involuntarily without the prior written consent of Mortgagee.

\*except as described in the Development Loan Agreement.

\*\*in the ordinary course of business

A. Grantor shall not, except in accordance with the Development Plan, ~~(as described in the Development Loan Agreement)~~, initiate or permit change of zoning or any other governmental agreement or control of any part of the Mortgaged Property, file subdivision or development plans or enter into any contract for the installation of roads, utilities, tree cutting or other work altering the Mortgaged Property without the prior approval of Mortgagee.

\*(as described in the Development Loan Agreement)

Within one hundred twenty (120) days after the initial disbursement date (as defined in Section 13(a)), and before the commencement of any work on the Mortgaged Property, Grantor shall furnish Mortgagee, for Mortgagee's approval, soils reports and supporting engineering calculations to be used in obtaining all grading, environmental, land use, and any other permits, or approvals or licenses required for the construction of the infrastructure and use of the Mortgaged Property (including permits required for sediment control, dams and lakes), together with such permits if not provided before the initial disbursement date, and design drawings, plans and specifications for construction of the improvements to the Mortgaged Property consistent with the Development Plan. All such items must conform to all applicable federal, state and local governmental rules, ordinances and regulations; including, without limitation, all applicable environmental protection laws. Neither the acceptance nor approval by Mortgagee of the plans and specifications, nor any subsequent inspections or approvals of the improvements during construction shall constitute a warranty or representation by Mortgagee as to the technical sufficiency, or adequacy or safety of the improvements or any component parts thereof, nor shall such approvals or inspections constitute such a warranty or representation as to the subsoil conditions involved in the project or any other physical condition or feature pertaining to the improvements. Mortgagee reserves the right to review and approve any changes to the plans and specifications for the development of the Mortgaged Property. Mortgagee shall have fifteen (15) days following receipt of the complete set of the plans or specifications, or any modifications thereof, and the engineer's report (described in the immediately following paragraph), in which to review such items and, provided the transmittal letter to Mortgagee so indicates, failure to respond within such 15-day period shall be deemed approval.

\*material

Before Grantor commences any site work or construction of infrastructure or other improvements on the Mortgaged Property, Grantor shall furnish Mortgagee for Mortgagee's approval an engineering report with respect to the Mortgaged Property and all improvements existing or to be constructed thereon (and all the plans and specifications for

such improvements) by an engineer satisfactory to Mortgagee. The engineering report shall be in form and substance satisfactory to Mortgagee. Grantor shall pay the costs of the engineering study. The engineer will confirm in its report that (a) the plans and specifications are full and complete in all material respects and conform to all applicable laws, (b) the improvements, if constructed substantially in accordance with the plans and specifications therefor, will comply with all applicable zoning, building, environmental and land use laws, statutes, codes and regulations, (c) all permits necessary for construction of the improvements have been or will be issued in the ordinary course of business, (d) all permits necessary for occupancy and use of the Mortgaged Property have been or will be issued in the ordinary course of business, (e) adequate ingress and egress to the Mortgaged Property is available over public rights of way or validly existing easements, and (f) the Development Plan is feasible from all applicable engineering criteria and factors and the number of amenity and non-amenity lots available are consistent with the Development Plan.

B. Grantor or an affiliate of Grantor shall develop approximately 185 acres as shown on the Development Plan as a golf course (the "Golf Course") as follows:

(a) a developer approved by Mortgagee (the "Golf Course Developer") with written partnership or contractual relationships, each as approved by Mortgagee, with ~~Robert C. Gump, Henry Johnson and William E. Robinson~~ maintained throughout the development of the Golf Course, shall develop the Golf Course; \*such parties as have been approved by Mortgagee in the Commitment.

(b) the Golf Course Developer shall submit all plans and specifications for development of the Golf Course to Mortgagee for Mortgagee's approval at least thirty (30) days before the date of the Golf Course Closing (defined below), and all material modifications thereof at least fifteen (15) days before commencing any of the work shown thereon;

(c) Grantor shall lease the Golf Course to the Golf Course Developer for development and operation of the Golf Course pursuant to a ground lease approved by Mortgagee (the "Golf Course Ground Lease"). Simultaneously with the execution and delivery of the Golf Course Ground Lease, Mortgagee shall release the Golf Course from the lien of this Mortgage, Grantor shall pledge and assign its interest under the Golf Course Ground Lease to Mortgagee so that Mortgagee shall have a secured interest in the Golf Course satisfactory to Mortgagee; Grantor and the Golf Course Developer shall subordinate their interests under the Golf Course Ground Lease to the lien of the

loan for the development of the Golf Course (the "Golf Course Loan") and the parties to the Golf Course Loan shall execute and deliver all documents and items necessary to close the Golf Course Loan (the simultaneous events described in this ~~Section~~ Section are collectively called the "Golf Course Closing");

\*6B(c)

(d) the Golf Course Developer shall develop and operate the Golf Course in substantial accordance with plans and specifications approved by Mortgagee and the Golf Course Ground Lease;

(e) the Golf Course Developer shall submit to Mortgagee for Mortgagee's approval, at least fifteen (15) days before the execution thereof, a contract for the management and operation of the Golf Course acceptable to Mortgagee, including the identity of the proposed superintendent of the Golf Course.

C. Mortgagee shall release the Mortgaged Property or any portion thereof from the lien of this Mortgage upon (a) receipt or deposit into the Debt Service Reserve (as defined in the Note) of all proceeds due to Mortgagee ~~thereof~~ pursuant to the Note and the Loan Documents; (b) approval of the sale price by Mortgagee; (c) receipt of evidence satisfactory to Mortgagee of access of the remaining portions of the Mortgaged Property to public rights of way and to water and sewer service; and (d) determination by Mortgagee that such release will not adversely affect the land planning agreement concerning the infrastructure or marketability of the remaining portions of the Mortgaged Property. Sale prices which equal or exceed one hundred-fifty percent (150%) of the pro rata amortization amounts calculated in accordance with Exhibit D to this Mortgage will be deemed to be approved by Mortgagee. All other sale prices must be specifically approved by Mortgagee after submission to Mortgagee of the applicable proposed contracts of sale. If, within fifteen (15) business days after receipt thereof, Mortgagee fails to respond to any such proposed contract of sale with notice to Mortgagee indicating that such failure to respond shall be deemed to be approval, then Mortgagee shall be deemed to have approved such contract of sale. \*from such sale \*\*in its reasonable discretion,

D. After the maturity date of the Note, which is 11-6-99, this Mortgage shall remain in effect to secure payment of the continuing contractual obligation of Grantor to pay the additional interest (as more fully set forth in the Note) in net sales proceeds from the sales of portions of the Mortgaged Property, provided, however, that this Section 6D shall not apply if Lender exercises its call option pursuant to the Note.



7. Encumbrances and Governmental Requirements.

Grantor (a) shall keep the Mortgaged Property free from all liens and claims of every kind except for Permitted Exceptions, ~~and~~ such as are approved in writing by Mortgagee and ~~for~~ general real estate taxes and assessments, library district charges and fire district charges which are a lien on the Mortgaged Property and not yet delinquent and except that Grantor may contest Impositions as provided in Section 4, and (b) shall comply with all laws, regulations, judgments, orders and other governmental requirements applicable to the Mortgaged Property.

\*nonmonetary encumbrances

8. Insurance.

Grantor shall at all times keep the Mortgaged Property\*\*insured for the benefit of Mortgagee and Grantor, as their interests may appear, against loss or damage by fire by "all risk" fire insurance and extended coverage insurance with broad form endorsements covering all improvements for the full replacement cost thereof with a waiver of subrogation, if available, and replacement cost agreed amount endorsements and against such other hazards, casualties and contingencies all as may be required from time to time by Mortgagee. Grantor will require annually the fire underwriters rating bureau, or equivalent organization acceptable to Mortgagee, to establish a value for the Mortgaged Property\*and to furnish an executed copy thereof to Mortgagee. In each such policy Grantor shall have Mortgagee named as an additional insured and as loss payee, and Grantor will cause a standard New York mortgagee clause satisfactory to Mortgagee to be included in each such policy providing that all payments thereunder shall be made to the sole order of Mortgagee as its interest may appear, and a clause providing that such policy may not be cancelled or modified without thirty (30) days prior written notice to Mortgagee. During the construction, repair, restoration or replacement of improvements on the Real Property, Grantor shall obtain and keep in effect a standard builder's risk policy with extended coverage in the amount of one hundred percent (100%) of the value of the improvements, with a mortgagee clause and non-cancellation, non-modification clause as described above. Grantor shall not be required to furnish property insurance in excess of the full insurable value of the Mortgaged Property and all policies of such insurance shall have a deductible of not more than \$25,000.00.

\*\*other than the Real Property

Except as hereinafter provided, if Mortgagee receives any proceeds of the insurance described above, Mortgagee, at its option, may apply whatever sums are received either to the repair, restoration and replacement of the damaged or destroyed property, without obligation to see the sums are so applied, or to the payment of the Indebtedness\* in such manner or combination thereof, including inverse order of maturity of

\*other than additional interest

installments, if any, as Mortgagee, in its sole discretion, may elect. If a foreclosure sale of the Mortgaged Property or transfer in place of a foreclosure sale occurs, Mortgagee may cancel any of such policies and may apply any unearned premium returned to the payment of the Indebtedness.

If, however, any loss or damage to the Mortgaged Property occurs, the Mortgagee shall make the insurance proceeds received by the Mortgagee available for the restoration of the improvements affected by such loss or damage, subject to the following conditions:

(a) There shall be no Event of Default under any of the terms, covenants and conditions of the Note or this Mortgage;

(b) All existing leases of the Mortgaged Property affected by such loss or damage shall continue in full force and effect, or such leases, after restoration is complete, shall be readily replaceable by leases having economic terms at least as favorable as those replaced;

(c) The Mortgagee shall first be given satisfactory proof that such improvements have been fully repaired, rebuilt, or otherwise restored or that by application of such proceeds they will be fully restored, free and clear of all liens, except the lien of this Mortgage;

(d) If such proceeds shall be insufficient to restore the improvements, Grantor either shall deposit promptly with the Mortgagee funds which, together with such proceeds, shall be sufficient to restore the improvements, or shall provide other assurance satisfactory to Mortgagee that the funds necessary to such restoration will be available;

(e) If Grantor shall fail within a reasonable time, subject to delays beyond its control, other than lack of funds, to restore the improvements, the Mortgagee, at its option, may restore the improvements for and on behalf of Grantor and may do any act or thing as agent of Grantor necessary or appropriate to that end;

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(f) Mortgagee shall hold the proceeds in escrow and disburse the funds in accordance with a construction draw schedule reasonably acceptable to Mortgagee, subject to (i) Mortgagee's approval of the plans, specifications, and contracts for the restoration, (ii) receipt of evidence reasonably satisfactory to Mortgagee that the amounts to be disbursed are due and owing for work performed, and (iii) receipt of paid invoices and lien waivers for amounts previously paid;

(g) Any insurer under any policy of insurance who claims that no liability exists as to any insured under such policy shall waive any right it may have to be subrogated, in whole or in part, to any right or power of the Mortgagee under this Mortgage or to the lien of this Mortgage;

~~(h) The total minimum fixed monthly rental payable to Grantor after such loss or damage under all leases of the Mortgaged Property shall be not less than the aggregate of (i) one-twelfth (1/12th) of the annual impositions, insurance premiums, repair and replacement reserve and all other expenses of operating the Mortgaged Property in accordance with the current operating budget, as approved by Mortgagee, payable with respect to the Real Property, plus (ii) the amount of each level monthly installment of principal and interest required to be paid under the Note, or if such total minimum monthly rental is less than such aggregate amount, the insurance proceeds shall first be applied to payment of the Indebtedness to the extent necessary to reduce each level monthly installment of principal and interest payable on the indebtedness to a level amount equal, as nearly as practicable, but not exceeding, the total minimum monthly rental, less the amounts referred to in items (i) and (ii) above;~~

(i) the marketability, utility, and value of the Mortgaged Property as established by the Mortgagee is not so

adversely affected by the casualty that the ratio, as as established by the Mortgagee, of the then unpaid principal balance of the Note, as reduced by any excess proceeds applied to the Note, to the value of the remaining Mortgaged Property together with improvements if they were to be restored would be increased to a ratio higher than the ratio as established by the Mortgagee of the original principal balance of the Note to the original appraised value of the Mortgaged Property; and

(j) The excess of insurance proceeds over the amount necessary to complete restoration shall be applied as a credit upon any portion of the Indebtedness \* selected by the Mortgagee.

\*(other than additional interest)

Grantor at all times shall maintain rental interruption insurance with respect to the business operated at the Mortgaged Property in such amounts as Mortgagee reasonably shall request but in no event shall such rental interruption coverage exceed the actual rental income from the Mortgaged Property for a 12 month period.

Grantor at all times shall keep itself insured against liability for damages arising from any accident or casualty in or upon the Mortgaged Property by maintaining comprehensive general public liability insurance, the limits of which shall be at least five million dollars (\$5,000,000) single limit coverage.

If on the date of this Mortgage, part or all of the Mortgaged Property is in an area that the Secretary of the United States Department of Housing and Urban Development has identified as having special flood or mud slide hazards, and in which the sale of flood insurance is available under the National Flood Insurance Act of 1968, 42 U.S.C.A. §4001 et seq., Grantor shall obtain and maintain a flood insurance policy satisfactory to Mortgagee in an amount equal to the balance due under the Note or to the limit of governmental assistance, whichever is less.

Grantor shall deliver to Mortgagee upon request the original of each policy or a certificate providing the Mortgagee the same protection under the mortgage clause as if the Mortgagee held the original policy and a copy of such policy, and shall deliver a renewal of each such policy at least thirty (30) days in advance of its expiration and evidence satisfactory to Mortgagee that the premium for such insurance is paid in full. Grantor shall notify Mortgagee

orally or in writing of any casualty or loss within twenty-four (24) hours after Grantor has knowledge thereof. During the construction, repair, restoration or replacement of improvements on the land included in the Mortgaged Property, Grantor shall cause all contractors and subcontractors, including Grantor if it acts as a contractor, to obtain and keep in effect workmen's compensation insurance to the full extent required by applicable law.

All insurance required under this Mortgage shall be written in such manner and by such companies as reasonably approved by Mortgagee.

The Grantor shall not take out any separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under this Mortgage unless the Mortgagee is included therein as a named insured, with loss payable to Mortgagee. The Grantor shall immediately notify the Mortgagee whenever any such separate insurance is taken out, specifying the insurer and full particulars as to such policies, and shall deliver to the Mortgagee certificates of insurers evidencing such insurance.

9. Accounts and Records; Financial Statements. Not later than March 31 of each calendar year after the year in which the initial disbursement date (as defined in Section 13(a)) occurs, Grantor shall deliver to Mortgagee (A) an audited written statement prepared by an independent certified public accountant paid by Grantor and reasonably acceptable to Mortgagee (the "Final Statement") setting forth (1) the actual Net Sales Proceeds (as defined in the Note) for the preceding calendar year, or portion thereof, (2) the amount of Net Sales Proceeds (as defined in the Note) to be paid to Mortgagee and to Grantor during such calendar year based on the actual amount of Net Sales Proceeds, and (3) the amount of principal repaid or to be repaid to Mortgagee pursuant to the Note; and (B) an audited financial statement of the Grantor for the preceding calendar year. Not later than ten (10) days after the end of each month, commencing with the month in which the initial disbursement date occurs, Grantor shall prepare and deliver to Mortgagee (A) a written report (the "Status Report") on the status of the subdivision, development and sale of all remaining lots or portions of the Property as of the end of such month and (B) monthly income and expense statements.

Grantor shall deliver to Mortgagee, for Mortgagee's approval, thirty (30) days before commencement of any phase (the "Phase") described in the operating and capital budget approval by Mortgagee pursuant to the ~~sub~~ paragraph of ~~the~~ this Section 9, a ~~subplan~~ <sup>salesplan</sup> (the "Sales Plan") for such phase setting

forth a proposed sale price, proposed calculation of pro rata repayment of principal in accordance with ~~Exhibit A~~ and proposed calculations of prorated costs of development and operation in accordance with ~~Exhibit B~~\* for each lot or other portion of the phase. Grantor shall not commence development of any Phase until Mortgager has approved the Sales Plan for such Phase. \*the Note

The Quarterly Statements (as defined in the Note) and Final Statement shall show all items relative to the calculation of Net Sales Proceeds (as set forth in the Note), and be certified by the general partner of Grantor as being true and correct at the time made. Grantor shall keep books and records setting forth the annual Net Sales Proceeds and quarterly Net Sales Proceeds in reasonable detail in accordance with generally accepted accounting principles. Mortgagee, through its authorized agent, representative or public accounting firm selected by Mortgagee, may, at its expense, inspect the books and records of Grantor for the purpose of verifying information contained in each Quarterly Statement, Final Statement, audited financial statement of the Grantor or Status Report.

Commencing on the initial disbursement date, Grantor shall provide to Mortgagee within thirty (30) days after the end of each calendar month a monthly income and expense statement prepared in accordance with generally accepted accounting principles showing the monthly income and expenses in detail by line item sufficient for Mortgagee to be able to review the financial status of the Property.

Grantor shall submit to Mortgagee no later than October 15 of each year <sup>preceding</sup> ~~the~~ the budget year <sup>on</sup> ~~an~~ operating and capital budget prepared by Grantor which will provide for the development of the Mortgaged Property for the subsequent calendar year, define phases of development of the Mortgaged Property (~~Exhibit C~~ <sup>hereinafter</sup> referred to individually as "Phase") set forth, the number of lots ~~corresponding~~ <sup>in illustration</sup> \* proposed for development in each phase and line item costs of development and operation of the Mortgaged Property for each Phase. Mortgagee shall have thirty (30) days following its receipt of the budget to approve such budget, and if Mortgagee fails to approve or specify its objections in writing within such thirty (30) day period the budget shall be deemed approved. Mortgagee has approved the initial operating and capital budget as attached ~~to the Development Loan Agreement~~ to the Development Loan Agreement. \*and corresponding infrastructure

10. Leases and Management. Grantor shall carry out all of its obligations as lessor set forth in any Lease and not permit a lien or other encumbrance superior to any Lease other than this Mortgage. Grantor shall furnish Mortgagee a copy of each

executed Lease immediately upon its execution. Grantor shall execute an assignment of any present or future Lease and the rents due under such Lease in the form provided by Mortgagee. No such assignment shall be construed as a consent by Mortgagee to any Lease, or to impose on the Mortgagee any obligation with respect to such Lease.

If, after an Event of Default by Grantor, any lessee fails to pay rent to the Mortgagee pursuant to such assignment, any rent collected by Grantor shall be deemed to constitute a trust fund for the benefit of the Mortgagee and be held by Grantor as a trustee for Mortgagee.

Grantor shall not make any other assignment, hypothecation or pledge of any rents under any Lease, nor modify, cancel, terminate or accept a surrender of any Lease other than in the ordinary course of business, nor accept a prepayment of rent other than the usual prepayment as would result from the acceptance by lessor on each regular rental installment period of any Lease without the prior written approval of Mortgagee. The holder of any subordinate lien shall not have any right to modify or terminate any Lease affecting the Mortgaged Property whether or not such Lease is subordinate to this Mortgage. Subject to the rights of the lessees therein, Grantor may use such payments in the ordinary course of Grantor's business, until an Event of Default shall occur.

Grantor hereby assigns to Mortgagee, as further security for the payment of the Indebtedness, the rents, security deposits, issues and profits of the Mortgaged Property, together with all leases and other documents evidencing such rents, issues and profits now or hereafter in effect and any and all deposits held as security under said Leases. Nothing contained in the foregoing sentence shall be construed to bind Mortgagee to the performance of any of the covenants, conditions or provisions contained in any such Leases, or other document or otherwise to impose any obligation on Mortgagee (including, without limitation, any liability under the covenant of quiet enjoyment contained in any Lease or in any law of any applicable state in the event that any tenant shall have been joined as a party defendant in any action to foreclose this Mortgage and shall have been barred and foreclosed thereby of all right, title and interest and equity of redemption in the Mortgaged Property), except that Mortgagee shall be accountable for any money actually received pursuant to such assignment. Grantor hereby further grants to Mortgagee the right if an Event of Default has occurred and is continuing (i) to enter upon and take possession of the Mortgaged Property for the purpose of collecting the said rents, issues and

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profits, (ii) to dispossess by the usual summary proceedings any tenant defaulting in the payment thereof to Mortgagee, (iii) to let the Mortgaged Property, or any part thereof, and (iv) to apply said rents, issues and profits, after payment of all necessary charges and expenses, on account of said Indebtedness. Such assignment and grant shall continue in effect until the Indebtedness is paid, the execution of this Mortgage constituting and evidencing the irrevocable consent of Grantor to the entry upon and taking possession of the Mortgaged Property by Mortgagee pursuant to such grant, whether foreclosure has been instituted or not and without applying for a receiver. Until the occurrence of an Event of Default, Grantor shall be entitled to collect and receive said rents, issues and profits. Grantor agrees to use said rents, issues and profits in payment of principal and interest becoming due under this Mortgage and in payment of taxes, assessments, water rates, sewer rents and carrying charges becoming due against the Mortgaged Property. Such right of Grantor to collect and receive such rents, issues and profits may be revoked by Mortgagee upon the occurrence of an Event of Default by giving written notice of such revocation, served personally upon or sent by registered or certified mail to the tenants of the Mortgaged Property.

Grantor shall not change the <sup>development manager</sup> ~~management~~ of the Mortgaged Property without the prior written consent of the Mortgagee, except that Mortgagee shall permit a change if the new manager is owned and controlled by the same persons or entities, and to the same extent, as is the existing manager.

11. Advances. If Grantor shall fail to perform any of Grantor's obligations under this Mortgage and an Event of Default shall have occurred and be continuing, Mortgagee shall have the option to make advances or payments to perform or satisfy such obligations. All sums so advanced or paid shall be at once repayable by Grantor and shall bear interest at the default rate as set forth in the Note, from the date such amounts shall become due and payable until the date paid, and all sums so advanced or paid, with interest as stated, shall become a part of the Indebtedness.

12. Condemnation. Should the grade of any street be altered or all or any part of the Mortgaged Property be condemned or taken through eminent domain proceedings or transfer in place or in anticipation thereof, then except as hereinafter provided, all or such part of any award or proceeds derived therefrom, as Mortgagee in its sole discretion may determine in writing, shall be paid to Mortgagee and applied to the payment of the Indebtedness\*, in such manner or combination thereof, including inverse order of maturity of installments of

\*other than additional interest



principal, if any, as Mortgagee, in its sole discretion, may elect.

If, however, part of the Mortgaged Property is condemned or taken through eminent domain proceedings, the Mortgagee shall make the condemnation proceeds received by the Mortgagee available for the restoration of the improvements affected by such loss or damage, subject to the following conditions:

(a) satisfaction of the conditions (a), (d), (e), (f), (h), (i) and (j) of Section 8 as if such paragraphs referred to condemnation proceeds;

(b) all existing leases of the Mortgaged Property affected by such loss or damage shall continue in full force and affect except as to the area taken and except to the extent of a reduction in rent in direct proportion to the floor area taken; and

(c) the Mortgagee shall first be given satisfactory proof that such improvements have been restored to an integrated whole or that by application of such proceeds they will be restored to an integrated whole, free and clear of all liens, except the lien of this Mortgage.

13. Funding. Mortgagee shall disburse funds to Grantor under the conditions set forth in this Section 13:

(a) the sum of [\$12,843,837.41] shall be disbursed to the Grantor on the date of this Mortgage (the "initial disbursement date").

(b) Mortgagee shall retain the sum of [\$1,929,162.59] (the "Contingency Reserve"), to disburse to Grantor on a quarterly basis for any unforeseen, unbudgeted costs of marketing, construction of infrastructure, administration, contingencies and closing costs not covered by the Working Capital Reserve (defined below in Section 13(c)) and approved by Mortgagee upon

(1) satisfaction of the conditions set forth in the Commitment and the Loan Documents, including, without limitation, the disbursement contemplated by Section 13(a);

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(2) issuance by the title insurer of an appropriate endorsement to the Mortgagee's title policy satisfactory to Mortgagee covering such disbursement and showing no adverse change in the title to the remaining portions of the Mortgaged Property since the initial disbursement date, other than nonmonetary encumbrances approved by Mortgagee;

(3) receipt by Mortgagee of evidence \*satisfactory to Mortgagee of the costs of the items for which such disbursement has been requested; \*reasonably

(4) receipt by Mortgagee of evidence \*satisfactory to Mortgagee of the approval (if required) by appropriate governmental authorities having jurisdiction over the Mortgaged Property of the plans and specifications with respect to the work for which such disbursement has been requested; \*reasonably

(5) receipt by Mortgagee of ~~evidence~~ ~~satisfactory to Mortgagee of the completion of~~ ~~the work for which such disbursement has been~~ ~~requested~~ executed lien waivers from all parties entitled to claim mechanics' or materialmen's liens for such work and an architect's or engineer's certificate stating that such work has been substantially completed in accordance with the plans and specifications, all applicable building codes, laws, statutes and regulations and, if available, a certificate of occupancy issued by the appropriate governmental authorities having jurisdiction over the Mortgaged Property ; and

(6) for any disbursement requested during the term of the Interest Guaranty delivery to Mortgagee of a letter of credit based on the amount requested to be disbursed and calculated on the same terms and conditions as set forth in the Interest Guaranty.

Disbursements made from the Contingency Reserve shall be in the amount of the actual costs to Grantor of the items for which such disbursements are requested. Grantor must meet the requirements for the disbursement of the Contingency Reserve within twenty-four (24) months after the initial disbursement date. After such twenty-four month period, Mortgagee shall

have no further obligation to disburse to Grantee any portion of the Contingency Reserve.

(c) Mortgagee shall make no disbursement pursuant to this Section 13 if Grantor shall be in default under the Commitment, any of the Loan Documents or the joint venture commitment (as defined in paragraph 12 (xviii) of the Commitment) or an event shall have occurred but for the giving of notice or passage of time would constitute a default under the Commitment, any of the Loan Documents, or the joint venture commitment.

14. Defaults. Each of the following events shall constitute a default ("Event of Default") under this Mortgage:

(a) default shall be made in any payment of the principal, interest or premium, if any, on the Note when and as such payment shall become due and payable as provided in the Note;

(b) default shall be made in the observance or performance of one or more of the other terms, covenants or other obligations on the part of Grantor set forth in the Note, this Mortgage or the Loan Documents (other than those set forth below) and the failure to perform such obligation is not cured within thirty (30) days after written notice thereof specifying such default. Grantor shall have for each such default under this Section 14(b) up to two (2) additional 60-day periods to cure a non-monetary default if Grantor is proceeding with due diligence to correct such default, and by its nature such default cannot be cured within the applicable time period, and such default is reasonably likely to be cured within the 60-day period;

\*applicable

(c) any representations or warranty of the Grantor set forth in this Mortgage, the Note, or any document executed in connection with the Loan shall prove to be incorrect in any material respect as of the time when made;

(d) any court of competent jurisdiction shall sign an order (i)

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adjudicating Grantor bankrupt, (ii) appointing a trustee or receiver of the Mortgaged Property or of a substantial part of the property of Grantor, or (iii) approving a petition for, or effecting an arrangement or reorganization in bankruptcy, or any other judicial modification or alteration of the rights of Mortgagee or of other creditors of Grantor; or if Grantor shall file any petition, consent to any action, or seek relief under any laws affecting creditor's rights; or if Grantor shall make an assignment for the benefit of creditors or shall admit in writing inability to pay debts generally as they become due, except that Grantor shall have sixty (60) days within which to dismiss an involuntary proceeding brought against Grantor;

(e) if Grantor dissolves or permits the dissolution of Grantor or of its general partner;

(f) a default occurs in the Certificate and Agreement;

(g) if the Grantor violates Section 6, Section 7, or fails to pay any Imposition as required by Section 4 of this Mortgage;

(h) if final judgment for the payment of money is entered against the Grantor and the Grantor shall not discharge such judgment by payment or bond within thirty (30) days following the entry thereof;

(i) if Grantor engages in any business unrelated to the operation of the Mortgaged Property, and any other real estate adjacent to or in close proximity with the Mortgaged Property and owned by grantor;

(j) if a default occurs under either the Interest Guaranty or the Working Capital Guaranty;

(k) failure of any of the events or matters described in Section 6 of this Mortgage.

(l) if Grantor defaults in its obligations under the documents evidencing or securing the Golf Course Loan<sup>\*</sup>; or

(m) if Grantor defaults in its obligations under the Golf Course Ground Lease<sup>\*</sup>

15. Remedies. In every such case upon the occurrence of an Event of Default, the Mortgagee may do the following:

(a) The Mortgagee, by notice to the Grantor may, declare the entire unpaid principal amount of the Note (if not then due and payable) and all accrued and unpaid interest thereon and any premiums to be due and payable immediately.

(b) The Mortgagee or its agents may enter upon the Mortgaged Property and may exclude the Grantor and any other occupant therefrom; and, at the expense of the Mortgaged Property, may use, operate, manage and control the Mortgaged Property and conduct the business thereof, may maintain and restore the Mortgaged Property and may make all necessary or proper repairs and replacements and any useful alterations, additions and improvements thereto. The Mortgagee shall be entitled to collect and receive all earnings, rents and other revenues of the Mortgaged Property and the Grantor hereby assigns such revenues to the Mortgagee. After deducting the expenses of conducting the business thereof and of all maintenance and improvements and of prior or other charges upon the Mortgaged Property, including reasonable compensation for the services of all attorneys and agents employed by the Mortgagee, the Mortgagee shall apply the moneys from the Mortgaged Property in the following order of priority: (i) to the payment of the amount then owing on the Note for interest; (ii) to the payment of any other sums secured by this Mortgage; (iii) to the payment of the amount then owing on the Note for principal; and (iv) to the payment of the surplus, if any, to whomever is entitled thereto.

(c) The Mortgagee by its agents or attorneys, may:

(1) bring a court action at law or in equity (i) to foreclose this Mortgage, or (ii) 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 Mortgagee's right to institute or maintain the other, provided that Mortgagee shall have only one payment and satisfaction of the indebtedness;

<sup>\*</sup>and such default is not cured by any party other than Lender within any applicable cure period specified in the documentation evidencing the Golf Course Loan

(2) 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;

(3) exercise any other right or remedy available under law or in equity;

(4) sell the Mortgaged Property at public outcry to the highest bidder for cash in front of the Court House door in the County where the Mortgaged 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 such sale in some newspaper published in such 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 such sale a deed to the property so purchased. Mortgagee may bid at such sale and purchase the Mortgaged Property, 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 Mortgagee may elect in its sole discretion.

(d) At the option of the Mortgagee, 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 Mortgagee exercises its option to foreclose this Mortgage in equity, Mortgagee 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 defendant to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted to be by the Grantor, a defense to any proceedings instituted by the Mortgagee to collect the sums secured hereby.

(e) The Mortgagee shall have all rights and remedies provided to a secured party by the Alabama Uniform Commercial Code with respect to such property in the Mortgaged Estate, if any, as the Alabama Uniform Commercial Code governs.

16. Sale of Property, Application of Proceeds. (a) To the extent permitted by law, the Mortgagee may postpone, one or more times, any sale of all or any part of the Mortgaged Property by public announcement at the time and place of such sale.

(b) Upon the completion of any sale by the Mortgagee under this Section 16, the Mortgagee shall execute and deliver



to the purchaser sufficient deeds and other instruments transferring all their right, title and interest in and to the property and rights sold. The Grantor hereby irrevocably appoints the Mortgagee the true and lawful attorney of the Grantor to make, in its own name and stead or in the name of the Grantor, all necessary conveyances, assignments, transfers and deliveries of the property and rights so sold, and for that purpose the Mortgagee may execute all necessary deeds and instruments of assignment and transfer and may substitute persons with like power, the Grantor hereby ratifying and confirming all that such attorneys or substitutes shall lawfully do by virtue hereof. Any sale made under or by virtue of this Section 16, shall divest all the estate and any right of the Grantor and any person claiming from, through or under the Grantor to the property and rights so sold, and shall be a perpetual bar against the Grantor and the respective successors and assigns.

(c) The receipt of the Mortgagee for the purchase money paid as a result of any such sale shall be sufficient discharge therefor to any purchaser of the Mortgaged Property sold as aforesaid. No such purchaser or its assigns shall be bound to see to the application of such purchase money upon or for any purpose hereof, shall be answerable in any manner whatsoever for any loss or misapplication of any of such purchase money or shall be bound to inquire as to the regularity of any such sale.

(d) If any sale under this Section 16 occurs, the entire principal of and interest on the Note and all other sums required to be paid by the Grantor pursuant hereto, if not previously due and payable, shall immediately become due and payable.

(e) The Mortgagee shall apply the purchase money or proceeds of any sale made under this Section 16, and any other amounts which the Mortgagee then may hold as part of the Mortgaged Property, in the following order: (i) to the payment of the costs and expenses of such sale including, but not limited to, ~~Mortgagee's fees~~, <sup>reasonable</sup> legal fees and disbursements, title charges and transfer taxes, and payment of all expenses liabilities and advances of the Mortgagee\*together with interest at the rate provided under the Note on all advances made by the Mortgagee; (ii) payment of all sums expended by the Mortgagee under the terms of this Mortgage and not yet repaid together with interest on such sums at the rate provided with the Note; (iii) payment of the indebtedness and obligations of the Grantor secured by this Mortgage in any order that the Mortgagee chooses; (iv) the remainder, if any, to the person or

\*under this Mortgage

persons appearing of record to be the owner of the Mortgaged Property.

(f) Upon any sale made under this Section 16, to the extent permitted by applicable law, the Mortgagee, may bid for and acquire the Mortgaged Property and, instead of paying cash therefor, may settle for the purchase price by crediting upon the indebtedness of the Grantor secured by this Mortgage the net proceeds of sale after deduction of all costs and other charges payable therefrom under this Mortgage. The person making such sale shall accept such settlement without requiring the production of any of the Note, and shall credit thereon the proportionate share of the net proceeds of sale ascertained pursuant to this Mortgage. The Mortgagee, upon so acquiring the Mortgaged Property or any part thereof may deal with such property in any manner provided by applicable laws.

(g) In case of proceedings against or involving the Grantor in insolvency or bankruptcy (including any proceedings under any federal or state bankruptcy or insolvency statute or similar law) or any proceedings for its reorganization or involving the liquidation of its assets, the Mortgagee shall be entitled to prove the whole amount of principal, interest and premium, if any, due upon the Note to the full amount thereof and all other payments and costs due under this Mortgage without deducting therefrom any proceeds obtained from the sale of the whole or any part of the Mortgaged Property; provided, however, that in no case shall the Mortgagee receive a greater amount than such principal and interest and such other payments and costs from the aggregate amount of the proceeds of all sales of the Mortgaged Property.

17. Voluntary Appearance; Receivers. Upon the occurrence of an Event of Default and immediately upon the commencement of any proceeding by the Mortgagee to obtain judgment for any indebtedness due hereunder or the Note, the Grantor, to the extent not prohibited by law, will (a) enter its voluntary appearance in such proceeding, and (b) if required by the Mortgagee, consent to the appointment of receivers of the Mortgaged Property and of all the revenues thereof. After an Event of Default the Mortgagee shall be entitled forthwith, as a matter of right and if it shall so elect, without the giving of notice to any other party and without regard to the adequacy or inadequacy of the security of the Mortgaged Property either before or after declaring the unpaid principal balance of the Note to be due and payable, to the appointment of such receivers. Any such receiver shall have such powers as the court making the appointment shall confer and all of the powers which Mortgagee is authorized to exercise by the provisions of Section 17.

18. Suits by Mortgagee. The Mortgagee may enforce all rights of action under this Mortgage or under any of the Note without the possession of any of the Note and without the production thereof at any trial or other proceeding relative thereto. A copy of any Note, shall constitute conclusive evidence of all matters that could be proven by production of the original of that Note in any proceeding relative thereto. The Mortgagee shall bring any such proceeding in its name.

19. Waiver of Default. The Mortgagee may waive any default hereunder and its consequences, except a default (a) in the payment or prepayment of the principal of or interest on the Note when and as such amount becomes due and payable, (b) depriving the Mortgagee of a lien upon the Mortgaged Property, or (c) in the due performance or observance of the covenants and obligations of the Grantor set forth in Section 4. In case of any such waiver or in case of discontinuance or determination adverse to the Mortgagee of any proceeding taken on account of any such default, then the Mortgagee shall be restored to its former positions and rights hereunder respectively. No such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

20. Remedies Cumulative. No remedy herein conferred upon the Mortgagee shall be exclusive of any other remedy. Each remedy shall be cumulative and shall be in addition to every other remedy given hereunder. No delay or omission of the Mortgagee to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or an acquiescence therein. Every power and remedy of the Mortgagee may be exercised from time to time and as often as may be deemed expedient.

21. Waiver of Rights. The Grantor will not (a) claim or take any benefit of any stay, extension or moratorium law which may affect the terms of this Mortgage; (b) claim or take any benefit of any law providing for the valuation or appraisal of the Mortgaged Property; or (c) exercise any statutory or equitable right to redeem the property so sold. The Grantor waives all right to have the Mortgaged Property marshaled upon any foreclosure hereof. The Grantor 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 Grantor waives the benefit of any statute requiring that the owner of the Mortgaged Property be set off against any part of the indebtedness secured hereby.

22. Indemnity. Mortgagee shall not be obligated to perform or discharge any obligation or duty to be performed or

discharged by Grantor under any Lease. Grantor shall indemnify Mortgagee for and save Mortgagee harmless from any and all liability arising from any Lease or assignment of a Lease as security under this Mortgage unless resulting from Mortgagee's negligence or willful misconduct. Mortgagee shall not have any responsibility for the control, care, management or repair of the Mortgaged Property or be liable for any negligence (other than Mortgagee's) in the management, operation, upkeep, repair or control of the Mortgaged Property resulting in loss or injury or death to any lessee or any other entity.

23. Expenses. Grantor shall pay all costs, charges and expenses, including attorneys' fees which Mortgagee may incur with respect to the settlement of this loan transaction or with respect to defending or enforcing the validity or priority of the lien of this Mortgage, or any term, covenant or condition hereof, in collecting any sum secured hereby, in protecting the security of the Mortgagee, or, if an Event of Default shall occur, in administering and executing the Mortgage hereby created and performing its powers, privileges and duties hereunder.

24. Waivers and Modifications. Mortgagee may (a) extend the time for payment of the Indebtedness, or any part thereof, or interest thereon, (b) waive, modify or amend any of the terms, covenants or conditions in the Note, this Mortgage or any other paper or document executed in connection with the Loan, in whole or in part, either at the request of Grantor or of any person having an interest in the Mortgaged Property, (c) accept one or more notes in replacement or substitution of the Note, (d) consent to the release of all or any part of the Mortgaged Property from the lien of this Mortgage, (e) take or release other security, (f) release any party, primarily or secondarily liable on the Note or under this Mortgage or on such other security, (g) grant extensions, renewals or indulgences under the Note or this Mortgage, (h) apply to the payment of the principal and interest and premium, if any, of the Indebtedness any part or all of the proceeds obtained by sale or otherwise as provided herein, without resort or regard to other security, or resort to any one or more of the securities or remedies which Mortgagee may have and which in its absolute discretion it may pursue for the payment of all or any part of the Indebtedness, in such order and in such manner as it may determine, all without in any way releasing Grantor or any party secondarily liable from any of the terms, covenants or conditions of the Note, this Mortgage, or other document executed in connection with the Loan, or relieving the unreleased Mortgaged Property from the lien of this Mortgage for any amounts owing under the Note and this Mortgage.

25. No Other Security Interests. Grantor shall not, without the prior written permission or Mortgagee, place any personal property upon the Mortgaged Property or any part thereof, or attach any fixture, ~~that~~ <sup>which</sup> is subject to a title retention agreement, security agreement, or other encumbrance, whether such lien or interest is prior to the lien of this Mortgage ~~successor or assignee of the grantor~~. Grantor shall not place or permit to be placed any personal property upon the Mortgaged Property, or any part thereof, other than the personal property of Grantor, ~~or~~ any tenant actually occupying all or part of the Mortgaged Property, or any independent contractor performing work or services on the Mortgaged Property.

\*any of which

26. Purchase by Mortgagee. Mortgagee may bid and become the purchaser at any sale under this Mortgage.

27. Estoppel Certificate. <sup>delivered</sup> Grantor, <sup>and Mortgagee</sup> upon request, made either personally or by mail, shall certify within ~~seven (7)~~ <sup>seven (7)</sup> days in case the request is made personally, or within ten (10) days after the mailing of such request in case the request is made by mail, by a writing duly acknowledged, to ~~Mortgagee~~ <sup>Mortgagee</sup> ~~or any proposed assignee of the Note~~, the amount of principal, interest\*\*and premium, if any, then owing on the Note and whether any offsets or defenses exist against the Indebtedness.

\*the requesting party

\*\*other than additional interest

28. Certain Taxes. If after the date of this Mortgage any law changes in any way the laws for the taxation of Mortgages and Security Agreements, or the manner of collection of any such taxation so as to affect this Mortgage, Mortgagee may give thirty (30) days' written notice to Grantor requiring the payment of the Indebtedness. If such notice be given, the Indebtedness shall become due and payable at the expiration of such thirty (30) days unless Grantor is permitted by law to pay the whole of such tax in addition to all other payments required hereunder, without any penalty or charge thereby accruing to Mortgagee, and if Grantor pays the tax prior to the date upon which payment is required by such notice.

~~29. Future Advances. Until this Mortgage is released of record, Mortgagee may make additional advances and readvances to Grantor from time to time, and such advances and readvances not exceeding the maximum principal sum of \$20,000,000 as are made within ten (10) years from the date hereof, plus interest thereon, and any disbursements made by the Mortgagee for the payment of taxes, insurance or other liens on the Real Property, with interest on such disbursements, which advances shall be secured hereby to the same extent as if such future advances were made this date. The total amount of Indebtedness secured hereby may increase or decrease from time to time. The provisions of this paragraph shall not be construed to imply any obligation on Mortgagee to~~

29. Right of First Refusal. Mortgagee shall have the right of first refusal to purchase all or any portion of the Mortgaged Property upon the terms, and in accordance with the procedures, set forth in Section 9 of the Note.



~~make any future advances, it being the intention of the parties that any future advances shall be solely at the discretion of the Mortgagee.~~

30., Notices. Any notice, demand or other communication to Grantor given or made hereunder or with reference to this Mortgage shall be sufficient if sent by registered or certified mail addressed to Mortgagee:

Gary L. Burke  
United States Fidelity and  
Guaranty Company  
34th Floor  
100 Light Street  
Baltimore, Maryland 21202

with an additional copy to:

USF&G Realty Advisors  
Equitable Tower II, 11th Floor  
100 South Charles Street  
Baltimore, Maryland 21201  
Attention: Charles R. Werhane

and if to Grantor:

Daniel Oak Mountain Limited  
Partnership  
c/o Daniel Corporation  
1200 Corporate Drive  
P.O. Box 43250  
Birmingham, Alabama 35243  
Attention: Stephen R. Monk  
Senior Vice President  
and General Counsel

with an additional  
copy to:

William A. Walsh, Jr., Esquire  
Hunton & Williams  
707 East Main Street  
Post Office Box 1535  
Richmond, Virginia 23212

Either party may from time to time designate another address for the receipt of future notices by a notice given as herein provided.

31. Applicable Law. The Note and this Mortgage shall be construed according to the law of the State of Alabama.



32. Severability. If any provision set forth in the Mortgage for any reason shall be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Mortgage, and this Mortgage shall be construed as if such invalid, illegal, or unenforceable provision had never been set forth herein, but only to the extent of such invalidity, illegality, or unenforceable.

33. Time of the Essence. Time is of the essence of this Mortgage and each and every term, covenant and condition herein.

34. Non-Exclusive Remedies. The rights, powers, privileges and discretions specifically granted to Mortgagee under this Mortgage are not in limitation of but in addition to those to which Mortgagee is entitled under any present or future general or local law relating to mortgages and security agreements in the jurisdiction in which the Mortgaged Property is located. The rights, powers, privileges and discretions (collectively called the "rights") to which Mortgagee may be entitled shall inure to the benefit of its successors and assigns. All the rights of Mortgagee are cumulative and not alternative and may be enforced successively or concurrently.

The failure of Mortgagee to exercise any right or remedy granted to Mortgagee under the Note, this Mortgage or any other document executed in connection with the Loan shall not constitute a waiver of any such right or remedy unless Mortgagee waives such right or remedy in writing.

35. Successors and Assigns. The terms and conditions agreed to by Grantor and the covenants of Grantor shall be binding upon the legal representatives, successor and permitted assigns of Grantor and of each of them. Any consent to an assignment shall not be consent to any further assignment, each of which must be specifically obtained in writing.

36. Gender. Whenever used herein the singular shall include the plural and the plural the singular. The use of any gender shall include all genders.

37. Hazardous Materials. Grantor represents that it has not located on or near the Mortgaged Property any material or substance and to the best of its knowledge, no material or substance is or has been located on ~~or near~~ the Mortgaged Property that under any applicable governmental requirement or private agreement is regulated as to use, generation, collection, storage, treatment, or disposal (such materials or substances collectively called "Substances")\*. The term

\*except as otherwise disclosed to Lender in the Phase I Environmental Site Assessment dated September 26, 1989 prepared by ATEC Environmental Services, a copy of which has been provided to Lender.

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"Substances" includes any material or substance the release or threatened release of which may pose a risk to human health or the environment and shall also include without limitation (i) asbestos in any form, (ii) urea formaldehyde foam insulation, (iii) paint containing lead, (iv) transformers or other equipment which contains dielectric fluid containing levels of polychlorinated biphenyls of 50 parts per million or more and (v) petroleum in any form. Grantor represents that the Mortgaged Property is not now used nor to the best of Grantor's knowledge has it ever been used in the past for any activities involving the use, generation, collection, storage, treatment, or disposal of any Substances. Grantor will not place or permit to be placed any Substances on or near the Mortgaged Property\*unless such Substances are approved in writing by Mortgagee.

If at any time (i) any Substance is spilled, emitted, disposed, or leaked in any amount; or (ii) located on, in, or under the Mortgaged Property other than those approved by Mortgagee, Grantor immediately shall notify Mortgagee and any applicable authority and, within thirty (30) days thereafter or sooner if required by Mortgagee or any governmental authority, shall take such action as Mortgagee or any governmental authority may require with respect to such Substance.

Grantor represents to the best of its knowledge that (i) no well or septic tank is on the Mortgaged Property serving any other property; (ii) no well or septic tank on other property serves the Mortgaged Property; (iii) no burial ground, archeological site, or habitat or endangered or threatened species is on the Mortgaged Property; (iv) no part of the Mortgaged Property is subject to tidal waters, is designated as wetlands by any governmental authority; or is located in a special flood hazard area.

The representations made by Grantor in this Section 37 are true and accurate to the best of Grantor's knowledge, information, and belief, after having made a reasonable investigation.

Grantor hereby agrees to indemnify and hold harmless Mortgagee from all loss, liability, damage, cost and expense, including reasonable attorney's fees, for failure of the Mortgaged Property to comply in all respects with the foregoing representations and warranties. The provisions hereof shall survive payoff, release, or foreclosure of this Mortgage.

Grantor, promptly upon the written request of Mortgagee from time to time, shall provide Mortgagee from time to time with an environmental site assessment or environmental

\*in such concentrations which would cause such Substances to be subject to federal or state regulation

audit report, or an update of such an assessment or report, all in scope, form, and content\*<sup>reasonably</sup>satisfactory to Mortgagee.

38. Security Agreement. This Mortgage creates a security interest in all the right, title and interest of Grantor in the personal property and fixtures on the Mortgaged Property and constitutes a SECURITY AGREEMENT under the ALABAMA UNIFORM COMMERCIAL CODE. Mortgagee 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. Grantor hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Mortgagee the attorney-in-fact of Grantor, such authority being coupled with an interest and irrevocable, 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 Mortgagee 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, Mortgagee shall have the right to cause any of the Mortgaged Property which is personal property and subject to the security interest of Mortgagee hereunder to be sold at any one or more public or private sales as permitted by applicable law, and Mortgagee 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 Mortgagee. Mortgagee shall be eligible to purchase any part or all of such property at such disposition.

39. Non-Recourse. \*No recourse shall be had for the payment of the principal of or interest or premium, if any, on the Note, or the performance of any term, condition or other covenant set forth in this Mortgage or the Loan Documents against (i) the Grantor or any partner of the Grantor or any incorporator or any past, present or future subscriber to the capital stock, stockholder, officer or director of any corporate partner of the Grantor, together with those of any predecessor or successor corporation; (ii) any legal representative, heir, estate, successor or assign of any thereof; or (iii) any corporation (or any officer, director or shareholder thereof), partnership (or any partner thereof), individual or entity to which the Mortgaged Property or any part thereof granted by this Mortgage shall have been transferred (or any legal representative, heir, estate, successor or assignee of any thereof); in each case, for any deficiency or any other sum owing on the Note, this Mortgage or the Loan Documents. The foregoing provisions of this paragraph shall not prevent recourse to the Mortgaged Property or

\*Notwithstanding anything provided herein or in any of the other Loan Documents to the contrary,

constitute a waiver, release or discharge of any indebtedness or obligation evidenced by the Note or secured by the Mortgage, but the Note shall continue until paid or discharged, and provided, further, that the foregoing provisions of this paragraph shall not limit the right of any person to name the Grantor, or any transferee of any interest in the Mortgaged Property as a party defendant in any action or suit for a judicial foreclosure of or in the exercise of any other remedy under the Note or the Mortgage, so long as no judgment in the nature of a deficiency judgment or seeking personal liability shall be asked for or (if obtained) enforced against the Grantor, or against such transferee. The provisions of this paragraph, shall in no way limit the liability of Daniel Corporation under either the Interest Guaranty or the Working Capital Guaranty.

40. Further Assurances. Grantor shall do, execute, acknowledge and deliver, at the sole cost and expense of Grantor, all and every such further acts, deeds, conveyances, assignments, estoppel certificates, notices of assignment, transfers and assurances as Mortgagee may reasonably require from time to time in order to better assure, convey, assign, transfer and confirm unto Mortgagee, the rights now or hereafter intended to be granted to Mortgagee under this Mortgage, any other instrument executed in connection with this Mortgage or any other instrument under which Grantor may be or may hereafter become bound to convey, transfer or assign to Mortgagee for carrying out the intention of facilitating the performance of the terms of this Mortgage.

41. No Partnership or Joint Venture. Nothing contained herein or in the Note or any other Loan Documents, nor the acts of the parties hereto, shall be construed to create a partnership or joint venture between Grantor and Mortgagee. The relationship between Grantor and Mortgagee is the relationship of "debtor" and "creditor". Mortgagee shall indemnify, save, defend and hold Mortgagee harmless from and against any and all claims and demands asserted against Mortgagee as being the agent, partner or joint or co-venturer of Grantor and attorneys' fees and court costs associated therewith.

42. Notice and Opportunity to Cure by Golf Course Lender. Any lender, including but not limited to AmSouth Bank N.A., making a loan for the development of the Golf Course (the "Golf Course Lender") shall be given notice of default by the Grantor and shall be granted an opportunity to cure any default under the Loan Documents prior to any action or proceeding by the Mortgagee to foreclose on the Property or exercise any of the other remedies under the Loan Documents. The Golf Course Lender's opportunity to cure any default under the Loan Documents shall be for an additional period of not less than thirty (30) days beyond the expiration of any applicable cure periods provided in the Loan Documents. As of the date hereof, the Golf Course Lender is, and notices shall be sent to:

AmSouth Bank N.A.  
P.O. Box 11007  
Birmingham, AL 35288  
ATTN: Commercial Real Estate Loan Department

IN WITNESS WHEREOF, Grantor has caused this Mortgage to be duly executed and delivered and its seal hereunto affixed as of the day and year first above written.

DANIEL OAK MOUNTAIN LIMITED PARTNERSHIP, an Alabama limited partnership, Grantor

By: Daniel Realty Investment Corporation - Oak Mountain, an Alabama corporation, sole general partner

WITNESS:

D. Whitten Jagan

By:

[Signature] (SEAL)  
its General Partner

STATE OF ALABAMA

SS:

COUNTY OF SHELBY

I, a Notary Public in and for said County in said State, hereby certify that Stephen R. Monk, whose name as Sr. Vice President of DANIEL REALTY INVESTMENT CORPORATION-OAK MOUNTAIN, an Alabama corporation, as general partner of Daniel Oak Mountain Limited Partnership, an Alabama limited partnership, is signed to the foregoing Mortgage and Security Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing Mortgage and Security Agreement, He, as such officer, and with full authority, executed the same voluntarily for and as the act of said corporation acting in its capacity as general partner as aforesaid.

GIVEN under my hand and seal of office this 7th day of November, A.D. 1989.

[SEAL]

Sheila A. Ellis  
Notary Public

My Commission Expires: 2/5/90



## EXHIBIT "A"

1 of 5

Description For Boundary Surveys of  
Daniel Oak Mountain Limited Partnership Properties  
(1768.000 Acres)

## Tract I

Commence at the southwest corner of Section 33, Township 18 South, Range 1 West, Shelby County, Alabama; thence S88°48'29"E on the south boundary of said Section 33 a distance of 5298.46 feet to the southeast corner of said section; thence S88°43'22"E on the south boundary of Section 34, Township 18 South, Range 1 West a distance of 2675.43 feet to a point; thence N1°12'39"E on the east boundary of the SW¼ of said Section 34 a distance of 2670.48 feet to a point; thence S89°36'14"E on the south boundary of the NE¼ of Section 34 a distance of 1124.27 feet to a point on the northwest right-of-way of Dunnavant Valley Road, County Road No. 41; thence N17°04'05"E on the northwest right-of-way of said Dunnavant Valley Road a distance of 1189.04 feet to the point of curve; thence northeasterly along a curve to the right, said curve having a central angle of 19°50'13" and a centerline radius of 5729.57 feet, a chord distance of 351.06 feet to a point on the northerly right-of-way of Hugh Daniel Drive; thence N68°34'25"W on the northerly right-of-way of Hugh Daniel Drive a distance of 323.09 feet to a point; thence N74°50'20"W on the northerly right-of-way of Hugh Daniel Drive a distance of 100.37 feet to a point; thence S80°10'17"W on the northerly right-of-way of Hugh Daniel Drive a chord distance of 195.08 feet along a curve to the left having a central angle of 33°20'37" and a radius of 340.00 feet to the point of tangent; thence S63°29'59"W on the north right-of-way of Hugh Daniel Drive a distance of 195.02 feet to the point of curve; thence S69°29'45"W on the northerly right-of-way of Hugh Daniel Drive a chord distance of 61.26 feet along a curve to the right having a central angle of 11°59'33" and a radius of 293.21 feet to the point of tangent; thence S75°29'32"W on the northerly right-of-way of Hugh Daniel Drive a distance of 455.56 feet to the point of curve; thence S53°50'56"W on the northerly right-of-way of Hugh Daniel Drive a chord distance of 398.33 feet along a curve to the left having a central angle of 43°17'11" and a radius of 540.00 feet to the point of tangent; thence S32°12'21"W on the northerly right-of-way of Hugh Daniel Drive a distance of 164.89 feet to the point of curve; thence S79°12'23"W on the northerly right-of-way of Hugh Daniel Drive a chord distance of 212.00 feet along a curve to the right having a central angle of 94°00'00" and a radius of 145.00 feet to the point of reverse curve; thence N61°08'39"W on the northerly right-of-way of Hugh Daniel Drive a chord distance of 388.34 feet along a curve to the left having a central angle of 14°42'00" and a radius of 1517.79 feet to the point of tangent; thence N68°29'40"W on the northerly right-of-way of Hugh Daniel Drive a distance of 409.95 feet to the point of curve; thence N23°39'03"E a distance of 618.94 feet to a point; thence N55°44'00"W a distance of 464.32 feet to a point; thence N34°16'37"E a distance of 3626.13 feet to a point; thence N55°43'23"W a distance of 650.00 feet to a point; thence N39°20'29"E a distance of 3057.84 feet to a point on the north boundary of Section 27, Township 18 South, Range 1 West; thence N89°07'51"W on the north boundary of said Section 27, a distance of 4771.07 feet to the northwest corner of said Section 27; thence S1°10'25"W on the west boundary of said Section 27 a distance of 1326.19 feet to the southeast corner of the NE¼ of the NE¼ of Section 28, Township 18 South, Range 1 West; thence N88°56'50"W on the north boundary of the SE¼ of the NE¼ of said Section 28, a distance of 1315.56 feet to the northwest corner of the SE¼ of the NE¼; thence S1°42'26"W on the west boundary of said SE¼ of the NE¼ a distance of 1329.23 feet to the southwest corner of said SE¼ of the NE¼; thence N88°44'15"W on the north boundary of the NW¼ of the SE¼ of Section 28 a distance of 1326.24 feet to the northwest corner of the NW¼ of the SE¼; thence S1°30'46"W on the west boundary of said NW¼ of the SE¼ a distance of 940.84 feet to a point; thence N53°40'05"W a distance of 749.98 feet to a point; thence N36°19'45"E a distance of 623.00 feet to a point; thence N56°56'56"W a distance of 1246.49 feet to a point on the east boundary of the SW¼ of the NE¼ of said Section 28; thence S1°36'12"W on the west boundary of the SE¼ of the NW¼ and the NE¼ of the SW¼ of said Section 28 a distance of 1379.43 feet to a point; thence N62°53'48"W a distance of 260.00 feet to a point; thence S39°36'32"W a distance of 934.39 feet to a point; thence S51°42'49"W a distance of 672.12 feet to a point on the west boundary of said Section 28; thence S1°43'29"W on the west boundary of said Section 28 a distance of 884.43 feet to the southwest corner of said Section 28; thence S1°11'32"W on the west boundary of Section 33, Township 18 South, Range 1 West, a

distance of 2647.21 feet to a point; thence N86°55'55"W a distance of 675.98 feet to a point; thence N88°43'44"W a distance of 1171.80 feet to a point; thence S29°42'07"W a distance of 207.41 feet to a point; thence S16°43'47"W a distance of 707.00 feet to a point; thence S18°10'07"E a distance of 878.58 feet to a point; thence S30°48'18"W a distance of 202.75 feet to a point; thence S78°21'39"W a distance of 270.12 feet to a point; thence S31°04'37"W a distance of 230.87 feet to the north right-of-way of Hugh Daniel Drive; said point being on a curve to the left, said curve having a central angle of 43°18'50" and a centerline radius of 337.47 feet; thence N63°29'47"W a chord distance of 60.19 feet to a point; thence N31°04'37"E a distance of 86.24 feet to a point; thence N60°31'47"W a distance of 264.51 feet to a point; thence N65°18'23"W a distance of 283.49 feet to a point; thence N66°14'56"W a distance of 231.08 feet to a point; thence N16°44'33"W a distance of 285.61 feet to a point; thence N51°04'36"W a distance of 176.49 feet to a point; thence S38°25'11"W a distance of 355.03 feet to a point on the northeast right-of-way of U.S. Highway No. 280; thence southeasterly on the northeast right-of-way of said U.S. Highway No. 280 and a curve to the right, said curve having a central angle of 89°57'30" and a centerline radius of 2864.79 feet, a chord distance of 598.42 feet to a point that is 80 feet northeasterly of and at right angles to the centerline of said U.S. Highway No. 280 at Station 201+00; thence S48°03'24"E along a straight line a distance of 105.06 feet to a point that is 100 feet northeasterly of and at right angles to the centerline of said U.S. Highway No. 280 at Station 202+00; thence southeasterly along a curve to the right, said curve having a central angle of 89°57'30" and a centerline radius of 2864.79 feet a chord distance of 103.49 feet to a point that is 100 feet northeasterly of and at right angles to the centerline of said U.S. Highway No. 280 at Station 203+00; thence S22°06'39"E on the northeast right-of-way of said Highway No. 280 a straight line distance of 105.06 feet to a point that is 80 feet northeasterly of and at right angles to said U.S. Highway No. 280 at Station 204+00; thence N40°33'24"E a distance of 102.25 feet to a point; thence N11°06'03"E a distance of 236.48 feet to a point on the south right-of-way of Hugh Daniel Drive; thence N81°03'02"E on the south right-of-way of Hugh Daniel Drive a distance of 205.60 feet to a curve to the right, said curve having a central angle of 43°18'50" and a centerline radius of 337.47 feet; thence along said curve a distance of 255.11 feet to a curve to the left, said curve having a central angle of 60°55'59" and a centerline radius of 582.42 feet; thence along said curve a distance of 619.39 feet; thence N63°25'53"E and tangent to said curve a distance of 247.39 feet to a curve to the right, said curve having a central angle of 33°47'17" and a centerline radius of 275.00 feet; thence along said curve a distance of 162.17 feet; thence S82°46'51"E and tangent to said curve a distance of 372.00 feet to a point; thence S45°44'54"E a distance of 665.17 feet to a point; thence S69°34'34"E a distance of 528.29 feet to a point on the east boundary of Section 5, Township 19 South, Range 1 West; thence N1°33'28"E on the east boundary of said Section 5 a distance of 180.34 feet to the point of beginning.

Less and except the following:

One acre in the northwest corner of the SE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Section 28, Township 18 South, Range 1 West, Shelby County, Alabama, commence at the northwest corner of said SE $\frac{1}{4}$  of the SW $\frac{1}{4}$ ; thence S1°36'12"W on the west boundary of said SE $\frac{1}{4}$  of the SW $\frac{1}{4}$  a distance of 208.71 feet; thence S88°55'39"E a distance of 208.71 feet; thence N1°36'12"E a distance of 208.71 feet to a point on the north boundary of said SE $\frac{1}{4}$  of the SW $\frac{1}{4}$ ; thence N88°55'39"W on the north boundary of said SE $\frac{1}{4}$  of the SW $\frac{1}{4}$  a distance of 208.71 feet to the point of beginning. All lying in the SE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Section 28, Township 18 South, Range 1 West, Shelby County, Alabama, and containing 1.00 acres.

Less and except the following:

Waterworks Board of City of Birmingham, Book 301, Page 131 (Pumping Station Site)

The following is the description of a tract of land situated in the NE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Section 33, Township 18 South, Range 1 West, Shelby County, Alabama and being more particularly described as follows: Commence at the southwest corner of Section 33, Township 18 South, Range 1 West; thence N00°51'25"W along the west section line 1,617.47 feet; thence N89°08'35"E, 2,436.41 feet to the southeast right-of-way of Mountain Road and also the point of beginning; thence N55°33'15"E along said right-of-way 91.41 feet; thence S34°26'45"E, leaving said right-of-way, 101.14 feet; thence S55°33'15"W, 91.41 feet; thence N34°26'45"W, 101.14 feet to the point of beginning and containing 0.213 acres, more or less.

Less and except the following:

Waterworks Board of City of Birmingham, Book 301, Page 140 (Water Tank Site)

The following is the description of a tract of land situated in the SE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 33, Township 18 South, Range 1 West, Shelby County, Alabama and being more particularly described as follows: Commence at the southwest corner of the NW $\frac{1}{4}$  of Section 33; thence N00°51'35"W, 628.96 feet along the west line of said section; thence 90° right 4,909.14 feet to the point of beginning; thence 40°41'23" right 49.02 feet; thence 90° left 105.00 feet; thence 90° left 106.45 feet; thence 82°32'53" left 105.89 feet; thence 97°27'07" left 71.16 feet to the point of beginning, and containing 0.273 acres, more or less.

Less and except the following:

BellSouth Mobility, Inc., Schedule B-Section II (File No. 43193) Tower Easement

To find the point of beginning, commence at the southwest corner of the SW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 33; thence running along said section line N00°51'35"W a distance of 583.80 feet to a point; thence leaving said section line and running N89°08'25"E a distance of 5237.52 feet to a point and the point of beginning; thence running S47°00'00"E a distance of 8.00 feet to an iron pin set; thence running S43°00'00"W a distance of 16.00 feet to an iron pin set; then running N47°00'00"W a distance of 16.00 feet to an iron pin set; thence running N43°00'00"E a distance of 16.00 feet to an iron pin set; thence running S47°00'00"E a distance of 8.00 feet to a point and the point of beginning, said tract being a 16 by 16 foot Tower Easement for BellSouth Mobility, Inc. containing 256 square feet, 0.006 acres.

Less and except the following:

Right-of-way Description for Hugh Daniel Drive, Book 301, Pages 799-803

To locate the point of beginning commence at the southeast corner of Section 32, Township 18 South, Range 1 West, Shelby County, Alabama; thence north on the east boundary of said section a distance of 342.03 feet to a point; thence  $90^{\circ}00'$  left a distance of 3068.24 feet to the point of beginning, said point being the centerline of an 80 foot right-of-way 40 feet either side of the centerline; thence  $155^{\circ}10'47''$  right to the tangent of a curve to the right, said curve having a central angle of  $14^{\circ}34'45''$  and a radius of 643.69 feet; thence along said curve a distance of 163.79 feet; thence tangent to said curve a distance of 355.75 feet to a curve to the right, said curve having a central angle of  $43^{\circ}18'50''$  and a radius of 337.47 feet; thence along said curve a distance of 255.11 feet to a curve to the left, said curve having a central angle of  $60^{\circ}55'59''$  and a radius of 582.42 feet; thence along said curve a distance of 619.39 feet; thence tangent to said curve a distance of 247.39 feet to a curve to the right, said curve having a central angle of  $33^{\circ}47'17''$  and a radius of 275.00 feet; thence along said curve a distance of 162.17 feet; thence tangent to said curve a distance of 372.00 feet to a curve to the left, said curve having a central angle of  $46^{\circ}57'34''$  and a radius of 350.00 feet; thence along said curve a distance of 286.86 feet; thence tangent to said curve a distance of 234.58 feet to a curve to the right, said curve having a central angle of  $52^{\circ}20'28''$  and a radius of 610.00 feet; thence along said curve a distance of 557.25 feet; thence tangent to said curve a distance of 250.36 feet to a curve to the left, said curve having a central angle of  $20^{\circ}00'20''$  and a radius of 1650.00 feet; thence along said curve a distance of 576.12 feet; thence tangent to said curve a distance of 169.47 feet to a curve to the left, said curve having a central angle of  $33^{\circ}24'16''$  and a radius of 960.00 feet; thence along said curve a distance of 559.70 feet to a point; thence tangent to said curve a distance of 49.12 feet to a curve to the right, said curve having a central angle of  $8^{\circ}25'01''$  and a radius of 500.00 feet; thence along said curve a distance of 73.45 feet; thence tangent to said curve a distance of 192.38 feet to a curve to the left, said curve having a central angle of  $7^{\circ}45'25''$  and a radius of 1600.00 feet; thence along said curve a distance of 216.61 feet; thence tangent to said curve a distance of 138.92 feet to a curve to the right, said curve having a centerline angle of  $29^{\circ}51'15''$  and a radius of 291.62 feet; thence along said curve a distance of 151.95 feet to a curve to the left, said curve having a central angle of  $22^{\circ}12'53''$  and a radius of 483.89 feet; thence along said curve a distance of 187.61 feet; thence tangent to said curve a distance of 90.62 feet to a curve to the right, said curve having a central angle of  $5^{\circ}46'48''$  and a radius of 4500.00 feet; thence along said curve a distance of 42.00 feet to the point of ending of said 80 foot right-of-way and the beginning of a 70 foot right-of-way being 40 feet left and 30 feet right of centerline; thence continue along said curve a distance of 91.41 feet to the point of ending of said 70 foot right-of-way and point of beginning of said 80 foot right-of-way; thence continue along said curve a distance of 320.54 feet; thence tangent to said curve a distance of 419.17 feet to a curve to the right, said curve having a central angle of  $2^{\circ}53'11''$  and a radius of 2579.92 feet; thence along said curve a distance of 129.97 feet; thence tangent to said curve a distance of 275.08 feet to a curve to the left, said curve having a central angle of  $18^{\circ}28'14''$  and a radius of 920.00 feet; thence along said curve a distance of 296.58 feet; thence tangent to said curve a distance of 103.68 feet to a curve to the right, said curve having a central angle of  $18^{\circ}01'02''$  and a radius of 400.00 feet; thence along said curve a distance of 125.79 feet; thence tangent to said curve a distance of 74.87 feet to a curve to the left, said curve having a central angle of  $13^{\circ}58'11''$  and a radius of 979.47 feet; thence along said curve a distance of 238.81 feet; thence tangent to said curve a distance of 122.76 feet to a curve to the left, said curve having a central angle of  $3^{\circ}20'48''$  and a radius of 2053.94 feet; thence along said curve a distance of 119.97 feet to the point of ending of said 80 foot right-of-way and the point of beginning of a 100 foot right-of-way being 50 feet either side of the centerline; thence tangent to said curve a distance of 208.93 feet to a curve to the right, said curve having



a central angle of  $160^{\circ}19'19''$  and a radius of 106.66 feet; thence along said curve a distance of 298.45 feet; thence tangent to said curve a distance of 193.23 feet to a curve to the left, said curve having a central angle of  $10^{\circ}20'33''$  and a radius of 1000.00 feet; thence along said curve a distance of 180.51 feet; thence tangent to said curve a distance of 274.66 feet to a curve to the left, said curve having a central angle of  $129^{\circ}04'25''$  and a radius of 214.29 feet; thence along said curve a distance of 482.73 feet; thence tangent to said curve a distance of 59.49 feet to a curve to the left, said curve having a central angle of  $14^{\circ}17'16''$  and a radius of 797.86 feet; thence along said curve a distance of 198.96 feet to the point of ending of said 100 foot right-of-way and a point of beginning of said 80 foot right-of-way; thence tangent to said curve 374.53 feet to a curve to the left, said curve having a central angle of  $6^{\circ}57'27''$  and a radius of 822.51 feet; thence along said curve a distance of 99.88 feet; thence tangent to said curve a distance of 141.57 feet to a curve to the right, said curve having a central angle of  $10^{\circ}11'44''$  and a radius of 1000.00 feet; thence along said curve a distance of 177.95 feet; thence tangent to said curve a distance of 185.11 feet to a curve to the left, said curve having a central angle of  $25^{\circ}21'02''$  and a radius of 800.00 feet; thence along said curve a distance of 353.96 feet; thence tangent to said curve a distance of 298.21 feet to a curve to the right, said curve having a central angle of  $11^{\circ}35'28''$  and a radius of 2315.31 feet; thence along said curve a distance of 468.40 feet; thence tangent to said curve a distance of 257.66 feet to a curve to the right, said curve having a central angle of  $67^{\circ}01'19''$  and a radius of 280.00 feet; thence along said curve a distance of 327.53 feet; thence tangent to said curve a distance of 409.95 feet to a curve to the right, said curve having a central angle of  $14^{\circ}42'00''$  and a radius of 1477.79 feet; thence along said curve a distance of 379.15 feet to a curve to the left, said curve having a central angle of  $94^{\circ}00'00''$  and a radius of 185.00 feet; thence along said curve a distance of 303.51 feet; thence tangent to said curve a distance of 164.89 feet to a curve to the right, said curve having a central angle of  $43^{\circ}17'11''$  and a radius of 500.00 feet; thence along said curve a distance of 377.75 feet; thence tangent to said curve a distance of 455.56 feet to a curve to the left, said curve having a central angle of  $11^{\circ}59'33''$  and a radius of 333.21 feet; thence along said curve a distance of 69.74 feet; thence tangent to said curve a distance of 195.02 feet to a curve to the right, said curve having a central angle of  $47^{\circ}55'36''$  and a radius of 300.00 feet; thence along said curve a distance of 250.94 feet; thence tangent to said curve a distance of 338.05 feet to the point of ending of said 80 foot right-of-way, said point being on the northwest right-of-way of the Dunnavant Valley Road. All lying in Sections 32, 33 and 34, Township 18 South, Range 1 West, Shelby County, Alabama, and containing 28.992 acres.

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

89 NOV -8 PM 1:36

*Thomas A. Snowdon, Jr.*  
JUDGE OF PROBATE

1. Deed Tax -----	\$	
2. Mtg. Tax -----	\$	22,159.50
3. Recording Fee -----	\$	102.50
4. Indexing Fee -----	\$	3.00
5. Notary Fee -----	\$	
6. Commission Stamp Fee --	\$	1.00
Total -----	\$	22,266.00