

[Execution Copy]

STATE OF ALABAMA )  
SHELBY COUNTY )

**THIS IS A FUTURE  
ADVANCE MORTGAGE.**

**MORTGAGE, SECURITY AGREEMENT  
AND ASSIGNMENT OF RENTS AND LEASES**

This mortgage, security agreement and assignment of rents and leases (hereinafter, together with all amendments hereto called this "Mortgage") dated June 6, 1991 is made and entered into by and between DANIEL OAK MOUNTAIN LIMITED PARTNERSHIP (hereinafter called the "Borrower," whether one or more), an Alabama limited partnership, whose address is 1200 Corporate Drive, Birmingham, Alabama 35242-2940, and AMSOUTH BANK N.A., a national banking association ("AmSouth"), whose address is P.O. Box 11007, Birmingham, Alabama 35288, Attention: Commercial Real Estate Loan Department.

**Recitals**

A. The Borrower and AmSouth, among others, have entered into a construction loan agreement of even date herewith (the "Construction Loan Agreement"), pursuant to which AmSouth has agreed to make the New AmSouth Loan to the Borrower in the Maximum Loan Amount set forth in the Construction Loan Agreement (which will not exceed \$3,873,660). One of the purposes of the New AmSouth Loan is to provide financing for the construction and development of a certain Project to be located on the Land. All capitalized terms used in these recitals and not otherwise defined in this Mortgage are used herein with the respective meanings attributed thereto in Annex A to this Mortgage and in the Construction Loan Agreement).

B. The New AmSouth Loan is to be evidenced by the Borrower's promissory note in the principal amount of \$3,873,660 (the "New AmSouth Loan Note") of even date herewith. The New AmSouth Loan Note bears interest as provided therein and is payable in full on or before December 31, 1992.

C. This Mortgage is given as security for the New AmSouth Loan and for the other Obligations of any one or more of the Daniel Obligors described herein.

D. Upon the Borrower's request, from time to time in the future, AmSouth may elect to extend other credit to the Borrower (although nothing contained in this Mortgage shall be construed as obligating AmSouth to do so), and this Mortgage shall secure all other such indebtedness, obligations and liabilities of the Borrower to AmSouth.

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*Cahala Title*

E. This is a **FUTURE ADVANCE MORTGAGE**. Certain of the Obligations may include future advances; for example: (i) the New AmSouth Loan is to be advanced by AmSouth to the Borrower in installments from time to time pursuant to the terms and conditions of the Construction Loan Agreement; (ii) under the Line of Credit sums may be advanced by AmSouth to the Borrower, repaid and readvanced from time to time, in a maximum principal amount not exceeding \$3,500,000 at any one time outstanding; and (iii) this Mortgage secures all other indebtednesses, obligations and liabilities of the Borrower to AmSouth, whether now existing and hereafter incurred, contracted or arising.

F. This Mortgage is given as additional security to the indebtedness secured by the Golf Course Loan Mortgage and the Infrastructure Loan Mortgage.

#### Agreement

NOW, THEREFORE, in consideration of the premises, and to induce AmSouth to extend credit to the Borrower under the Construction Loan Agreement and the other Loan Documents and to extend such additional credit to the Borrower as AmSouth, in its sole discretion, may elect, and to secure the other Obligations described herein, the Borrower hereby agrees with AmSouth as follows:

#### I. DEFINITIONS AND RULES OF CONSTRUCTION

**SECTION 1.01. Rules of Construction.** For the purposes of this Mortgage, except as otherwise expressly provided or unless the context otherwise requires:

(a) Words of masculine, feminine or neuter gender shall mean and include the correlative words of other genders, and words importing the singular number shall mean and include the plural number, and vice versa.

(b) All references herein to designated "Articles," "Sections" and other subdivisions or to lettered Exhibits are to the designated Articles, Sections and subdivisions hereof and the Exhibits annexed hereto unless expressly otherwise designated in context. All Article, Section, other subdivision and Exhibit captions herein are used for reference only and in no way limit or describe the scope or intent of, or in any way affect, this Mortgage.

(c) The terms "include," "including," and similar terms shall be construed as if followed by the phrase "without being limited to."

(d) The terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Mortgage as a whole and not to any particular Article, Section, other subdivision or Exhibit.

(e) The term "person" shall include any individual, corporation, partnership, joint venture, association, trust, sole proprietorship, unincorporated organization and any Governmental Authority.

(f) All recitals set forth in, and all Exhibits to, this Mortgage are hereby incorporated in this Mortgage by reference.

(g) All obligations of the Borrower hereunder shall be performed and satisfied by or on behalf of the Borrower at the Borrower's sole cost and expense.

(h) No inference in favor of or against any party shall be drawn from the fact that such party has drafted any portion hereof.

SECTION 1.02. Definitions. As used in this Mortgage the following terms shall have the respective meanings attributed to them as follows:

The terms defined in Annex A attached hereto and not otherwise defined herein shall have the respective meanings attributed to them in Annex A.

Architect Contracts shall mean the contracts between the Architects and the Borrower providing for the design of the Project, or any Subproject, the preparation of the Plans, the supervision of construction of the Project, or any Subproject, and any other architectural, engineering and similar services with respect to the Project, or any Subproject.

Architects shall mean the architects, engineers, Golf Course designers and consultants and other persons responsible for the design of the Project, or any Subproject, the preparation of the Plans and the supervision of the construction of the Project, or any Subproject, or any other architectural, engineering or similar services with respect to the Project, or any Subproject, which shall be architects, engineers or similar experts satisfactory to AmSouth.

CERCLA shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq.

Collateral shall mean all property, real and personal, that is conveyed or assigned to AmSouth, or with respect to which AmSouth is granted a Lien, pursuant to the Loan Documents, including the Property.

Construction Contracts shall mean the contracts between the Contractors and the Borrower providing for the construction of the Project, or any Subproject.

Construction Documents shall mean (i) all plans and specifications for any of the Project (including the Plans); (ii) all contracts (including the Architect Contracts) with Architects (including the Architects) or other persons responsible for the preparation or evaluation of any of such plans and specifications; (iii) all construction contracts to which the

Borrower is a party (including the Construction Contracts) providing for the construction of any of the Project or the furnishing of labor or material in connection therewith; (iv) all contracts with managers and consultants relating to the design, construction and development of any of the Project; (v) all rights of the Borrower as a third party beneficiary under all contracts pertaining to the design, construction and development of any of the Project as to which the Borrower is not a signatory party; and (vi) all other contracts and agreements related to the design, construction and development of any of the Project, including the Project Budget, Construction Schedule, Sources and Uses of Funds Schedule and other documents referred to in Section 4.05 of the Construction Loan Agreement.

Contractors shall mean the contractors for the Project, or any Subproject, which shall be contractors satisfactory to AmSouth.

Development shall mean Greystone, a residential subdivision proposed to consist of improved, single-family Lots, together with the Golf Course, Golf Course Improvements and other existing and planned Improvements and amenities, situated on the Land, the Golf Course Property and certain other real estate located in Shelby County, Alabama, all as generally described in the Zoning Plan; provided, however, that this Mortgage does not encumber any part of the Development other than the Real Property.

Environmental Law shall mean and include any Governmental Requirement (including CERCLA) relating to pollution or protection of human health or the environment, including any relating to Hazardous Substances.

Existing Tenant Leases shall have the meaning attributed to that term in Section 2.02.

Force Majeure means acts of God or the public enemy, strikes, lock-outs, work slowdowns or stoppages or other labor disputes, insurrections, riots, or other civil disturbances, orders of any Governmental Authority, or partial or entire failure of public utilities, or general unavailability of energy, materials or personnel effectively preventing full performance and observance by the Borrower of its agreements and covenants herein contained, or any other similar circumstance beyond the control of the Borrower, but specifically excluding the inability of the Borrower to obtain working capital or financing.

Golf Course shall mean the 18-hole golf course presently under construction within the Development, as shown on the Zoning Plan, the completion of which is to be financed as part of the Project; provided, however, that the Golf Course and Golf Course Improvements are not encumbered by this Mortgage.

Golf Course Improvements shall mean the following Improvements related to the Golf Course that are to be financed as part of the Project: interim clubhouse to be build utilizing modular buildings to house a pro shop, small grille area, administrative offices and limited locker room facilities, grading and site preparation work for the permanent clubhouse buildings, parking facilities and other improvements related to the Golf

Course, as more particularly described in the Plans and the Project Budget; provided, however, that the Golf Course and Golf Course Improvements are not encumbered by this Mortgage.

Golf Course Subproject shall mean the Subproject consisting of the Golf Course and the Golf Course Improvements.

Governmental Authority shall mean any federal, state, county, municipal or other government, domestic or foreign, and any agency, authority, department, commission, bureau, board, court or other instrumentality thereof.

Governmental Requirements shall mean all laws, rules, regulations, ordinances, judgments, decrees, codes, orders, injunctions, notices and demand letters of any Governmental Authority applicable to any Daniel Obligor or any of the Property.

Gross Sales Proceeds shall mean the gross sale proceeds of any Lot, Parcel or other part of the Real Property.

Guarantors shall mean Daniel Realty Company, Daniel Realty Corporation and Daniel Corporation.

Guaranty Agreement shall mean the Guaranty Agreement of even date herewith executed by the Guarantors, pursuant to which they have guaranteed the payment and performance of the obligations described therein.

Hazardous Substances shall mean and include all pollutants, contaminants, toxic or hazardous wastes and other substances (including asbestos, urea formaldehyde foam insulation and materials containing either petroleum or any of the substances referenced in Section 101(14) of CERCLA), the removal of which is required or the manufacture, use, maintenance and handling of which is regulated, restricted, prohibited or penalized by any Environmental Law, or even though not so regulated, restricted, prohibited or penalized, might pose a hazard to the health and safety of the public or the occupants of the property on which it is located or the occupants of the property adjacent thereto.

Impositions shall mean all taxes, assessments, dues, fines, rents, levies, fees, permits and other governmental and quasi-governmental charges imposed or levied upon the Property (or any part thereof), the use or occupancy thereof, the Liens or other interests created by this Mortgage, the filing or recording of this Mortgage or the Obligations.

Improvements shall have the meaning attributed to that term in Section 2.02.

Interior Lot Subproject shall mean the planned Subproject to be constructed following the Phase I Subproject and the Phase II Subproject, consisting of approximately 49 Lots, as shown on the drawing attached as Exhibit I to the Construction Loan Agreement, for which \$425,000 has been

budgeted from the proceeds of the Advances under the Construction Loan Agreement.

Land shall have the meaning attributed to that term in Section 2.02. The Land is the same land referred to as the New AmSouth Loan Property on Annex A.

Liabilities shall mean (i) the principal of the New AmSouth Loan, all interest thereon and all other amounts payable under the New AmSouth Note; (ii) the principal of, all interest on, and all other amounts payable in connection with the following obligations of the Daniel Obligors (or any one or more of them) to AmSouth, whether now existing or hereafter incurred, contracted or arising: the \$143,000 Loan in the original principal amount of \$143,000, the Line of Credit in a maximum principal amount at any one time outstanding not exceeding \$3,500,000, the Acquisition Loan in the principal amount of \$750,000, the Infrastructure Loan in the original principal amount of \$6,831,655.96, the Existing USF&G Reimbursement Obligation in the principal amount of \$1,981,232, the Hawkins/Singleton Reimbursement Obligations relating to the Hawkins Letter of Credit in the amount of \$1,000,000 and the Singleton Letter of Credit in the amount of \$1,000,000, and the Golf Course Loan in the original principal amount of \$7,000,000; (iii) all other sums becoming due and payable by the Borrower, Daniel Links or any of the other Daniel Obligors under the terms of this Mortgage or any of the other Loan Documents, including sums advanced by AmSouth pursuant to the terms of this Mortgage or any of the other Loan Documents; (iv) all other indebtedness, obligations and liabilities of the Borrower to AmSouth (including obligations of performance) of every kind and description whatsoever, arising directly between the Borrower and AmSouth or acquired outright, as a participation or as collateral security from another by AmSouth, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter incurred, contracted or arising, joint or several, liquidated or unliquidated, regardless of how they arise or by what agreement or instrument they may be evidenced or whether they are evidenced by agreement or instrument, and whether incurred as maker, endorser, surety, guarantor; excluding, however, any indebtedness, obligations and liability arising solely by virtue of the fact that the Borrower is a member of a partnership, syndicate, joint venture, association or other group; (v) and any and all extensions, renewals, amendments and modifications of any of the indebtednesses and obligations described in clauses (i) through (iv) above, whether or not any extension, renewal, amendment or modification agreement is executed in connection therewith; and (vi) the compliance with all of the stipulations, covenants, agreements, representations, warranties and conditions contained in the Loan Documents.

Lien shall mean any mortgage, pledge, assignment, charge, encumbrance, lien, security title, security interest or other preferential arrangement of any kind or nature whatsoever.

Lot shall mean a lot in the Real Property as platted and subdivided on the Subdivision Plats for the Real Property from time to time.



Net Sales Proceeds shall mean the Gross Sales Proceeds of the sale of any Lot, Parcel or other part of the Real Property, less 10% of the Gross Sales Proceeds payable to the Borrower under Section 6(a) of the Forbearance Agreement, plus a sewer tap fee of \$2,600, to the extent paid to the Borrower by the Purchaser.

New AmSouth Loan Security Documents shall mean this Mortgage, the New AmSouth Loan Security Agreement described in the Construction Loan Agreement and any other documents now or hereafter executed by the Borrower or any other person in favor of AmSouth as security for the New AmSouth Loan or any of the other Liabilities in connection with the Construction Loan Agreement.

Obligations shall have the meaning attributed to that term in Section 2.01.

Parcel shall mean any parcel of land (other than a Lot within a recorded Subdivision Plat) that is included in the Real Property and that is proposed to be sold by the Borrower.

Permitted Encumbrances shall mean any Liens and other matters affecting title to the Property that are described in Exhibit B.

Personal Property shall have the meaning attributed to that term in Section 2.02.

Phase I Subproject shall mean the Subproject consisting of the Improvements to Phase I of the 1st Sector of the Development, as shown on the drawing attached as Exhibit I to the Construction Loan Agreement.

Phase II Subproject shall mean the Subproject consisting of the Improvements to Phase II of the 1st Sector of the Development, as shown on the drawing attached as Exhibit I to the Construction Loan Agreement.

Plans shall mean the complete and final working plans and specifications for constructing and developing the Project (or each Subproject) prepared by an Architect, or other persons acceptable to AmSouth, and all amendments and modifications thereto.

Project shall mean a certain project consisting of Improvements the construction of which is to be financed with the proceeds of the Advances and completed in accordance with the Plans on the Land, together with related utilities, roads and other off-site Improvements, if any, described in the Plans, said project being generally described as follows: (i) the completion of the improvement (including clearing and grubbing, rough grading, water and sewer (sanitary and storm) lines, drainage, streets paving, curbs and gutters) of the Lots (and adjoining streets) in the 1st Sector of the Development (the Phase I Subproject and the Phase II Subproject), (ii) the completion of the Golf Course and the Golf Course Improvements (the Golf Course Subproject), and (iii) the improvement (as aforesaid) of certain additional interior Lots (and the adjoining streets) included in the Interior Lot Subproject; provided, however, that the Golf

Course and the Golf Course Improvements are not encumbered by this Mortgage even though they constitute part of the Project.

Property shall have the meaning attributed to that term in Section 2.02.

Purchasers shall mean the parties other than the Borrower named in the Sale Contracts as the purchaser(s) therein, and their respective heirs, successors and assigns.

Real Property shall have the meaning attributed to that term in Section 2.02.

Rents shall have the meaning attributed to that term in Section 2.02.

Sale Contract shall mean any sale contract heretofore or hereafter entered into by the Borrower with any person for the sale of any Lot or Parcel in the Real Property (or the grant of any option to purchase, right of first refusal, right to select the Lot or Parcel in the Real Property, or any other right or interest whatsoever with respect to any Lot or Parcel in the Real Property).

Subdivision Plats shall mean the subdivision plat for the Phase I Subproject, as recorded in Map Book 14, at page 91 in the Probate Office, the Phase II Subproject, the Interior Lot Subproject, or any other phase, sector or other portion of the Real Property, and any amendments, supplements, revisions and other changes thereto, all of which subdivision plats and changes must be approved in writing by AmSouth.

Subproject shall mean a separate portion of the Project approved by AmSouth for treatment as a separate subproject under the Construction Loan Agreement, such as the Phase I Subproject, the Phase II Subproject, the Golf Course Subproject and the Interior Lot Subproject.

Tenant Leases shall have the meaning attributed to that term in Section 2.02.

UCC Property shall have the meaning attributed to that term in Section 5.03(e).

Zoning Plan shall mean the zoning plan for the Development dated January 18, 1991, a copy of which has been furnished to and approved by AmSouth, as amended from time to time with the prior written approval of AmSouth.

## II. OBLIGATIONS, GRANTING CLAUSES, ASSIGNMENTS, ETC.

SECTION 2.01. Obligations. This Mortgage is given to secure and shall secure the following (collectively, the "Obligations"): (i) the



payment of all of the Liabilities; (ii) the payment of any and all sums now or hereafter becoming due and payable by the Borrower under the terms of this Mortgage, including advancements made by AmSouth pursuant to the terms and conditions of this Mortgage; (iii) all renewals, extensions, modifications and amendments of any or all of the obligations described in clauses (i) and (ii) of this Section 2.01, whether or not any renewal, extension, modification or amendment agreement is executed in connection therewith; and (iv) the full and complete performance of and compliance with all of the stipulations, covenants, agreements, representations, warranties and conditions contained in this Mortgage and the other Loan Documents.

SECTION 2.02. Granting Clauses. As security for the Obligations the Borrower does hereby grant, bargain, sell, mortgage, assign and convey unto AmSouth, its successors and assigns, and does grant to AmSouth, its successors and assigns, a security interest in, all of the Borrower's rights, titles and interests in, to and under the following property and interests in property (collectively, the "Property"):

(a) Land. All those certain lot(s), piece(s) or parcel(s) of land located in Shelby County, Alabama more particularly described in Exhibit A, as the description of the same may be amended or supplemented from time to time, together with all other property, rights and interests described in said Exhibit A (all of the foregoing hereinafter collectively called the "Land").

(b) Improvements. All buildings, structures, facilities and other improvements now or hereafter located on the Land, and all building material, building equipment and fixtures of every kind and nature now or hereafter located on the Land or attached to, contained in, or used in connection with, any such buildings, structures, facilities or other improvements, and all appurtenances and additions thereto and betterments, renewals, substitutions and replacements thereof, owned by the Borrower or in which the Borrower has or shall acquire an interest, including any recreational facilities now or hereafter located on the Land, such as tennis courts or swimming pools, and (subject to the prior rights, if any, of other persons) any pumping stations, lines and other equipment now or hereafter used in connection with the sewage system on the Land (all of the foregoing hereinafter collectively called the "Improvements," and together with the Land called the "Real Property").

(c) Personal Property. All chattels and other articles of personal property and fixtures, both tangible and intangible (including appurtenances, additions and accessions thereto and replacements, substitutions, betterments and renewals thereof), of every kind or character now owned or hereafter constructed, created or acquired by the Borrower and attached to the Real Property; or placed on the Real Property and used or useful in connection with, or in any way appertaining or relating to, the Real Property (or the operations of the Borrower thereon) though not attached to the Real Property; or for which the proceeds of the New AmSouth Loan or the other Advances described in the Construction Loan Agreement have been or may be advanced, wherever the same may be located; including: (i) the items of personal property described in Exhibit A-1 hereto;

(ii) all lumber and lumber products, bricks, stones, building blocks, sand, cement, roofing materials, paint, doors, windows, hardware, wires, wiring and other building materials; and (iii) all machinery, equipment, motor vehicles, appliances and fixtures for generating or distributing air, water, heat, electricity, light, fuel or refrigeration, or for incinerating or compacting plants, or for ventilating or sanitary purposes, or for the exclusion of vermin or insects, or for the removal of dust, refuse, sewage, or garbage, and all furniture, furnishings, decorations, art, mirrors, wall-beds, wall-safes, built-in furniture, appliances and installations, linens, towels, cutlery, dishes, shelving, partitions, screens, doorstops, vaults, elevators, escalators, dumbwaiters, awnings, window shades, venetian blinds, curtains, window treatments, light fixtures, bathroom fixtures, fire hoses and brackets and boxes for same, fire sprinklers, alarm systems, drapery rods and brackets, screens, storm doors and windows, linoleum, carpets, rugs, wall coverings, plumbing, laundry and drying equipment, vacuum and other cleaning systems and equipment, call systems, switchboards, iceboxes, refrigerators, heating units, dishwashing equipment, stoves, ovens, water heaters, generators, tanks, motors, engines, boilers, furnaces, incinerators, garbage disposers, video and audio equipment, entertainment equipment and systems, recreation equipment, communication systems, and signage and graphics (all of the foregoing hereinafter collectively called the "Personal Property").

(d) Tenant Leases and Rents. (i) All leases, subleases, lettings and licenses, and other use and occupancy agreements, written or oral, covering any of the Real Property or Personal Property with respect to which the Borrower is the lessor, licensor or sublessor, including any of the same now in existence (all of the foregoing hereinafter collectively called the "Existing Tenant Leases"), and any and all other such agreements hereafter made or entered into (all of the foregoing hereinafter collectively called the "Tenant Leases"); (ii) any and all guaranties of the performance of the lessee, licensee, sublessee or occupant (all of the foregoing hereinafter collectively called the "Tenants") under any of the Tenant Leases; (iii) the immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues and profits now due or that may become due or to which the Borrower may now or shall hereafter (including during the period of redemption, if any) become entitled or may demand or claim, arising or issuing from or out of the Tenant Leases, the Real Property, the Personal Property, or any part thereof, including minimum rents, additional rents, percentage rents, common area maintenance charges payable to Borrower, parking charges, tax and insurance premium contributions, and liquidated damages following default, the premium payable by any Tenant upon the exercise of any cancellation privilege provided for in any of the Tenant Leases, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Real Property or Personal Property, together with any and all rights and claims of any kind that the Borrower may have against any Tenant (all such moneys, rights and claims described in this Section 2.02(d)(iii) being hereinafter collectively referred to as the "Rents"); provided, however, that so long as no Event of Default has occurred and is continuing, the Borrower shall

have the right under a license granted hereby (but limited as set forth in Section 5.03(f)(1)(A) hereof) to collect, receive and retain the Rents, but no Rents shall be collected prior to the due date thereof; and (iv) any award, dividend or other payment made hereafter to the Borrower in any court procedure involving any of the Tenants in any bankruptcy, insolvency or reorganization proceedings before any Governmental Authority and any and all payments made by Tenants in lieu of rent. The Borrower hereby appoints AmSouth as the Borrower's irrevocable attorney-in-fact to appear in any action and to collect any such award, dividend or other payment.

(e) Insurance Policies. Each and every policy of hazard insurance now or hereafter in effect which insures the Improvements, the Personal Property, or any part thereof, together with all right, title and interest of the Borrower in and to each and every such policy, including any premiums paid on each such policy and rights to returned premiums.

(f) Condemnation Awards. Any and all judgments, damages, settlements, awards, payments and compensation, including all interest thereon, together with the right to receive the same, that may be made to the Borrower or any subsequent owner of any of the Real Property, the Personal Property or any other property or rights conveyed or encumbered hereby, as a result of (i) the exercise of the right of eminent domain or condemnation, (ii) the alteration of the grade of any street or (iii) any other injury to or decrease in value of the Real Property or the Personal Property.

(g) General Intangibles and Agreements. (i) Subject to the prior rights, if any, of other persons, all general intangibles relating to the development or use of the Real Property, the Personal Property, or any other property or rights conveyed or encumbered hereby, or the management and operation of any business of the Borrower thereon, including all patents, patent applications, trade names, trademarks, trademark applications, knowledge and process, licensing arrangements, blueprints, technical specifications, manuals and other trade secrets, including the right to use the name "Greystone" and any logo, copyright or trademark associated therewith in the naming of or advertising for the Project and the Real Property, and the sale of Lots and other Parcels therein; (ii) subject to the prior rights, if any, of other persons, the good will of any business conducted or operated on the Real Property, all governmental permits relating to the construction, renovation or operation thereof, and all names under or by which the same may at any time be operated or known and all rights to carry on business under any such names or any variant thereof; and (iii) and all contracts and agreements (including leasing, management, operating and concession agreements) affecting the Real Property, the Personal Property or any other property conveyed or encumbered by this Mortgage, or used or useful in connection therewith, whether now or hereafter entered into;

(h) Construction Documents. The Construction Contracts, the Architect Contracts, the Plans and the other Construction Documents.

(i) Sale Contracts. (i) All Sale Contracts, (ii) all guarantees of payment or performance of any of the obligations of the Purchasers under

the Sale Contracts, (iii) all Gross Sales Proceeds and other sums payable under the Sale Contracts, including all earnest money and other deposits paid or to be paid thereunder, and (iv) all awards, dividends and other payments heretofore or hereafter made to the Borrower in any court proceedings involving any of the Purchasers under the Sale Contracts in any bankruptcy, insolvency or reorganization proceedings in any state or federal court (the Borrower hereby appointing AmSouth as the Borrower's irrevocable attorney in fact to appear in any such proceeding and to collect any such award, dividend or other payment).

(j) Supplemental Documents. All changes, additions, supplements, modifications, amendments, extensions, renewals, revisions and guaranties to, of or for any agreement or instrument included in the foregoing.

(k) Proceeds. All proceeds (including insurance proceeds) of any of the foregoing, or of any part thereof.

(l) Other Property. Any and all other real or personal property, rights, titles and interests from time to time hereafter by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred to AmSouth, or in which AmSouth is granted a security interest, as and for additional security hereunder by the Borrower, or by anyone on behalf of, or with the written consent of, the Borrower.

SUBJECT, HOWEVER, to Permitted Encumbrances.

TO HAVE AND TO HOLD the Property, together with all the rights, privileges and appurtenances thereunto belonging, unto AmSouth, its successors and assigns forever.

### III. REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to AmSouth that:

SECTION 3.01. Valid Title, etc. (i) The Borrower is lawfully seized in fee simple of the Real Property and is the lawful owner of, and has good title to, the Personal Property and the remainder of the Property and has good right to mortgage, assign and grant a security interest in the Property as aforesaid; (ii) the Property is free of all Liens other than Permitted Encumbrances; (iii) the Borrower has and will have full power and lawful authority to encumber and convey the Property as provided herein; (iv) this Mortgage is and will remain a valid and enforceable first priority lien on, and security interest in, the Property, subject only to Permitted Encumbrances; and (v) the Borrower will forever warrant and defend the title to the Property unto AmSouth against the lawful claims of all persons whomsoever, except those claiming under Permitted Encumbrances.

SECTION 3.02. Rents and Tenant Leases. (i) The Borrower has duly and punctually performed all and singular the terms, covenants, conditions and warranties of the Existing Tenant Leases on the Borrower's part to be kept, observed and performed; (ii) except for Permitted Encumbrances, the

Tenant Leases and the Rents, whether now due or hereafter to become due, are not subject to any assignment, transfer or grant by the Borrower that is now in effect; (iii) no Rents due for any period subsequent to the month next succeeding the date of this Mortgage have been collected, and no payment of any of the Rents has otherwise been anticipated, waived, released, discounted, set-off or otherwise discharged or compromised; (iv) the Borrower has not received any funds or deposits from any Tenant in excess of one month's rent for which credit has not already been made on account of accrued rents; and (v) to the best of the Borrower's knowledge, the Tenants under the Existing Tenant Leases are not in default under any of the terms thereof.

SECTION 3.03. Environmental Compliance. To the best knowledge of the Borrower, (i) the Property has not been used by the Borrower, and has never been used by any other person, to generate, manufacture, refine, transport, treat, store, handle or dispose of any Hazardous Substance; (ii) the Property is not now, and has never been, in violation of any applicable Environmental Law; (iii) the Property does not contain, and has never contained, any Hazardous Substance; (iv) there are no pending investigations, claims or threats of claims with respect to the Property by any Governmental Authority or other person relating to any Environmental Law; (v) there are no Hazardous Substances present on property adjacent to the Property that could migrate to, through or under the Property; (vi) the past, current and intended uses of the Property comply and will comply with all Environmental Laws; and (vii) the Borrower has obtained all certificates, licenses, authorizations, registrations, permits and other approvals of Governmental Authorities required by Environmental Laws.

SECTION 3.04. Other Governmental Compliance, etc. (i) The Property, the Project and the use and operation thereof contemplated by the Construction Loan Agreement comply with all applicable Governmental Requirements; and (ii) no Lien exists on the Property, or any part thereof, in favor of any Governmental Authority or other person under any Governmental Requirement that might have priority over this Mortgage.

SECTION 3.05. Construction Documents. (i) There is in effect no other assignment to any other person of any of AmSouth's rights under the Construction Documents, nor any Lien thereon; (ii) to the best knowledge of the Borrower, the Borrower has done no act nor omitted to do any act that might prevent AmSouth from, or limit AmSouth in, acting under any of the provisions of this Mortgage with respect to the Construction Documents; (iii) to the best knowledge of the Borrower, there exists no default under the terms of any of the Construction Documents; (iv) to the best knowledge of the Borrower, the Borrower is not prohibited under any agreement with any other person or any Governmental Requirement from the granting of the Liens hereunder on the Construction Documents, the performance of each and every covenant of the Borrower hereunder and in the Construction Documents, and the meeting of each and every condition herein and therein contained.

SECTION 3.06. Bankruptcy. To the best knowledge of the Borrower, the Borrower is, and after giving effect to the transactions contemplated

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under the Construction Loan Agreement will be, solvent, and no bankruptcy, insolvency or similar proceeding is pending or contemplated by or against the Borrower.

SECTION 3.07. Existing Default. Except as heretofore disclosed by the Borrower in writing to AmSouth, there is no existing default by the Borrower under the Loan Documents or the Permitted Encumbrances, and no event has occurred that, with notice or the passage of time or both, would constitute or result in such a default.

SECTION 3.08. Certificates and Permits. (i) The Borrower has obtained all material certificates, licenses, authorizations, registrations, permits and other approvals of Governmental Authorities necessary for the operation of any of the Property, the conduct of the Borrower's business at the Real Property, and the construction of the Project, including all required zoning, building, land use, environmental, occupancy, fire and other approvals, (ii) the present and contemplated use and occupancy of the Property do not conflict with or violate any of the same, and (iii) the Borrower, promptly upon request by AmSouth, shall deliver to AmSouth copies of all of the same.

SECTION 3.09. Statements, etc. Correct. All reports, statements, certificates and other data furnished by or on behalf of the Borrower to AmSouth in connection with the Loan Documents or the transactions contemplated thereunder, and all representations and warranties made in the Construction Loan Agreement and other Loan Documents, or any certificate or other instrument delivered in connection therewith, are true and correct in all material respects and do not omit to state any material fact or circumstance necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading as of the date of such information, reports, statements or certificates.

SECTION 3.10. Sale Contracts. As of the date of this Mortgage with respect to each Sale Contract heretofore entered into, and as of the date of execution of any Sale Contract entered into hereafter, except for such exceptions to the following warranties as may occur in the ordinary course of the Borrower's business in accordance with usual and prudent business practices and as may be disclosed by the Borrower to AmSouth in writing: (i) the Borrower owns the Sale Contract, free and clear of any Liens; (ii) the Borrower has full right to assign the Sale Contract as provided herein; (iii) the Borrower has made no prior or other assignment of said Sale Contract, or granted a prior Lien thereon to any other person that is in effect on the date of this Mortgage; (iv) the Sale Contract is an original, genuine, bona fide and legally binding obligation in all respects as it purports to be; (v) to the best knowledge of the Borrower, the Sale Contract is fully enforceable in accordance with its terms; (vi) to the best knowledge of the Borrower, there are no set-offs, counter-claims or defenses to the Sale Contract; (vii) no warranties have been made by the Borrower with respect to the Lot(s) or Parcel(s) covered by the Sale Contract except such as appear on the face of the Sale Contract; (viii) to the best knowledge of the Borrower, the aggregate amount stated in the Sale Contract as the balance due on the Sale Contract, less any earnest money



stated in the Sale Contract, is validly and legally owing under the Sale Contract, and the earnest money shown on the Sale Contract has been paid by the Purchasers to the Borrower, and, in the case of each existing Sale Contract, the Borrower has deposited said earnest money in an agency account of Daniel Realty Corporation, as broker, with AmSouth pending the closing; (ix) the Sale Contract arose from a bona fide sale of a Lot or a Parcel; (x) to the best knowledge of the Borrower, the Borrower has duly and punctually performed all and singular the terms, covenants, conditions and warranties of the Sale Contract on the Borrower's part to be performed on or prior to the date hereof; (xi) to the best of the Borrower's knowledge, the Purchasers under the Sale Contract are not in default under any of the terms thereof; and (xii) the Borrower has received no notice of the bankruptcy, insolvency or adverse change in the financial condition of the Purchasers.

#### IV. COVENANTS AND AGREEMENTS OF MORTGAGOR

The Borrower covenants and agrees that, until the Obligations are paid and this Mortgage is satisfied in writing by AmSouth:

SECTION 4.01. Payment of Impositions. Unless the Borrower is making monthly deposits pursuant to Section 4.06 hereof, the Borrower will pay or cause to be paid all Impositions and will deliver receipts therefor to AmSouth at least ten days before the Impositions are due, or at AmSouth's request will pay to AmSouth an amount equal to such Impositions. The Borrower may, at the Borrower's own expense, in good faith contest any such Impositions and, in the event of any such contest, may permit the Impositions so contested to remain unpaid during the period of such contest and any appeal therefrom, provided that during such period enforcement of such contested items shall be effectively stayed.

#### SECTION 4.02. Insurance.

(a) General Requirements. All insurance coverages required by this Mortgage must be provided by insurance companies acceptable to AmSouth. Any reinsurance endorsements must be approved by AmSouth in writing. All insurance companies must be licensed and qualified to do business in the state where the insured Property is located.

(b) Terms of Policies. The deductible amount under each insurance policy must not exceed \$5,000. The original copy of each insurance policy or, in the case of a blanket policy, a copy of the original policy certified in writing by a duly authorized agent for the insurance company as a "true and certified" copy of the policy, must be delivered to AmSouth. The Borrower shall not submit a certificate of insurance, in lieu of the original policy. Each policy must provide that, insofar as AmSouth's interests under the policy are concerned, the coverage afforded thereby shall not lapse or be terminated, cancelled or modified by reason of (i) any act or negligence, or breach of any condition, declaration or warranty contained in any such policy, by the Borrower or any third party, (ii) the occupation, operation or use of the Property for purposes more

hazardous than those permitted by the terms of the policy, (iii) any foreclosure or other proceeding or notice of sale relating to the Property or (iv) any change in the title to or ownership of all or any portion of the Property. Each insurance policy must (A) provide primary insurance without right of contribution from any other insurance carried by AmSouth, (B) contain an express waiver by the insurer of any right of subrogation, setoff or counterclaim against any insured party thereunder, (C) permit AmSouth to pay premiums at AmSouth's discretion and (D) provide that no claims in excess of \$25,000 thereunder shall be adjusted or settled without the prior written consent of AmSouth, which consent shall not be unreasonably withheld or delayed by AmSouth.

(c) Types of Insurance. The Borrower will at all times keep the Property insured against loss or damage from such causes as are customarily insured against, by prudent owners of similar facilities. Without limiting the generality of the foregoing, the Borrower will obtain and maintain in effect the following amounts and types of insurance:

(1) Builder's Risk. Until such time as the construction of the Golf Course Improvements and any other insurable above-ground Improvements included in the Project have been completed, builder's risk insurance with respect to all parts of the Property affected by or involved in such construction (including any equipment or other Personal Property so affected or involved) to such extent as is necessary to provide for full payment of the costs of restoring or replacing the property damaged or destroyed or, if insurance to such extent is not available, to the extent of the full insurable value of such parts of the Property;

(2) Workmen's Compensation. Workmen's compensation insurance covering all persons involved in the construction of the Project or any other work done on or about the Property and all employees of the Borrower to the extent required by any Governmental Requirement;

(3) Hazard. Insurance against loss or damage to the Golf Course Improvements and any other insurable above-ground Improvements included in the Property (including plate glass breakage) due to fire, lightning, water, wind, theft, vandalism, malicious mischief and other risks commonly insured against by the persons or using like premises in Shelby, County, Alabama, together with uniform standard "extended coverage," "all-risk" and "difference in conditions" endorsements, under which endorsements any loss is valued on a replacement cost basis, to the extent of the full insurable value of the Property; provided, however, that the Borrower shall not be required to maintain such insurance with respect to Improvements fully covered by the builder's risk insurance required by paragraph (1) of this Section 4.02(c); provided, further, however, that not less than 30 days before the date such builder's risk insurance will expire, the Borrower shall deliver to AmSouth evidence satisfactory to AmSouth that the insurance required by this paragraph (3) will be in full force and effect when such builder's risk insurance expires;

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(4) Boiler. Boiler and machinery insurance covering all boilers, machinery, air conditioning, pressure vessels, and similar type equipment commonly covered under a broad form boiler and machinery policy, in an amount reasonably satisfactory to AmSouth;

(5) Flood. If the Property is located in a flood hazard area designated as such under the national flood insurance program, flood insurance in the amount of the lesser of (i) the unpaid principal amount of the New AmSouth Loan or (ii) the maximum limit of coverage made available with respect to the Property under said program; and

(6) Liability. Comprehensive general liability insurance covering claims for bodily injury to or death of persons and for damage to or loss of property occurring on or about the Real Property or in any way related to the condition or operation of the Real Property, in the minimum amounts of \$500,000 for death of or bodily injury to any one person, \$1,000,000 for all death and bodily injury claims resulting from any one accident, and \$100,000 for property damage.

(d) Special Clauses. Each policy described in paragraphs (1), (3), (4) and (5) above must contain the following special clauses:

(1) Mortgagee's Clause:

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

(2) Loss Payable Clause:

Loss, if any, under this policy shall be payable to AmSouth Bank N.A., its successors and assigns, as their interests may appear, P.O. Box 11007, Birmingham, Alabama 35288, Attention: Commercial Real Estate Loan Department.

(3) Cancellation and Modification Clause:

The Insurer hereby agrees that this policy will not lapse or terminate, or be amended, modified or cancelled, unless and until AmSouth Bank N.A. has received not less than 30 days' prior written notice thereof at the following address: P.O. Box 11007, Birmingham, Alabama 35288, Attention: Commercial Real Estate Loan Department.

(e) Payment of Premiums. Unless the Borrower is making monthly payments pursuant to Section 4.06 hereof, at least ten days prior to the date the premiums on each required insurance policy becomes due and payable, the Borrower shall furnish to AmSouth evidence of the payment of such premiums. The Borrower agrees that the Borrower will not take any action or fail to take any action, which action or inaction would result in the invalidation of any insurance policy required hereunder.

(f) Separate Insurance. The Borrower shall not obtain or carry separate insurance concurrent in form or contributing in the event of loss with that required in this Section 4.02 to be furnished by the Borrower unless AmSouth is included therein as a named insured, with loss payable as in this Mortgage provided. The Borrower shall immediately notify AmSouth whenever any such separate insurance is obtained and shall deliver to AmSouth the policies or certificates evidencing the same.

(g) Blanket Policies. Anything contained in this Section 4.02 to the contrary notwithstanding, any and all insurance that the Borrower is obligated to carry pursuant to this Section 4.02 may be provided pursuant to a general coverage floater policy, master insurance policy or so-called "blanket" policy, provided that such policy allocates to the Property the coverage required herein, without possibility of reduction or coinsurance by reason of, or damage to, any other property (real or personal) owned by the Borrower or its affiliates by reason of the inclusion of such insurance under a policy containing aggregate loss limits.

(h) No Duties of AmSouth. AmSouth shall have no duties in connection with any insurance required hereunder other than (i) to receive the policies, or certified copies thereof to be delivered and (ii) to receive and apply, in accordance with the provisions of this Mortgage, any insurance monies paid to AmSouth.

(i) Foreclosure, etc. Upon foreclosure of this Mortgage or other transfer of title or assignment of the Property in extinguishment, in whole or in part, of the Obligations, all right, title and interest of the Borrower in and to all policies of insurance required under this Section or otherwise then in force with respect to the Property and all proceeds payable thereunder and unearned premiums thereon shall immediately vest in the purchaser or other transferee of the Property.

#### SECTION 4.03. Damage and Destruction.

(a) Borrower's Obligations. In the event of any damage to or loss or destruction of the Property, the Borrower shall (i) promptly notify AmSouth of such event and take such steps as shall be necessary to preserve any undamaged portion of the Property and (ii) unless otherwise instructed by AmSouth shall promptly, regardless whether the insurance proceeds, if any, shall be sufficient for the purpose or shall be otherwise applied by AmSouth as provided herein, commence and diligently pursue to completion the restoration, replacement or rebuilding of the Property as nearly as possible to the value, condition and character thereof immediately prior to such damage, loss or destruction and in accordance with plans and specifications reasonably approved, and with other reasonable provisions for the preservation of the security hereunder established, by AmSouth.

(b) AmSouth's Rights; Application of Proceeds. If any portion of the Property is so damaged, destroyed or lost, and such damage, destruction or loss is covered, in whole or in part, by insurance described in Section 4.02, then (i) AmSouth may, but shall not be obligated to, make proof

of loss if proof of loss is not made promptly by the Borrower, and is hereby authorized and empowered by the Borrower to settle, adjust or compromise any claims for damage, destruction or loss thereunder, (ii) each insurance company concerned is hereby authorized and directed to make payment therefor directly to AmSouth, and (iii) AmSouth shall have the right to apply the insurance proceeds, first, to reimburse AmSouth for all reasonable costs and expenses, including all attorneys' fees and disbursements, incurred in connection with the collection of such proceeds, and second, the remainder of such proceeds shall be applied, at AmSouth's option, (A) in payment of all or any part of the Obligations in the order and manner determined by AmSouth in its sole discretion (provided that the remainder of the Obligations shall continue in full force and effect and the Borrower shall not be excused in the payment thereof), (B) to the cure of any then-current default hereunder, or (C) to the repair, restoration, or replacement, in whole or in part, of the portion of the Property so damaged, destroyed or lost. The Borrower expressly assumes all risk of loss, including a decrease in the use, enjoyment or value, of the Property from any casualty whatsoever, whether or not insurable or insured against.

#### SECTION 4.04. Condemnation.

(a) Borrower's Obligations; Proceedings. The Borrower, immediately upon obtaining knowledge thereof, will notify AmSouth of any pending or threatened proceedings for the condemnation of the Property or any part thereof or of the exercise of any right of eminent domain with respect thereto, or of any other pending or threatened proceedings arising out of injury or damage to the Property or any part thereof. AmSouth may participate in any such proceedings, and the Borrower from time to time will execute and deliver to AmSouth all instruments requested by AmSouth to permit such participation. The Borrower shall, at its expense, diligently prosecute any such proceedings, deliver to AmSouth copies of all papers served in connection therewith and consult and cooperate with AmSouth, its attorneys and agents, in carrying on and defense of any such proceedings, provided that no settlement of any such proceedings shall be made by the Borrower without AmSouth's consent, not to be unreasonably withheld.

(b) AmSouth's Rights to Proceeds. All proceeds of condemnation awards or proceeds of sale in lieu of condemnation, and all judgments, decrees and awards for injury or damage to the Property shall be paid to AmSouth. The Borrower authorizes AmSouth to collect and receive the same, to give receipts and acquittances therefor, and to appeal from any such judgment, decree or award. AmSouth shall not be liable for any failure to collect, or exercise diligence in the collection of, any of the same.

(c) Application of Proceeds. AmSouth shall have the right to apply any proceeds, judgments, decrees or awards referred to in subsection (b) of this Section 4.04 first, to reimburse AmSouth for all reasonable costs and expenses, including attorneys' fees, incurred in connection with the proceeding in question or the collection of such amounts, and second, the remainder thereof in the same manner as provided in Section 4.03(b) with respect to insurance proceeds held by AmSouth.

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SECTION 4.05. Liens and Liabilities.

(a) Discharge of Liens. The Borrower will pay, bond or otherwise discharge, from time to time when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in, or permit the creation of, a Lien on the Property, or any part thereof, and in general, the Borrower shall do, or cause to be done, at the Borrower's sole cost and expense, everything necessary to preserve fully the Lien and priority of this Mortgage.

(b) Creation of Liens. The Borrower will not, without AmSouth's consent, create, place or permit to be created or placed, or through any act or failure to act acquiesce in the placing of, or allow to remain, any voluntary or involuntary Lien, whether statutory, constitutional or contractual, against or covering the Property, prior to, on a parity with or subordinate to the Lien of this Mortgage, other than Permitted Encumbrances. If any such Lien becomes attached to the Property, the Borrower will cause the same to be discharged and released within 30 days after such attachment.

(c) No Consent. Nothing in the Loan Documents shall be construed as constituting any consent to, or request by, AmSouth, express or implied, to any contractor, subcontractor, laborer, mechanic or materialman for the performance of any labor or the furnishing of any material for any improvement, construction, alteration or repair of the Property. The Borrower further agrees that AmSouth does not stand in any fiduciary relationship to the Borrower by reason of the transactions contemplated by the Loan Documents.

SECTION 4.06. Tax and Insurance Deposits. At any time during the term of this Mortgage after an Event of Default shall have occurred and be continuing, upon demand by AmSouth, the Borrower shall deposit with AmSouth a sum that bears the same relation to the annual insurance premiums for all insurance required by the terms hereof and Impositions assessed against the Property for the insurance period or tax year then in effect, as the case may be, as the number of months elapsed as of the date of such demand since the last preceding installment of said premiums or Impositions shall have become due and payable bears to twelve (12). For the purpose of this computation, the month in which such last preceding installment of premiums or Impositions became due and payable and the month in which such demand is given shall be included and deemed to have elapsed. On the first day of the month next succeeding the month in which such demand is given, and thereafter on the first day of each and every month during the term of this Mortgage, the Borrower shall deposit with AmSouth a sum equal to one-twelfth of such insurance premiums and such Impositions for the then-current annual insurance period and tax year, so that as each installment of such premiums and Impositions shall become due and payable, the Borrower shall have deposited with AmSouth a sum sufficient to pay the same. All such deposits shall be received and held by AmSouth, and shall be applied to the payment of each installment of such premiums and Impositions as they shall become due and payable. AmSouth shall, upon demand, furnish evidence to the Borrower of the making of each such payment. If the amount of such premiums



and Impositions has not been definitely ascertained at the time when any such monthly deposits are required to be made, the Borrower shall make such deposits based upon the amount of such premiums and Impositions for the preceding year, subject to adjustment as and when the amount of such premiums and Impositions are ascertained. If at any time when any installment of such premiums and such Impositions becomes due and payable the Borrower shall not have deposited a sum sufficient to pay the same, the Borrower shall, within ten days after demand, deposit any deficiency with AmSouth. Upon payment in full of the Obligations secured by this Mortgage, any remaining amount on deposit with AmSouth shall be repaid to the Borrower. The Borrower shall deliver to AmSouth all insurance and tax bills promptly following receipt during any period when such monthly deposits are to be made with AmSouth in such order as AmSouth in its sole discretion may elect. Upon the occurrence and during the continuance of any Event of Default, all funds so deposited may, at AmSouth's option, be applied to the Obligations in the order determined by AmSouth or to cure said Event of Default or to the payment of insurance premiums and Impositions as provided in this Section.

**SECTION 4.07. Operations; Utilities; Waste; Demolition; Alteration or Replacement.** Subject to Force Majeure, the Borrower will continuously operate any existing Improvements, and upon completion will continuously operate the Project, in accordance with sound business practices, and will not engage in any activity that would materially diminish the value of the Property or materially decrease the income from the Property. The Borrower shall pay or cause to be paid all bills for utilities and other materials and services used on or in connection with the Property. The Borrower shall cause the Property and every part thereof to be maintained, preserved and kept in safe and good repair, working order and condition; shall not commit or permit waste thereon; except as may be contemplated by the Plans, shall not remove, demolish or alter the design or structural character of any Improvements erected on the Land without the express prior written consent of AmSouth; and shall from time to time make all reasonably necessary repairs, renewals, additions and restorations thereto so that the value and efficient use thereof shall be fully preserved and maintained. Except as may be contemplated by the Plans, the Borrower agrees not to remove any of the fixtures or Personal Property included in the Property without the express prior written consent of AmSouth and unless the same are immediately replaced with like property of at least equal value and utility.

**SECTION 4.08. Rents and Tenant Leases.** The Borrower shall: (i) observe and perform each obligation and condition provided for under the terms of the Tenant Leases to be observed and performed by the Borrower, and shall give prompt notice to AmSouth in the event the Borrower fails to observe and perform the same; (ii) enforce or secure in the name of AmSouth the observance and performance of each and every obligation and condition to be observed and performed by any Tenant under the terms of the Tenant Leases; (iii) appear in and defend any action or proceeding arising under, occurring out of, or in any manner connected with the Tenant Leases or the obligations, duties or liabilities of the Borrower and any Tenant thereunder, and, upon request by AmSouth to do so in the name and on behalf

of AmSouth but at the expense of the Borrower, and to pay all costs and expenses of AmSouth, including reasonable attorneys' fees, in any action or proceeding in which AmSouth may appear; (iv) not receive or collect any Rents from any present or future Tenant for a period of more than one month in advance, or pledge, transfer, mortgage or otherwise grant or permit any Lien on future payments of the Rents; (v) not waive, excuse, condone, discount, set off, compromise, or in any manner release or discharge any Tenant of and from any obligations and conditions by said Tenant to be kept, observed and performed, including the obligation to pay rent in the manner and at the place and time specified in any Tenant Lease; (vi) not enter into any Tenant Leases except on a form approved by AmSouth, nor cancel, terminate or consent to any surrender of any Tenant Lease, or modify or in any way alter the terms thereof without, in each such instance, the prior written consent of AmSouth; (vii) not renew or otherwise extend the term of the Existing Tenant Leases; provided, however, that nothing herein contained shall prevent the Borrower, upon expiration of the now-current term (or other expiration or termination) of the Existing Tenant Leases, from leasing the property covered thereby to the Tenant thereunder by a lease or leases expressly subject and fully subordinate to the Liens of this Mortgage; (viii) promptly upon the execution by the Borrower of any future Tenant Lease, (A) furnish AmSouth with the name and address of the Tenant thereunder, the term of such Tenant Lease and a description of the premises covered thereby and, upon request of AmSouth, a copy of such Tenant Lease, and (B) execute all such further assignments of such Tenant Lease and the Rents therefrom as AmSouth may require; (ix) not, without the prior written approval of AmSouth, execute any management or leasing agreements affecting any of the Property other than the existing development management agreement with Daniel Realty Corporation; and (x) if required by AmSouth, cause each Tenant Lease to provide, in a manner approved by AmSouth, that the Tenant Lease is junior and subordinate to the Liens of this Mortgage and that the Tenant will recognize, as lessor, AmSouth or any person succeeding to the interest of AmSouth upon any foreclosure of this Mortgage.

SECTION 4.09. Sale, Lease or Transfer, etc. Except for sales of Lots and Parcels in accordance with Section 6.18 of the Construction Loan Agreement and Section 6.15 of this Mortgage, the Borrower covenants and agrees that neither the Real Property, nor any part thereof, nor any interest therein, shall be (i) sold, assigned, transferred, conveyed, leased with an option to purchase, exchanged or otherwise disposed of, nor shall the Borrower contract with any person for any of the foregoing, without AmSouth's prior written consent; or (ii) subject to any additional Lien, either voluntarily or involuntarily, without AmSouth's prior written consent. Upon the occurrence of any such sale, assignment, transfer, conveyance, lease with an option to purchase, exchange, other disposition, contract or Lien, this Mortgage shall be deemed to be in default at the option of AmSouth and AmSouth may, at its sole option: (A) declare the Obligations immediately due and payable in full and exercise the remedies on default hereunder; or (B) require the payment, after the date of such occurrence, of a higher rate of interest on the unpaid principal portion of the Obligations as a condition to not exercising such option to accelerate the Obligations and other remedies, whether such rights and remedies be exercised by

AmSouth to obtain a higher rate of interest on the Obligations or to protect the security of this Mortgage. The Borrower further covenants and agrees that without the prior written consent of AmSouth, the Borrower (if a partnership or corporation) shall not be dissolved, liquidated or terminated, whether by operation of law or otherwise. Any such dissolution, liquidation or termination, without AmSouth's prior written consent, shall constitute a default hereunder.

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SECTION 4.10. Use, Governmental Compliance, etc. The Borrower will use the Property solely as a single-family residential subdivision and for the other uses contemplated by the Zoning Plan, and for no other purpose. The Borrower shall maintain all material certificates, licenses, authorizations, registrations, permits and other approvals of Governmental Authorities necessary for the operation of any of the Property, the conduct of the Borrower's business at the Real Property, and the construction, completion and occupancy of the Project, including all required zoning, building, land use, environmental, occupancy, fire and other approvals. The Borrower shall comply with and make all payments required under all Governmental Requirements now or hereafter affecting the Property or any part thereof or the business or activity conducted or to be conducted thereon. The Borrower shall not commit, suffer, permit or allow any act to be done in or on the Property in violation of any such Governmental Requirements or that constitutes a public or private nuisance, or that makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto. Except for Permitted Encumbrances, the Borrower shall not permit any Lien to exist on the Property, or any part thereof, in favor of any Governmental Authority or other person under any Governmental Requirement that might have priority over this Mortgage.

SECTION 4.11. Zoning; Title Matters. The Borrower will not, without AmSouth's consent, (i) initiate or support any zoning reclassification of the Property, seek any variance under existing zoning ordinances applicable to the Property or use or permit the use of the Property in a manner that would result in such use becoming a non-conforming use under, or violate, applicable zoning ordinances, (ii) modify, amend or supplement any Permitted Encumbrances in any manner that would materially increase the obligations or decrease the rights of the Borrower or adversely affect the rights of AmSouth under the Loan Documents; (iii) subject the Property to any restrictive covenants or encumbrances (other than the Permitted Encumbrances), execute or file any subdivision plat affecting the Property (except as contemplated by the Construction Loan Agreement) or consent to the annexation of the Property to any municipality or (iv) permit or suffer the Property to be used by the public or any person in such manner as might make possible a claim of adverse usage or possession or of any implied dedication easement or easement by prescription.

SECTION 4.12. Environmental Compliance. The Borrower shall (i) not, and shall not permit any Tenant or other person to, bring any Hazardous Substances on to the Property; (ii) if any Hazardous Substances are brought or found on the Property, immediately remove and properly dispose thereof in accordance with applicable Environmental Laws; (iii) cause the Property and the operations conducted thereon (including all operations

conducted thereon by Tenants and other persons) to comply with all Environmental Laws; (iv) permit AmSouth from time to time to inspect the Property and observe the Borrower's operations thereon and to perform tests (including soil and ground water tests) for Hazardous Substances on the Property; (v) undertake any and all preventive, investigatory and remedial action (including emergency response, removal, clean up, containment and other remedial action) that is (A) required by any applicable Environmental Law or (B) necessary to prevent or minimize any property damage (including damage to any of the Property), personal injury or harm to the environment, or the threat of any such damage or injury, by releases of or exposure to Hazardous Substances in connection with the Property or the operations of the Borrower on the Property; (vi) promptly give notice to AmSouth in writing if the Borrower should become aware of (A) any spill, release or disposal of any Hazardous Substances, or imminent threat thereof, at the Property, in connection with the operations on the Property, or at any adjacent property that could migrate to, through or under the Property, (B) any violation of Environmental Laws regarding the Property or operations on the Property, and (C) any investigation, claim or threatened claim under any Environmental Law, or any notice of violation under any Environmental Law, involving the Borrower or the Property; and (vii) deliver to AmSouth, at AmSouth's request, copies of any and all documents in the Borrower's possession or to which the Borrower has access relating to Hazardous Substances or Environmental Laws and the Property, and the operations on the Property, including laboratory analyses, site assessments or studies, environmental audit reports and other environmental studies and reports. If AmSouth at any time reasonably believes that the Borrower is not complying with all applicable Environmental Laws or the requirements of this Mortgage regarding the same, or that a material spill, release or disposal of Hazardous Substances has occurred on or under the Property, AmSouth may require the Borrower to furnish to AmSouth an environmental audit or site assessment reasonably satisfactory to AmSouth with respect to the matters of concern to AmSouth. Such audit or assessment shall be performed at the Borrower's expense by a qualified consultant approved by AmSouth.

**SECTION 4.13. Maintenance of Lien Priority.** The Borrower shall take all steps necessary to preserve and protect the perfection, validity and priority of the Liens on the Property created hereby. The Borrower shall execute, acknowledge, deliver, file and record such additional instruments as AmSouth may deem reasonably necessary in order to perfect, preserve, protect, continue, extend or maintain the Liens created hereby as first priority Liens on the Property, subject to Permitted Encumbrances, or to subject after-acquired property of the Borrower or proceeds to such Liens. If the Liens, validity or priority of this Mortgage, or if title to any of the rights of the Borrower or AmSouth in or to the Property shall be endangered or questioned, or shall be attacked directly or indirectly, or if any action or proceeding is instituted against the Borrower or AmSouth with respect thereto, the Borrower will promptly notify AmSouth thereof and will diligently endeavor to cure any defect that may be developed or claimed, and will take all necessary and proper steps for the defense of such action or proceeding, including the employment of counsel, the prosecution or defense of the litigation, and subject to AmSouth's approval, the

compromise, release or discharge of any and all adverse claims other than Permitted Encumbrances.' AmSouth (whether or not named as a party to such actions or proceedings) is authorized and empowered (but shall not be obligated) to take such additional steps as it may reasonably deem necessary or proper for the defense of any such action or proceeding or the protection of the Liens, validity or priority of this Mortgage or of such title or rights, including the employment of counsel, the prosecution or defense of litigation, the compromise, release or discharge of such adverse claims, and the removal of prior Liens. The Borrower shall, on demand, reimburse AmSouth for all expenses (including attorneys' fees and disbursements) reasonably incurred by AmSouth in connection with any of the foregoing matters.

SECTION 4.14. Construction Documents. (i) The Borrower shall (A) perform and observe each and every condition and obligation of the Borrower contained in the Construction Documents; (B) give prompt notice to AmSouth of any claim of default under the Construction Documents given to the Borrower or by the Borrower, together with a complete copy of any such claim; (C) at the sole cost and expense of the Borrower, enforce the performance and observance of each and every obligation and condition of the Construction Documents to be performed or observed by any other person thereunder, and (D) appear in, and defend any action growing out of, or in any manner connected with, the Construction Documents or the obligations or liabilities of the Borrower, or any guarantor thereunder; and (ii) the Borrower shall not (A) modify the terms of the Construction Documents unless required so to do by the terms of the Construction Documents; or (B) waive or release the observance or performance of any obligation or condition of the Construction Documents or any liability on account of any warranty given by them.

SECTION 4.15. Certificates. The Borrower, within ten days after request therefor by AmSouth, shall furnish to AmSouth a written statement, duly acknowledged, certifying to AmSouth or AmSouth's designee as to (i) the amount of the Obligations then owing under this Mortgage, (ii) the terms of payment and maturity date of the Obligations, (iii) the date to which interest has been paid under this Mortgage, (iv) whether any offsets or defenses exist against the Obligations and, if any are alleged to exist, a detailed description thereof, (v) the representations and warranties of the Borrower set forth herein being true and correct on the date of such certification, (vi) the Loan Documents being valid, in full force and effect and unmodified (except as may be specifically noted therein) on the date of such certification, and (vii) whether there are any defaults under the Loan Documents, and to the best knowledge of the Borrower, whether any event has occurred or any condition or state of facts exist which constitute, or with the giving of notice or the lapse of time or both would constitute a default under the Loan Documents. Such certificate shall be binding upon the Borrower and its successors and assigns, and may be relied upon by any prospective assignee of the Loan Documents.

SECTION 4.16. Sale Contracts. The Borrower covenants and agrees, with respect to all existing Sale Contracts and all Sale Contracts that are entered into hereafter, until this Mortgage is terminated as set forth in



Section 6.16: (i) to keep the Sale Contracts in full force and effect and not to transfer or convey title to the Lots or Parcels referred to in the Sale Contracts to any of the Purchasers without requiring compliance with the terms and conditions of the Sale Contracts and complying with the terms and conditions of the Loan Documents; (ii) except as otherwise required in the ordinary course of the Borrower's business in accordance with usual and prudent business practices, not to (A) terminate, modify or amend the Sale Contracts or any of the terms thereof, (B) grant any concessions in connection therewith, or (C) accept a surrender thereof without the prior written consent of AmSouth (any such attempted termination, modification, amendment, concession or surrender without such written consent to be null and void); (iii) not to execute any other assignments of the Sale Contracts, or any interest therein or any sums payable thereunder, or permit any Lien on any of the same; (iv) to perform, in a timely manner, all of the Borrower's covenants and agreements under the Sale Contracts and, except as otherwise required in the ordinary course of the Borrower's business in accordance with usual and prudent business practices, not to suffer or permit to occur any release of liability of the Purchasers; (v) to give prompt notice to AmSouth of any notice received from the Purchasers of default, or alleged default, on the part of the Borrower with respect to any of the Sale Contracts, and to furnish AmSouth with complete copies of said notices; (vi) except as otherwise required in the ordinary course of the Borrower's business in accordance with usual and prudent business practices, if so requested by AmSouth, to enforce the Sale Contracts and all remedies available to the Borrower against the Purchasers in case of default by the Purchasers under the Sale Contracts; (vii) that notwithstanding any variation of the terms of any of the other Loan Documents, or any extension of time for payment of the Loan thereunder, or any release of part or parts of other collateral for the Loan under any of the other Loan Documents, the Sale Contracts and benefits hereby assigned shall continue as security for the Obligations in accordance with the terms hereof; (viii) except as otherwise required in the ordinary course of the Borrower's business in accordance with usual and prudent business practices, not to consent to the transfer or assignment of any of the Sale Contracts by the Purchasers without the prior written consent of AmSouth; (ix) except as otherwise required in the ordinary course of the Borrower's business in accordance with usual and prudent business practices, not to exercise any right of election, whether specifically set forth in any Sale Contract or otherwise, that would in any way diminish the Purchasers' obligations thereunder; (x) that all Sale Contracts will be in a form approved by AmSouth, and that the Borrower will not enter into any other leases, options or other agreements with respect to any of the Lots or Parcels; (xi) not to sell any Lot unless the sale price complies with Section 6.18 of the Construction Loan Agreement and unless the Borrower makes immediate payment to AmSouth in cash at closing of the Net Sales Proceeds of such Lot, and not to sell any Parcel unless AmSouth has given its prior written consent to the nature and description of the Parcel to be released and the sale price for such Parcel and unless the Borrower makes immediate payment to AmSouth in cash at closing of the Net Sales Proceeds of such Parcel; (xii) except for earnest money deposits under the Sale Contracts, not to accept any prepayment, in whole or in part, of any amounts due under any of the Sale Contracts without the prior written consent of AmSouth and immediately to



pay over to AmSouth the proceeds of any such prepayment for application to the Obligations in such order as AmSouth, in its sole discretion, may elect; (xiii) except as otherwise required in the ordinary course of the Borrower's business in accordance with usual and prudent business practices, to enforce or secure (in the name of AmSouth, if requested by AmSouth) the performance of each and every obligation, term, covenant, condition and agreement to be performed by the Purchasers under the terms of any of the Sale Contracts; (xiv) to appear in and defend any action or proceeding arising under the Sale Contracts, or the obligations of the Borrower thereunder, and upon request of the AmSouth, to do so in the name and on behalf of AmSouth, but at the expense of the Borrower; and to pay all costs and expenses of AmSouth, including reasonable attorneys' fees, in any action or proceeding in which AmSouth may appear; (xv) except as may be required in the ordinary course of the Borrower's business in accordance with usual and prudent business practices, not to waive, excuse, condone, discount, set off, compromise, or in any manner release or discharge any Purchaser from any covenants, obligations, conditions and agreements to be observed or performed by said Purchaser under the Sale Contracts; (xvi) if required by AmSouth, cause each Sale Contract to provide, in manner approved by AmSouth, that the Sale Contract is junior and subordinate to this Mortgage (it being the express intention of AmSouth and the Borrower that the Sale Contracts shall be subordinate to this Mortgage) and that the Purchaser will recognize AmSouth, its successors and assigns, as a party to the Sale Contract upon the exercise of AmSouth's rights under this Mortgage; (xvii) promptly on the request of AmSouth, to execute individual assignments (the form and content of which shall be satisfactory to AmSouth) of any or all Sale Contracts, whether now existing or hereafter acquired or created; (xviii) to deposit all earnest money and other deposits received by the Borrower under the Sale Contracts into an agency account at AmSouth in the name of the broker, Daniel Realty Corporation, pending the closing, and promptly following any forfeiture of such earnest money or other deposit by the Purchaser (except for any refunds or credits made by the Borrower to the Purchaser in the ordinary course of business in accordance with usual and prudent business practices) to pay over the amount forfeited to AmSouth for application to the Obligations in such order as AmSouth, in its sole discretion, may elect; and (xix) promptly to disclose to AmSouth in writing any exception made by the Borrower to the requirements of (ii), (iv), (vii) or (xv) above with respect to any Sale Contract in the ordinary course of the Borrower's business.

#### V. DEFEASANCE, DEFAULT AND REMEDIES

SECTION 5.01. Defeasance. Subject to the provisions of Section 6.16 below regarding the termination of this Mortgage, this Mortgage is made upon the condition that if the Borrower pays the Obligations, as defined in this Mortgage (which Obligations include all of the debt described in clauses (i) through (iv) of Section 2.01 of this Mortgage, including (i) the payment of all Liabilities, as defined in this Mortgage, whether now existing or hereafter incurred, contracted or arising, and specifically including any future advances and re-advances of amounts included in the Liabilities; (ii) the payment of any and all sums now or

hereafter becoming due and payable by the Borrower under the terms of this Mortgage, including advancements made by AmSouth pursuant to the terms and conditions of this Mortgage; (iii) all renewals, extensions, modifications and amendments of any or all of the obligations described in clauses (i) and (ii), whether or not any renewal, extension, modification or amendment agreement is executed in connection therewith; and (iv) the full and complete performance of and compliance with all of the stipulations, covenants, agreements, representations, warranties and conditions contained in this Mortgage and the other Loan Documents); and if the Borrower reimburses AmSouth for any amounts AmSouth has paid in respect of Liens, Impositions, any prior mortgages, insurance premiums, keeping the Property in repair, performing the Borrower's obligations under any Tenant Lease or Construction Document, complying with Environmental Laws or the other provisions of Section 4.12 hereof, and any other advancements hereunder, and interest thereon, and fulfills all of its other obligations under this Mortgage; and if AmSouth has no obligation to extend any further credit to or for the account of the Borrower under the Loan Documents; and if there is in existence no contingent liability of the Borrower that is secured by this Mortgage, this conveyance shall be null and void.

SECTION 5.02. Events of Default. Subject to the provisions of the Forbearance Agreement, the happening of any one or more of the following events, or the happening of any other event of default as specified elsewhere in this Mortgage (collectively, "Events of Default"), shall constitute a default under this Mortgage:

(a) if the Borrower or Daniel Links fails to pay to AmSouth when due any principal of or interest on the New AmSouth Loan or or to pay any other of the Obligations and such default continues unremedied for five days; or

(b) if the Borrower defaults in the observance or performance of any provision of this Mortgage not otherwise specifically provided for in this Section 5.02 and such default continues unremedied for 30 days after written notice of thereof has been given by AmSouth to the Borrower; or

(c) if any Guarantor fails to comply with any of the provisions of the Guaranty Agreement (after giving effect to any applicable notice, grace and cure periods); or

(d) if AmSouth determines that any statement, certification, representation or warranty contained herein or in any of the other Loan Documents, or any report, financial statement, certificate or other instrument delivered to AmSouth by or on behalf of the Borrower or Daniel Links was misleading or untrue in any material respect at the time it was made; or

(e) if default is made in the payment of any indebtedness (other than the Obligations) of any Daniel Obligor when due, or if any other default occurs in connection with any such indebtedness if the effect of such default is to accelerate the maturity of such indebtedness or to permit the holder thereof to cause such indebtedness to become due prior to its stated maturity; or

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(f) if a receiver, trustee, liquidator or other custodian is appointed for any Daniel Obligor or for any of the property of any Daniel Obligor, or if a petition in bankruptcy or under any insolvency law is filed by or against any Daniel Obligor, or if any Daniel Obligor applies for the benefits of, or takes advantage of, any law for the relief of debtors, or enters into an arrangement or composition with, or makes an assignment for the benefit of, or makes any transfer in fraud of, creditors; or

(g) if any Daniel Obligor other than Daniel Commercial dissolves; or, as to any such Daniel Obligor that is a partnership, any general partner dies or is replaced or withdraws; or

(h) if final judgment (meaning thereby a judgment as to which all rights of appeal shall have been exhausted) for the payment of money is rendered against any Daniel Obligor, and the same remains undischarged for a period of 30 days during which execution is not effectively stayed; or

(i) if any of the material provisions contained in any Loan Document is declared invalid or inoperative by any court of competent jurisdiction; or

(j) if any other default, event of default or other event that would permit AmSouth to accelerate any of the Obligations, occurs under any of the other Loan Documents (after giving effect to any applicable notice, grace and cure periods provided for therein); or

(k) if an order of a court of competent jurisdiction is entered permanently enjoining the construction of the Project, or any material portion thereof, or the operation of the Collateral and all rights of appeal therefrom are exhausted; or

(l) if any action is taken for the enforcement of any prior Lien on any of the Collateral; or

(m) except to the extent caused by Force Majeure, if the Borrower at any time prior to completion of the Project abandons the Project, or ceases to work thereon for a period of more than 15 consecutive calendar days, or fails diligently to prosecute the work on the Project; or

(n) if in the judgment of AmSouth any of the proceeds of any of the Advances (as defined in the Construction Loan Agreement) are being or at any time have been diverted to a purpose other than the reimbursement for, or payment of, costs included in of the Project Budget (as defined in the Construction Loan Agreement); or

(o) if the Borrower conveys or further encumbers all or part of the Property except as permitted by the New AmSouth Loan Documents; or

(p) if any Lien, statement of Lien or suit to enforce a Lien is filed against any of the Property and the Borrower fails to have such Lien satisfied or suit dismissed or to secure the payment of the amount claimed

by such Lien, statement of Lien or suit by a bond, letter of credit or other security satisfactory to AmSouth within 30 days of the day such Lien, statement of Lien or suit is filed; or

(q) if any law is passed imposing, or authorizing the imposition of, any specific tax upon this Mortgage or the Obligations or permitting or authorizing the deduction of any such tax from the principal of, or interest on, the Obligations, or by virtue of which any tax, Lien or assessment upon the Property shall be chargeable against the owner of this Mortgage and the same is not paid and discharged in full by the Borrower within 30 days after written notice thereof; or

(r) if any fire, flood, windstorm or other casualty occurs with respect to any of the Real Property, which casualty materially and adversely affects the construction, development or operation of, or the ability of the Borrower to offer Lots for sale in, the Real Property (or any material portion thereof), and which is not fully covered by insurance; or

(s) if any other material adverse change occurs in the financial condition of any Daniel Obligor or in the construction, development or operation of, or ability of the Borrower to offer Lots for sale in, the Real Property (or any material portion thereof); or

(t) except to the extent caused by Force Majeure, if the Borrower discontinues or abandons for any period of more than 15 consecutive days its efforts to sell Lots; or

(u) if the Forbearance Period is terminated prior to December 31, 1992, in accordance with the provisions of the Forbearance Agreement.

**SECTION 5.03. Rights and Remedies of AmSouth Upon Default.**

(a) Acceleration of Obligations. Upon the occurrence and during the continuance of any Event of Default, time being of the essence, AmSouth may at its option and without demand or notice to the Borrower, declare all or any part of the Obligations immediately due and payable (provided, however, that the Golf Course Loan may not be declared immediately due and payable unless an event of default shall have occurred and be continuing under the Golf Course Loan Documents), whereupon all such Obligations shall forthwith become due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrower, and AmSouth may immediately enforce payment of all such amounts and may exercise any or all of its rights and remedies under this Mortgage, the New AmSouth Loan Note, any of the other Loan Documents and applicable law (provided, however, that AmSouth may not exercise any rights and remedies for default under the Golf Course Loan Documents or under any law applicable thereto unless an event of default shall have occurred thereunder). The Borrower also waives any and all rights the Borrower may have to a hearing before any Governmental Authority prior to the exercise by AmSouth of any of its rights under this Mortgage or any of the other Loan Documents and applicable law.

(b) Operation of Property by AmSouth. Upon the occurrence and during the continuance of any Event of Default, in addition to all other rights herein conferred on AmSouth, AmSouth (or any person designated by AmSouth) may, but will not be obligated to, (i) enter upon and take possession of any or all of the Property, exclude the Borrower therefrom, and hold, use, administer, manage and operate the same to the extent that the Borrower could do so, without any liability to the Borrower resulting therefrom; (ii) perform any and all obligations of the Borrower under the Construction Documents and exercise any and all rights of the Borrower thereunder as fully as the Borrower could; (iii) collect, receive and receipt for all proceeds accruing from the operation and management of the Property; (iv) make repairs and purchase needed additional property; (v) insure or reinsure the Property; (vi) maintain and restore the Property; (vii) have furnished to the Property utilities and other materials and services used on or in connection with the Property; and (viii) exercise every power, right and privilege of the Borrower with respect to the Property.

(c) Judicial Proceedings; Right to Receiver. Upon the occurrence and during the continuance of any Event of Default, AmSouth, in lieu of or in addition to exercising the power of sale hereinafter given, may proceed by suit to foreclose its Lien on the Property, to sue the Borrower for damages on account of or arising out of said default or breach, or for specific performance of any provision contained herein, or to enforce any other appropriate legal or equitable right or remedy. AmSouth shall be entitled, as a matter of right, upon bill filed or other proper legal proceedings being commenced, to the appointment by any competent court or tribunal, without notice to the Borrower or any other party, of a receiver of the rents, issues and profits of the Property, with power to lease and control the Property and with such other powers as may be deemed necessary.

(d) Power of Sale. Upon the occurrence and during the continuance of any Event of Default, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages, and AmSouth shall be authorized, at its option, whether or not possession of the Property is taken, to sell the Property (or such part or parts thereof as AmSouth may from time to time elect to sell) under this power of sale, at public outcry, to the highest bidder for cash, at the front or main door of the courthouse of the county in which the Land to be sold, or a substantial and material part thereof, is located, after first giving notice by publication once a week for three successive weeks of the time, place and terms of such sale, together with a description of the Property to be sold, by publication in some newspaper published in the county or counties in which the Land to be sold is located. If there is Land to be sold under this Mortgage in more than one county, publication shall be made in all counties where the Land to be sold is located, but if no newspaper is published in any such county, the notice shall be published in a newspaper published in an adjoining county for three successive weeks. The sale shall be held between the hours of 11:00 a.m. and 4:00 p.m. on the day designated for the exercise of the power of sale hereunder. AmSouth, its successors and assigns, may bid at any sale or sales had under the terms of this Mortgage and may purchase the Property, or any part thereof, if the



highest bidder therefor. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. At any foreclosure sale, any part or all of the Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, the Borrower hereby waiving the application of any doctrine of marshalling or like proceeding. In case AmSouth, in the exercise of the power of sale herein given, elects to sell the Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Property not previously sold shall have been sold or all the Obligations shall have been paid in full.

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(e) Personal Property and Fixtures. Upon the occurrence and during the continuance of any Event of Default, AmSouth shall have and may exercise with respect to the Personal Property and all other personal property and fixtures included in the Property (the "UCC Property") all rights, remedies and powers of a secured party under the Alabama Uniform Commercial Code, including the right and power to sell at public or private sale or sales or otherwise dispose of, lease or utilize the UCC Property and any part or parts thereof in any manner to the fullest extent authorized or permitted under the Alabama Uniform Commercial Code after default hereunder, without regard to preservation of the UCC Property or its value and without the necessity of a court order. AmSouth shall have, among other rights, the right to take possession of the UCC Property and to enter upon any premises where the same may be situated for the purpose of repossessing the same without being guilty of trespass and without liability for damages occasioned thereby and to take any action deemed appropriate or desirable by AmSouth, at its option and its sole discretion, to repair, restore or otherwise prepare the UCC Property for sale, lease or other use or disposition. At AmSouth's request, the Borrower shall assemble the UCC Property and make the UCC Property available to AmSouth at any place designated by AmSouth. To the extent permitted by law, the Borrower expressly waives any notice of, and any other formalities prescribed by law with respect to, any sale or other disposition of the UCC Property or to the exercise of any other right or remedy of AmSouth after default. To the extent that such notice is required and cannot be waived, the Borrower agrees that if such notice is given to the Borrower in accordance with the provisions of Section 6.14 below, at least five days before the time of the sale or other disposition of UCC Property or exercise of such other right or remedy, such notice shall be deemed reasonable and shall fully satisfy any requirement for giving said notice.

The Borrower agrees that AmSouth may proceed to sell or dispose of both the real and personal property comprising the Property in accordance with the rights and remedies granted under this Mortgage with respect to the real property covered hereby. The Borrower hereby grants AmSouth the right, at its option after the occurrence and during the continuance of any Event of Default hereunder, to transfer at any time to itself or its nominee the UCC Property or any part thereof and to receive the monies, income, proceeds and benefits attributable to the same and to hold the same as UCC



Property or to apply it on the Obligations in such order and amounts and manner as AmSouth may elect. The Borrower covenants and agrees that all recitals in any instrument transferring, assigning, leasing or making other disposition of the UCC Property or any part thereof shall be full proof of the matters stated therein and no other proof shall be required to establish the legal propriety of the sale or other action taken by AmSouth and that all prerequisites of sale shall be presumed conclusively to have been performed or to have occurred.

(f) Rents and Tenant Leases. Upon the occurrence and during the continuance of any Event of Default:

(1) AmSouth, at its option, shall have the right, power and authority to exercise and enforce any or all of the following rights and remedies with respect to Rents and Tenant Leases:

(A) to terminate the license granted to the Borrower in Section 2.02(d)(iii) hereof to collect the Rents, and, without taking possession, in AmSouth's own name to demand, collect, receive, sue for, attach and levy the Rents, to give proper receipts, releases and acquittances therefor, and to apply the proceeds thereof as set forth in Section 5.03(h);

(B) without regard to the adequacy of the security, with or without any action or proceeding, through any person or by agent, or by a receiver to be appointed by court, to enter upon, take possession of, manage and operate the Property or any part thereof for the account of the Borrower, make, modify, enforce, cancel or accept surrender of any Tenant Lease, remove and evict any Tenant, increase or reduce rents, decorate, clean and make repairs, and otherwise do any act or incur any cost or expenses AmSouth shall deem proper to protect the security hereof, as fully and to the same extent as the Borrower could do if in possession, and in such event to apply any funds so collected to the operation and management of the Property (including payment of reasonable management, brokerage and attorney's fees) and as set forth in Section 5.03(h);

(C) to take whatever legal proceedings may appear necessary or desirable to enforce any obligation or covenant or agreement of the Borrower under this Mortgage.

(2) The collection of the Rents and application thereof (or holding thereof in reserve) as aforesaid or the entry upon and taking possession of the Property or both shall not cure or waive any default or waive, modify or affect any notice of default under this Mortgage, or invalidate any act done pursuant to such notice, and the enforcement of such right or remedy by AmSouth, once exercised, shall continue for so long as AmSouth shall elect, notwithstanding that the collection and application aforesaid of the Rents may have cured the original default. If AmSouth shall thereafter elect to discontinue the exercise of any such right or remedy, the same or any other right or remedy hereunder

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may be reasserted at any time and from time to time following any subsequent default.'

(g) Foreclosure Deeds. The Borrower hereby authorizes and empowers AmSouth or the auctioneer at any foreclosure sale had hereunder, for and in the name of the Borrower, to execute and deliver to the purchaser or purchasers of any of the Property sold at foreclosure good and sufficient deeds of conveyance or bills of sale thereto.

(h) Order of Application of Proceeds. All payments received by AmSouth as proceeds of the Property, or any part thereof, as well as any and all amounts realized by AmSouth in connection with the enforcement of any right or remedy under or with respect to this Mortgage, shall be applied by AmSouth as follows: (i) to the payment of all necessary expenses incident to the execution of any remedies under this Mortgage, including reasonable attorneys' fees as provided herein and in the other Loan Documents, appraisal fees, title search fees and foreclosure notice costs, (ii) to the payment in full of any of the Obligations that are then due and payable (including principal, accrued interest and all other sums secured hereby) and to the payment of attorneys' fees as provided herein and in the other Loan Documents, all in such order as AmSouth may elect in its sole discretion, (iii) to a cash collateral reserve fund to be held by AmSouth in an amount equal to, and as security for, any of the Obligations that are not then due and payable, and (iv) the remainder, if any, shall be paid to the Borrower or such other persons as may be entitled thereto by law, after deducting therefrom the cost of ascertaining their identity.

(i) Multiple Sales. Upon the occurrence and during the continuance of any Event of Default, AmSouth shall have the option to proceed with foreclosure, either through the courts or by power of sale foreclosure as provided for in this Mortgage, but without declaring the whole Obligations due. Any such sale may be made subject to the unmatured part of the Obligations secured by this Mortgage, and such sale, if so made, shall not in any manner affect the unmatured part of the Obligations secured by this Mortgage, but as to such unmatured part of the Obligations this Mortgage shall remain in full force and effect as though no sale had been made under the provisions of this paragraph. Several sales may be made under the provisions of this paragraph without exhausting the right of sale for any remaining part of the Obligations whether then matured or unmatured, the purpose hereof being to provide for a foreclosure and sale of the Property for any matured part of the Obligations without exhausting any power of foreclosure and the power to sell the Property for any other part of the Obligations, whether matured at the time or subsequently maturing.

(j) Waiver of Appraisement Laws. The Borrower waives, to the fullest extent permitted by law, the benefit of all laws now existing or hereafter enacted providing for (i) any appraisement before sale of any portion of the Property (commonly known as appraisement laws), or (ii) any extension of time for the enforcement of the collection of the Obligations or any creation or extension of a period of redemption from any sale made in collecting the Obligations (commonly known as stay laws and redemption laws).

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(k) Prerequisites of Sales. In case of any sale of the Property as authorized by this Section 5.03, all prerequisites to the sale shall be presumed to have been performed, and in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the nonpayment of any of the Obligations or as to the advertisement of sale, or the time, place and manner of sale, or as to any other fact or thing, shall be taken in all courts of law or equity as rebuttably presumptive evidence that the facts so stated or recited are true.

SECTION 5.04. Construction Documents. Upon the occurrence and during the continuance of any Event of Default, AmSouth may exercise any or all of the rights and remedies of the Borrower under the Construction Documents, to the same extent as the Borrower could in the absence of such Event of Default, including the completion of the construction of the Project pursuant to the Construction Documents and in the course of such construction the making of such changes in the Plans and other Construction Documents as AmSouth in its sole discretion may deem advisable. AmSouth may, but without obligation so to do and without notice to or demand on the Borrower or releasing the Borrower from its obligations so to do, perform any covenant or condition of the Borrower under the Construction Documents and, to the extent that AmSouth shall incur any costs or pay any monies in connection therewith, including any costs or expenses of litigation, then such costs, expense or payment shall be included in the Obligations and shall bear interest from the incurring or payment thereof at the Default Interest Rate. AmSouth shall have the right to call on the Architects, the Contractors and any other parties to the Construction Documents, to advise and consult with AmSouth concerning construction of the Project and other matters relating thereto, and to furnish to AmSouth information concerning the Project. If AmSouth calls on the Architects, the Contractors or any other person for such services, the Borrower agrees to pay all charges thereof for performing such services.

SECTION 5.05. Sale Contracts. Upon the occurrence and during the continuance of any Event of Default, the following provisions shall apply with respect to the Sale Contracts in addition to any other rights and remedies provided elsewhere in this Mortgage:

(a) AmSouth at its option may collect all or any part of the sums due under the Sale Contracts, bring or defend any lawsuits in connection with the Sale Contracts in AmSouth's name or in the Borrower's name, and perform such other acts in connection with the Sale Contracts, including the consummation thereof in the name of the Borrower or of AmSouth, as AmSouth in its judgment may deem necessary or proper.

(b) AmSouth, at its option, shall be entitled, upon notice to the Purchasers, to all amounts payable to the Borrower under the Sale Contracts, and this Mortgage shall constitute a direction and full authority to the Purchasers to pay all such amounts to AmSouth without proof of the Event of Default relied upon by AmSouth. The Borrower hereby releases any claims against any Purchasers for any sums paid to AmSouth in accordance with this Mortgage. The Borrower hereby irrevocably authorizes the Purchasers to rely upon and comply with (and the Purchasers shall be fully

protected in so doing) any notice or demand by AmSouth for the payment to AmSouth of any such amounts, and the Purchasers shall have no right or duty to inquire as to whether any Event of Default has actually occurred or is then existing.

(c) The Borrower empowers AmSouth, and its agents or attorneys, at AmSouth's option, to demand, collect, receive, sue for, attach and levy all sums payable under the Sale Contracts, to settle, compromise and give acquittances, receipts and releases for all such sums, to make, modify, enforce, cancel or accept the release of any Sale Contract, and to exercise all remedies for the enforcement of the Sale Contracts and all rights in and under the Sale Contracts that the Borrower might have pursued but for this Mortgage. At the request of AmSouth, the Borrower agrees that the Borrower will take such action as may be necessary to enforce the Sale Contracts.

(d) The Borrower hereby irrevocably appoints AmSouth, its successors and assigns, and each officer of AmSouth and such successors and assigns, as the Borrower's agent and attorney in fact to exercise, at AmSouth's option at any time after the occurrence and during the continuance of any Event of Default, all or any of the following powers: (i) to take control, in any manner, of any item of payment on, or proceeds of the Sale Contracts; (ii) subject to the prior rights, if any, of other persons therein, to use the information recorded on or contained in any data processing equipment and computer hardware and software relating to the Sale Contracts to which the Borrower has access; (iii) to execute any and all deeds and other documents and to do all other acts and things necessary to consummate the Sale Contracts; and (iv) to do all acts and things necessary, in AmSouth's sole discretion, to fulfill the Borrower's obligations under this Mortgage and to carry out the purposes of this Mortgage.

## VI. MISCELLANEOUS

**SECTION 6.01. Collection Costs.** The Borrower agrees to pay all costs, including reasonable attorneys' fees, incurred by AmSouth in collecting or securing, or attempting to collect or secure, the Obligations, or any part thereof, or in defending or attempting to defend the priority of this Mortgage against any Lien on the Property (except Permitted Encumbrances) and all costs incurred in the foreclosure of this Mortgage, either under the power of sale contained herein, or by virtue of the decree of any court of competent jurisdiction. The full amount of such costs incurred by AmSouth shall be a part of the Obligations.

**SECTION 6.02. No Obligations of AmSouth; Indemnification.** AmSouth shall not by virtue of this Mortgage or otherwise assume any duties, responsibilities, liabilities or obligations with respect to any Tenant Lease, the Improvements, the Personal Property, the Land, the Construction Documents, the Sale Contracts or any of the other Property (unless expressly assumed by AmSouth under a separate agreement in writing), and this Mortgage shall not be deemed to confer on AmSouth any duties or obligations that would make AmSouth directly or derivatively liable for

any person's conduct, whether negligent, reckless, wilful or otherwise. The Borrower agrees to defend, indemnify and save harmless AmSouth from and against any and all claims, causes of action, judgments and other loss, cost and expense (collectively called "claims and losses") relating to or arising out of any default in the Borrower's performance of its representations, warranties, covenants, agreements, duties, responsibilities and obligations under this Mortgage or any of the other Loan Documents and with respect to any of the Property. The provisions of this Section 6.02 shall survive the payment of the Obligations in full and the termination, satisfaction, release (in whole or in part) and foreclosure of this Mortgage with respect to claims and losses asserted against or suffered by AmSouth. Without limiting the generality of the foregoing, the Borrower agrees that the Borrower's obligation to defend, indemnify and save harmless AmSouth set forth in this Section shall specifically include all claims and losses asserted against or suffered by AmSouth that are related to or arise out of (i) any representations or warranties set forth in Section 3.03 hereof that shall prove to be false or untrue in any material respect, (ii) any default in the performance of nonperformance of the Borrower's covenants and agreements set forth in Section 4.07 hereof, and (iii) any clean up or removal of, or other remedial action with respect to, any Hazardous Substances now or hereafter located on or included in the Property, or any part thereof, that may be required by any Environmental Law or Governmental Authority.

SECTION 6.03. Construction of Mortgage. This Mortgage is and may be construed as a mortgage, deed of trust, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation or contract, or any one or more of them, in order fully to effectuate the Liens created hereby and the purposes and agreements herein set forth.

SECTION 6.04. Successors and Assigns. All covenants and agreements herein made by the undersigned shall bind the undersigned and the heirs, personal representatives, successors and assigns of the undersigned; and every option, right and privilege herein reserved or secured to AmSouth shall inure to the benefit of AmSouth's successors and assigns.

SECTION 6.05. Waiver and Election. The exercise by AmSouth of any option given under the terms of this Mortgage shall not be considered as a waiver of the right to exercise any other option given herein, and the filing of a suit to foreclose the Liens granted by this Mortgage, either on any matured portion of the Obligations or for the whole of the Obligations, shall not be considered an election so as to preclude foreclosure under power of sale; nor shall the publication of notices for foreclosure under power of sale preclude the prosecution of a later or simultaneous suit to collect the Obligations or foreclose the Liens granted by this Mortgage. No failure or delay on the part of AmSouth in exercising any right, power or remedy under this Mortgage shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder or thereunder. The remedies provided in this Mortgage and in the other Loan Documents are cumulative and not exclusive of any remedies provided by law. No amendment, modification, termination or waiver of any provisions of this Mortgage or any of the other Loan



Documents, nor consent to any departure by the Borrower therefrom, shall be effective unless the same shall be in writing and signed by an executive officer of AmSouth, and then such waiver or consent shall be effective only in this specific instance and for the specific purpose for which given. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances.

SECTION 6.06. Landlord-Tenant Relationship. Any sale of the Property upon default under this Mortgage shall, without further notice, create the relationship of landlord and tenant at sufferance between the purchaser and the Borrower.

SECTION 6.07. Enforceability. If any provision of this Mortgage is now or at any time hereafter becomes invalid or unenforceable, the other provisions hereof shall remain in full force and effect, and the remaining provisions hereof shall be construed to effectuate the provisions hereof.

SECTION 6.08. Application of Payments. If the Liens created by this Mortgage are invalid or unenforceable as to any part of the Obligations or are invalid or unenforceable as to any part of the Property, the unsecured or partially secured portion of the Obligations shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the Obligations, and all payments made on the Obligations, whether voluntary or under foreclosure or other enforcement action or procedures, shall be considered to have been first paid on and applied to the full payment of that portion of the Obligations that are not secured or not fully secured by said Liens created hereby.

SECTION 6.09. Other Mortgages Encumbering the Land. The Borrower hereby authorizes the holder of any other mortgage encumbering any of the Real Property to disclose to AmSouth from time to time and at any time the following information: (i) the amount of debt secured by such mortgage; (ii) the amount of such debt that is unpaid; (iii) whether such debt is or has been in arrears; (iv) whether there is or has been any default with respect to such mortgage or the debt secured thereby; and (v) any other information regarding such mortgage or the debt secured thereby that AmSouth may request from time to time.

The Borrower expressly agrees to comply with the terms of any other mortgage encumbering any of the Real Property and agrees not to consent to or permit any amendment or modification thereof without the prior written consent of AmSouth. The Borrower further agrees that if default should be made in the payment of principal, interest or any other sum secured by any other mortgage encumbering any of the Real Property, AmSouth may (but shall not be required to) pay all or any part of such amount in default, without notice to the Borrower. The Borrower agrees to repay any such sum advanced upon demand, with interest from the date such advance is made at the rate provided for in the New AmSouth Loan Note, or the highest rate permitted by law, whichever is less, and any sum so advanced with interest shall be a part of the Obligations.



SECTION 6.10. Meaning of Particular Terms. The words "Borrower" and "AmSouth" shall include their respective successors and assigns. The term "Borrower" as used in this Mortgage refers to each of the undersigned, jointly and severally, whether one or more natural persons, corporations, associations, trusts, partnerships or other entities or organizations.

SECTION 6.11. Advances by AmSouth. If the Borrower shall fail to comply with the provisions hereof with respect to the securing of insurance, the payment of Liens or Impositions, the keeping of the Property in repair, the performance of the Borrower's obligations under any Tenant Lease or any Construction Document, the payment or performance of any prior mortgages, the compliance with Environmental Laws or the other provisions of Section 4.12 hereof, or the performance of any other term or covenant herein contained, AmSouth may (but shall not be required to) make advances to perform the same, and where necessary enter the Property for the purpose of performing any such term or covenant. The Borrower agrees to repay all such sums advanced upon demand, with interest from the date such advances are made, at the rate provided for in the New AmSouth Loan Note, or the highest rate permitted by law, whichever shall be less, and all sums so advanced with interest shall be a part of the Obligations. The making of any such advances shall not be construed as a waiver by AmSouth of any Event of Default resulting from the Borrower's failure to pay the amounts paid.

SECTION 6.12. Release or Extension by AmSouth. AmSouth, without notice to the Borrower and without in any way affecting the rights of AmSouth hereunder as to any part of the Property not expressly released, may release any part of the Property or any person liable for any of the Obligations and may agree with any party with an interest in the Property to extend the time for payment of all or any part of the Obligations or to waive the prompt and full performance of any term, condition or covenant of the New AmSouth Loan Note or any of the other Loan Documents.

SECTION 6.13. Partial Payments. Acceptance by AmSouth of any payment of less than the full amount due on the Obligations shall be deemed acceptance on account only, and the failure of the Borrower to pay the entire amount then due shall be and continue to constitute an Event of Default, and at any time thereafter and until the entire amount due on the Obligations has been paid, AmSouth shall be entitled to exercise all rights conferred on it by the terms of this Mortgage in case of the occurrence and continuance of an Event of Default.

SECTION 6.14. Notices. Any notice provided with respect to this Mortgage shall be conclusively deemed to have been received by a party hereto and be effective on the day on which delivered by hand or sent by facsimile transmission to such party at the address set forth below (or at such other address as a party shall specify to the other party in writing) or if sent by registered or certified mail, on the third business day after the day on which mailed to such address:

(a) If to the Borrower, at: Daniel Oak Mountain Limited Partnership, 1200 Corporate Drive, Birmingham, Alabama 35242-2940, Attention: Mr. Stephen R. Monk, fax number (205) 995-0526; and

(b) If to AmSouth, at: Commercial Real Estate Loan Department, Fifth Floor, AmSouth-Sonat Tower, 1900 Fifth Avenue North, Birmingham, Alabama 35203; fax number (205) 326-4075.

SECTION 6.15. Release of Lots and Parcels. So long as no Event of Default shall have occurred and be continuing, any Lot in the Project that is part of a recorded Subdivision Plat approved by AmSouth, and any other Parcel in the Property that is acceptable to AmSouth, may be sold for a sales price conforming to the requirements of Section 6.18 of the Construction Loan Agreement and in connection with such sale may be released from the Lien of this Mortgage by the Borrower upon payment to AmSouth of the Net Sales Proceeds of such Lot or Parcel, accompanied by a signed copy of the closing statement showing the selling price and computation of the Net Sales Proceeds. Upon payment to AmSouth of the Net Sales Proceeds with respect to any Lot or Parcel, AmSouth agrees to execute and deliver to the Borrower a partial release of said Lot or Parcel from the Lien of this Mortgage prepared by the Borrower and satisfactory to AmSouth. AmSouth shall apply the Net Sales Proceeds in accordance with the Forbearance Agreement, if the Forbearance Agreement is then in effect. If not, AmSouth may apply the Net Sales Proceeds to the reduction of the Obligations secured by this Mortgage in such order and proportions as AmSouth, in its sole discretion, may elect.

SECTION 6.16. Termination of Mortgage. This Mortgage and AmSouth's Lien under this Mortgage in the Property will not be terminated until a written mortgage satisfaction instrument executed by one of AmSouth's officers is filed for record in the county in which the Land is located, even if the Borrower should pay all of the Obligations owing to AmSouth at any one time. Except as otherwise expressly provided in this Mortgage, no satisfaction of this Mortgage shall in any way affect or impair the representations, warranties, agreements, covenants, obligations, duties and liabilities of the Borrower or the powers, rights and remedies of AmSouth under this Mortgage with respect to any transaction or event occurring prior to such satisfaction, all of which shall survive such satisfaction. Notwithstanding anything to the contrary set forth elsewhere in this Mortgage, upon the Borrower's written request, AmSouth shall be obligated and does hereby agree to satisfy its Lien under this Mortgage when all of the following conditions shall have been fulfilled: (a) all of the Greystone Obligations shall have been paid in full and the applicable period for avoiding or setting aside such payment under bankruptcy or insolvency laws shall have expired, (b) AmSouth shall not be obligated to extend any further credit pursuant to the Greystone Obligations, and (c) if any portion of the Hawkins Letter of Credit or the Singleton Letter of Credit shall then be outstanding, the Borrower shall have complied with the remainder of this Section 6.16. If any portion of the Hawkins Letter of Credit or the Singleton Letter of Credit shall be outstanding when the Borrower desires that this Mortgage be terminated by AmSouth, the Borrower shall, unless otherwise agreed by AmSouth in its sole discretion, make a

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cash prepayment to AmSouth on the date such termination is desired in an amount equal to the then-outstanding amounts available to be drawn under the Hawkins Letter of Credit and the Singleton Letter of Credit, and AmSouth shall hold such prepayment in an interest-bearing cash collateral account in the name and under the sole control of AmSouth (which account shall bear interest at AmSouth's then-current rate for such accounts) as security for the Hawkins/Singleton Reimbursement Obligations. Such account shall not constitute an asset of the Borrower or any other Daniel Obligor, but shall be subject to the Borrower's rights under this Section 6.16. AmSouth shall from time to time debit such account for the payment of the Smith/Hawkins Reimbursement Obligations as the same become due and payable and shall promptly refund any excess funds (including interest) held in said account to the Borrower if and when no amounts shall remain outstanding under the Hawkins Letter of Credit and the Singleton Letter of Credit and all of the other Greystone Obligations shall have been paid in full. Subject to the Forbearance Agreement, the Borrower shall remain liable for any Obligations in excess of the amounts paid from such account.

SECTION 6.17. Forbearance Agreement. This Mortgage is subject to all of the provisions of the Forbearance Agreement, and in the event of a conflict between the provisions of this Mortgage and the provisions of the Forbearance Agreement, the provisions of the Forbearance Agreement shall be controlling.

IN WITNESS WHEREOF, the undersigned Daniel Oak Mountain Limited Partnership has caused this instrument to be executed by its duly authorized general partner on the date first written above.

DANIEL OAK MOUNTAIN LIMITED PARTNERSHIP

By DANIEL REALTY INVESTMENT CORPORATION -  
OAK MOUNTAIN, Its General Partner

ATTEST:

Its Secretary

[SEAL]

By  
Its

Donald K. Klay

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STATE OF ALABAMA )

COUNTY OF Jefferson;

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Donald E. Lloyd, whose name as Ex-Vice Pres. of DANIEL REALTY INVESTMENT CORPORATION - OAK MOUNTAIN, an Alabama corporation, General Partner of DANIEL OAK MOUNTAIN LIMITED PARTNERSHIP, an Alabama limited partnership, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, 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 of said limited partnership.

GIVEN under my hand and official seal, this 6th day of June, 1991.

Mphie S. Meacham  
Notary Public

[NOTARIAL SEAL]

My Commission expires: \_\_\_\_\_  
My Commission Expires July 1, 1991

This instrument prepared by:

Douglas T. Arendall  
MAYNARD, COOPER, FRIERSON & GALE, P.C.  
1901 Sixth Avenue North  
2400 AmSouth/Harbert Plaza  
Birmingham, Alabama 35203-2602  
(205) 254-1000

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## EXHIBIT A

### Description of the Land

**Tract I** - Lots 3, 4, 9, 11, 15, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 34, 37, 40, 41, 42, 43, 44, 46, 104, 109, 113, 115, 116, 117, 118, 121, 122, 123, 124, 125 and 126, according to the Survey of Greystone 1st Sector Phase 1, as recorded in the Office of the Judge of Probate of Shelby County, Alabama, in Map Book 14, page 91.

**Tract II** - The following described property situated in Sections 32 and 33, Township 18 South, Range 1 West, Shelby County, Alabama:

Commence at the northeast corner of said Section 32, thence run south  $0^{\circ} 51' 42''$  west along the east line of said Section 32 for a distance of 1,039.75 feet to the point of beginning; thence run south  $80^{\circ} 55' 57''$  east for a distance of 30.02 feet to a point; thence run north  $33^{\circ} 30' 56''$  east for a distance of 104.94 feet to a point; thence run south  $67^{\circ} 39' 08''$  east for a distance of 133.52 feet to a point; thence run north  $67^{\circ} 31' 12''$  east for a distance of 102.22 feet to a point; thence run north  $30^{\circ} 07' 08''$  east for a distance of 105.74 feet to a point; thence run north  $25^{\circ} 38' 07''$  east for a distance of 719.57 feet to a point; thence run north  $19^{\circ} 14' 45''$  east for a distance of 328.54 feet to a point; thence run north  $57^{\circ} 43' 07''$  east for a distance of 173.41 feet to a point; thence run south  $0^{\circ} 28' 33''$  west for a distance of 493.64 feet to a point; thence run south  $46^{\circ} 31' 38''$  east for a distance of 66.09 feet to a point; thence run south  $10^{\circ} 53' 37''$  west for a distance of 113.01 feet to a point; thence run south  $26^{\circ} 58' 58''$  east for a distance of 133.53 feet to a point; thence run south  $63^{\circ} 47' 26''$  east for a distance of 163.17 feet to a point on a curve to the left having a radial bearing in of north  $89^{\circ} 04' 40''$  east, a radius of 438.39 feet and a central angle of  $11^{\circ} 34' 54''$ ; thence run in a southeasterly direction along the arc of said curve for a distance of 88.61 feet to a point; thence run south  $12^{\circ} 30' 14''$  east for a distance of 155.00 feet to a point on a curve to the right having a radial bearing in of south  $77^{\circ} 29' 46''$  west, a radius of 820.68 feet and a central angle of  $29^{\circ} 00' 00''$ ; thence run in a southeasterly to southwesterly direction along the arc of said curve for a distance of 415.38 feet to a point; thence run south  $16^{\circ} 29' 46''$  west for a distance of 200.00 feet to a point on the intersection

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of Greystone Drive (a private roadway) and King Stables Road (a private roadway) in Greystone 1st Sector Phase I as recorded in Map Book 14, Page 91, in the office of the Judge of Probate, Shelby County, Alabama, said point being on a curve to the right having a radial bearing in of north  $73^{\circ} 30' 14''$  west, a radius of 25.00 feet and a central angle of  $90^{\circ} 00' 00''$ ; thence run in a southwesterly to northwesterly direction along the arc of said curve and also along the northeast right of way of King Stables Road for a distance of 39.27 feet to a point; thence run north  $73^{\circ} 30' 14''$  west along said northeast right of way for a distance of 202.55 feet to a point on a curve to the right having a radial bearing in of north  $16^{\circ} 29' 46''$  east, a radius of 1,169.34 feet and a central angle of  $10^{\circ} 52' 34''$ ; thence run in a northwesterly direction along the arc of said curve and also along said northeast right of way for a distance of 221.97 feet to a point; thence run south  $27^{\circ} 22' 20''$  west crossing said King Stables Road for a distance of 60.00 feet to the northwest corner of Lot 126 in said Greystone 1st Sector Phase I; thence continue south  $27^{\circ} 22' 20''$  west along the northwest line of said Lot 126 for a distance of 176.25 feet to a point on the northeast line of Lot 125 in said Greystone 1st Sector Phase I; thence run north  $62^{\circ} 28' 38''$  west along the northeast line of said Lot 125 for a distance of 17.16 feet to the northwest corner of said Lot 125; thence run south  $31^{\circ} 22' 48''$  west along the northwest line of Lots 125, 124, 123 and 122 in said Greystone 1st Sector Phase I for a distance of 539.34 feet to the northwest corner of Lot 121 in said Greystone 1st Sector Phase I; thence run south  $40^{\circ} 50' 29''$  west along the northwest line of said Lot 121 for a distance of 121.62 feet to the northwest corner of Lot 120 in said Greystone 1st Sector Phase I; thence run south  $34^{\circ} 39' 12''$  west along the northwest line of Lots 120 and 119 in said Greystone 1st Sector Phase I for a distance of 200.11 feet to a point; thence run south  $47^{\circ} 49' 35''$  west along the northwest line of Lots 119 and 118 in said Greystone 1st Sector Phase I for a distance of 195.26 feet to the northernmost corner of Lot 117 in said Greystone 1st Sector Phase I; thence run south  $44^{\circ} 53' 27''$  west along the northwest line of Lots 117, 116 and 115 in said Greystone 1st Sector Phase I for a distance of 337.35 feet to a point; thence run south  $29^{\circ} 08' 15''$  west along the northwest line of Lots 115 and 114 in said Greystone 1st Sector Phase I for a distance of 179.95 feet to a point; thence run south  $54^{\circ} 35' 05''$  west along the northwest line of said Lot 114 for a distance of 48.12 feet to a point; thence run south  $5^{\circ} 19' 35''$  west along the west line of Lots 114, 113 and 112 in said Greystone 1st Sector Phase I



for a distance of 320.00 feet to a point on the northernmost corner of Lot 111 in said Greystone 1st Sector Phase I; thence run south  $47^{\circ} 59' 48''$  west along the northwest line of Lots 111 and 110 in said Greystone 1st Sector Phase I for a distance of 182.48 feet to the northeast corner of Lot 109 in said Greystone 1st Sector Phase I; thence run north  $47^{\circ} 20' 45''$  west along the northeast line of said Lot 109 for a distance of 130.00 feet to the northeast corner of Lot 108 in said Greystone 1st Sector Phase I; thence run south  $72^{\circ} 39' 15''$  west along the northwest line of said Lot 108 for a distance of 50.00 feet to a point; thence run north  $58^{\circ} 57' 19''$  west along the northwest line of said Lot 108 for a distance of 40.81 feet to a point; thence run south  $67^{\circ} 20' 12''$  west along the northwest line of said Lot 108 for a distance of 200.00 feet to the northwest corner of Lot 107 in said Greystone 1st Sector Phase I; thence run south  $7^{\circ} 20' 12''$  west along the west line of said Lot 107 for a distance of 125.00 feet to a point; thence run south  $12^{\circ} 39' 48''$  east along the southwest line of Lots 107 and 105 in said Greystone 1st Sector Phase I for a distance of 220.00 feet to the northeast corner of Lot 104 in said Greystone 1st Sector Phase I; thence run south  $74^{\circ} 20' 12''$  west along the northwest line of Lots 104 and 103 in said Greystone 1st Sector Phase I for a distance of 270.51 feet to the northwest corner of said Lot 103; thence run south  $10^{\circ} 42' 57''$  east along the southwest line of said Lot 103 for a distance of 160.05 feet to a point on the northwest right of way of Shandwick Place (a private roadway) in said Greystone 1st Sector Phase I; said point being on a curve to the right having a radial bearing in of north  $10^{\circ} 42' 57''$  west, a radius of 289.52 feet and a central angle of  $1^{\circ} 59' 04''$ ; thence run in a southwesterly direction along the arc of said curve and also along said northwest right of way for a distance of 10.03 feet to a point; thence run south  $8^{\circ} 43' 52''$  east crossing said Shandwick Place for a distance of 60.00 feet to the northwest corner of Lot 48 in said Greystone 1st Sector Phase I; thence continue south  $8^{\circ} 43' 52''$  east along the southwest line of said Lot 48 for a distance of 210.40 feet to the southwest corner of said Lot 48; thence run south  $81^{\circ} 12' 19''$  west for a distance of 401.50 feet to a point; thence run north  $61^{\circ} 52' 13''$  west for a distance of 91.66 feet to a point; thence run north  $12^{\circ} 57' 12''$  west for a distance of 545.86 feet to a point; thence run north  $8^{\circ} 45' 30''$  west for a distance of 170.13 feet to a point; thence run north  $12^{\circ} 28' 01''$  east for a distance of 177.77 feet to a point; thence run north  $16^{\circ} 33' 28''$  east for a distance of 378.52 feet to a point; thence run north  $29^{\circ} 26' 52''$  east for a distance of 485.09 feet to a point; thence run north  $4^{\circ}$

41' 46" west for a distance of 114.76 feet to a point; thence run north 45° 14' 29" west for a distance of 70.04 feet to a point; thence run north 5° 06' 49" west for a distance of 123.71 feet to a point; thence run north 41° 55' 46" east for a distance of 347.92 feet to a point; thence run north 38° 08' 46" east for a distance of 348.81 feet to a point; thence run north 23° 38' 35" east for a distance of 407.34 feet to a point; thence run south 59° 21' 08" east for a distance of 223.55 feet to a point; thence run north 30° 38' 52" east for a distance of 267.58 feet to a point on a curve to the left having a radial bearing in of north 59° 21' 08" west, a radius of 25.00 feet and a central angle of 86° 03' 19"; thence run in a northwesterly direction along the arc of said curve for a distance of 37.55 feet to a point on a reverse curve to the right having a radial bearing in of north 34° 35' 33" east, a radius of 774.50 feet and a central angle of 12° 44' 46"; thence run in a northwesterly direction along the arc of said curve for a distance of 172.30 feet to a point; thence run north 42° 39' 42" west for a distance of 72.14 feet to a point; thence run north 37° 14' 42" east for a distance of 42.02 feet to a point; thence run south 80° 55' 57" east for a distance of 646.84 feet to the point of beginning; said Tract II containing 100.732 acres, more or less.

TOGETHER ALSO WITH THE FOLLOWING:

(a) All and singular the reversions and remainders in and to said tracts of land hereinabove described (the "Tracts") and the tenements, hereditaments, easements, rights of way or use, rights (including mineral and mining rights, and all water, oil and gas rights), privileges, royalties and appurtenances to the Tracts, now or hereafter belonging or in anywise pertaining thereto, including but not limited to (but subject to the prior rights, if any, of other persons) any right, title, interest in, to or under any agreement or right granting, conveying or creating, for the benefit of the Tracts, any easement, right or license in any way affecting other property and in, to or under any streets, ways, alleys, vaults, gores or strips of land adjoining the Tracts or any parcel thereof, or in or to the air space over the Tracts, all water, water courses, water rights and water stock, and all claims or demands of Daniel Oak Mountain Limited Partnership (the "Borrower") either at law or in equity, and possession or expectancy of, in or to the same;

(b) all rights of the Borrower in and to any easement, quasi-easement, servitude, right of way,

covenant running with the land or license for the purpose of access, ingress or egress over, under, across, through or upon the land other than the Tracts forming the development of which the Tracts are a part (the "Other Property") to or from the Tracts, now or hereafter created or reserved, pursuant to (i) the Reciprocal Easement Agreement dated as of January 1, 1990 between the Borrower and Daniel Links Limited Partnership, which instrument is recorded in the Office of the Judge of Probate of Shelby County, Alabama in Deed Book 312, page 274, as amended (the "Reciprocal Easement Agreement"), (ii) the Greystone Residential Declaration of Covenants, Conditions and Restrictions dated November 6, 1990 by the Borrower, which instrument is recorded in the Office of the Judge of Probate of Shelby County, Alabama in Deed Book 317, page 260, as amended and as may be extended to the Other Property (the "Declaration of Covenants"), and (iii) any other express or implied grant or reservation, the rights described in this clause (b) being subject to and used in common with the Borrower, its successors and assigns, and any other parties having rights or interests therein;

(c) all rights of the Borrower in and to any easement, quasi-easement, servitude, right of way, covenant running with the land or license for the purpose of installing, erecting, replacing, relocating, maintaining and operating any and all utilities necessary or convenient for the use of any portion of the Tracts, including but not limited to master television and/or cable systems, security and similar systems, publicly or privately owned and operated electrical, gas, telephone, water and sewer services, storm drains and sewers, drainage systems, retention ponds, lakes, basins and facilities, lines, pipes, conduits, equipment, machinery and other apparatus and appurtenances necessary or otherwise reasonably required in order to provide any utility service to any portion of the Tracts over, under, across, through or upon the Other Property, now or hereafter created or reserved, pursuant to (i) the Reciprocal Easement Agreement, (ii) the Declaration of Covenants, and (iii) any other express or implied grant or reservation, the rights described in this clause (c) being subject to and used in common with the Borrower, its successors and assigns, and any other parties having rights or interests therein;

(d) a permanent, perpetual and non-exclusive easement over and upon, and the right to use for pedestrian and vehicular travel and transportation purposes, for access to the Tracts, Hugh Daniel Drive as described in Exhibit C

to the Reciprocal Easement Agreement, which easement to and rights to use Hugh Daniel Drive shall be subject to and used in common with the Borrower, its successors and assigns, and any other parties having rights or interests therein and shall also be subject to the terms and conditions set forth in Paragraphs 4(b) and 4(c) of the Reciprocal Easement Agreement;

(e) all rights of the Borrower as "Developer" under the Declaration of Covenants, including but not limited to Developer's right to appoint and remove members of the ARC (as defined in the Declaration of Covenants); provided, however, that unless and until Foreclosure shall have occurred the Borrower may exercise all such rights;

(f) all rights of the Borrower to 80,000 gallons per day of the Guaranteed Capacity under Agreement dated September 28, 1988, between D & D Water Renovators, Inc. and Shelby County, Alabama (the "Agreement") and under Assignment dated September 29, 1988, between D & D Water Renovators, Inc., Daniel Realty Corporation and Dantract, Inc. and Assignment dated September 7, 1989, between the Borrower and Dantract, Inc. (collectively, the "Assignments"), and all related rights under the Agreement and the Assignments with respect to such 80,000 gallons per day of Guaranteed Capacity;

(g) all rights of Borrower under Covenant and Agreement for Water Service dated April 24, 1989, between Dantract, Inc., Daniel Realty Company and Shelby County, insofar as such instrument relates to or benefits the Tracts or any part thereof; and

(h) all other rights and interest in the Tracts or arising therefrom, including but not limited to all rents, issues and profits therefrom, proceeds of any sale or other disposition of all or any part thereof, proceeds of any condemnation thereof and proceeds of casualty insurance relating thereto.

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# EXHIBIT A-1

## GREYSTONE GOLF MAINTENANCE PHYSICAL EQUIPMENT INVENTORY

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4-23-91

Entity

LIFE EXP

MM

SERIAL #

10

102155G692856

10

102155G703528

3

10381

10

A300674

5

PS6AN230

5

67672089TDO

5

61611657

4

9000174, 62933

3

2783, 264, 3783

5

0880-01099

4

80-408493, 80-409113

4

760790

5

91501974

10

092256

2

22025-7002453, 7002457

4

03430-00631

4

03410-00189

5

30788-01037

5

30795-004010

4

532,529,526,530,525,10242

4

30722-01683/01760

7

04050-01373

04375-90254

Toro 72 Decks

Toro Greensmaster 1000 walking greens mower triplex

Toro Greensmaster 300 D Triplex greensmower

\*Based on average normal use/years may vary due to course conditions.



John Deere 272 grooming mower	MO027X010196	5
John Deere 254 flail mower	PO0025A638023	5
John Deere 350 sickle	F00350X08091011	5
John Deere 90 boom mower	RO00906750690	5
John Deere 660 heavy duty tiller		15
Tuffline 7" box blade/somifiers	34971	10
Land/pride 7' landscape rake	R-8A	2
Scotts Greens rotary type spreader	14445	2
Greens drop type Gandy 24" spreader	0042003	10
Hahn model 970 3 point hitch sweeper		
Motorola 2 way radios		4
Gandy Rollers	550	10
Tamaka Edgers	E0280SE761009,761134	
John Deere 280S F.M. Slicer		10
Brush Sweeper	LYRCC812311006	5
Vermeer Chipper	6382	2
Raven Computer	P56AN230	2
Hose Reel		2
Solo backpack sprayer		2
Chappin handsprayer		
Isuzu Pup Pickup Trucks '90 white	451CL1115L4215978	5
	451CL1113L4215977	
	451CL1113L4215020	
	<del>451CL1113L4215020</del>	
	451CL1111L4203226	
'80 Gandy		
'90 Grey		2
Mule - Kawasaki		

Equipment Parts on Hand - <sup>4-23-91</sup> ~~XXXXXX~~

Toro Greensmaster 105

<u>Part #</u>	<u>Description</u>	<u>Quantity</u>
3-0514	Friction Disc	6
3-0477	Clutch Plate	6
3290-211	Washer	2
3-0478	Spring	2
3296-6	Lock Nut	2
2-4779	Universal Driver	1
251-163	Bearing	1
32121-25	Roll Pin	4
253-59	Oil Seal	2
3-4510	Pull Arm	2
3-2251	Belt	2
3-5794	Bedknife	4
57-4910	Screws	48
3-5084	Shaft	1
3-1852	Pad	4

Miscellaneous Items: spark plugs, string trimmer cord, etc.

# Toro Sand Pro

<u>Part #</u>	<u>Description</u>	<u>Quantity</u>
44-2230	Coupling	1
33-1300	Air Filter	1
36-4630	"S" Link	1
22-4600	Pivot Bracket	1
18-6370	Chain	1
18-7550	Arm's Rake	4
18-7530	Arm's Rake	4
18-7460	Rake Bar	4
12-8140	Switch Ignition	1

## 322D Toro Groundsmaster

<u>Part #</u>	<u>Description</u>	<u>Quantity</u>
249-39	Hood Latch	2
63-8300	Fuel Filter	1
43-2550	Fuel Filter	1
53-9660	V-Belt P.T.O.	1
21-1830	Spring	1
231-101	Tire	1
23-105	Tire	1
44-2230	Coupling P.T.O.	2
67-8110	Oil Filter	1
29-6160	Switch	1
42-9100	Fan Belt	1
43-5910	Fan Belt	1
27-7110	Air Filter	1
29-6930	Switch-Safety	1
23-2410	Blade	3
21-0890	Belt	3
49-8320	Bearing	3
253-138	Oil Seal	9
12-1509	Wheel Assembly	2
63-8400	Wheel Assembly	2
26-1580	Wheel Spacers	24

## Irrigation Parts and Tools - 2/1/91

<u>Part #</u>	<u>Description</u>	<u>Quantity</u>
	1" swing joint	10
	1" x 3" nipple	25
	1 1/2" repair coupler	9
	1 1/2" tee	15
	1 1/2" 90°	15
	1 1/2" 45°	15
	2" x 1 1/2" reducer	6
	2" male adapter	15
	2" x 1 1/2" end cap (Pierce)	8
	2" 90° (Pierce)	3
	2" 45° (Pierce)	3
	2" tee	7
	2" repair coupler (Pierce)	6
	2 1/2" tee	8
	2 1/2" repair coupler (Pierce)	6
	2 1/2" repair coupler (Flow)	3
	2 1/2" 90°	7
	2 1/2" 45°	6
	2 1/2" male adaptor	6
	2 1/2" x 2" reducer	6
	3" x 2 1/2" reducer	6
	3" male adaptor	7
	3" female adaptor	5
	3" repair coupler	6



	3" tee	7
	3" x 3" x 2 1/2" tee	1
	4" x 3" reducer	6
	4" repair coupler	6
	1 1/2" swing joint	19
	1 1/2" x 3" nipple	75
	1 1/2" x 8" nipple	25
	1 1/2" x 12" nipple	50
	2" x 3" nipple	55
	2 1/2" x 2" bushing	15
	3" x 2 1/2" bushing	22
	3" nipple	16
	2" angle valve, brass	1
	2 1/2" angle valve, brass	1
	1" hand valve, brass	1
	1" air release	3
	DBY splice kit	73
	3m splice kit	16
Nw 8000	timing wrench	1
Nw 8000	pump & current monitor	1
Nw 8000	triac module	2
Nw 8000	communication cable bracket assembly	1
Nw 8000	power supply	1
Nw 8000	3A F.B. fuses	10
Nw 8000	1/2 A F.B. fuses	25
Nw 8000	3 2A Slo-Blo fuses	10
Nw 8000	modem board	2

Nw 8000	transformer	1
	hydraulic converter	4
	PVC cement	10 cans
	PVC primer	10 cans
	521 locator	1
	A-frame (fault finder)	1
Nw 8000	Satellite	1
	6" repair coupler	4
	8" repair coupler	2
654-01-57	sprinkler heads	17
655-01-58	sprinkler heads	1
674-01-70	sprinkler heads	6
674-01-73	sprinkler heads	8
694-01-91	sprinkler heads	5
	10" round valve boxes	14
	14" square valve boxes	2
	15" square valve boxes	8
	20" square valve boxes	2
	wire - copper (ground)	2 rolls
	#12 AWG white wire	1/2 roll
	#12 AWG black wire	1/2 roll
	#12 AWG green wire	1/2 roll
	#6 AWG white	1/2 roll
	#18 AWG communication cable	1 roll
	control tubing	3 rolls
	6" x 1" flo control saddles	4
	6" x 2" flo control saddles	4

Tools:

3" x 1" flo control saddles	3
3" x 1 1/2" flo control saddles	4
3" x 2" flo control saddles	5
2 1/2" x 2" flo control saddles	5
2 1/2" x 1" flo control saddles	10
2" x 1 1/2" flo control saddles	10
8" x 1 1/2" flo control saddles	1
6" x 2" APAC saddles	4
8" x 2" APAC saddles	2
roller base sprinkler	9
474 quick coupler 1"	7
C100 coupler key 1"	12
pipe wrench 24"	1
pipe wrench 18"	1
pipe wrench 14"	1
crescent wrench 15"	1
crescent wrench 6"	1
hack saw	1
fish tape 200 feet	1
valve key	3
Lenox PVC saw	1
12" saw blades	2
18" saw blades	2
15" channel lock pliers	2
10" channel lock pliers	1
snap ring pliers	2
standard slip pliers	1

vise grip pliers	2
7" lineman's pliers	1
wire strippers 18 gauge	1
needle nose pliers	2
chain wrench 12"	2
ball pin hammer	1
rubber mallet	1
4 in 1 file	2
test light	1
10" standard screw drivers	6
6" standard screw drivers	3
3" standard screw drivers	2
10" hex screw driver	1
8" hex screw driver	1
7" hex screw driver	1
6" hex screw driver	3
3" hex screw driver	2
vise - D44	1
sledge hammer 8 lb.	1

**EXHIBIT B**

**(Permitted Encumbrances)**

1. The Lien for ad valorem taxes and library and fire district dues on the Property so long as such taxes and dues are not delinquent.
2. The leasehold interest of the tenants under the Existing Tenant Leases, if any.
3. The exceptions set forth in Schedule B, Part II of the mortgagee's title insurance policy issued or to be issued pursuant to that certain Title Insurance Commitment No. 67426 prepared by First American Title Insurance Company, by Cahaba Title, Inc., having an effective date of June 6, 1991, at 8:00 a.m., to the extent only that such exceptions refer expressly to instruments recorded against, or otherwise specifically affect, the Property and not to any general, standard or similar exceptions that may appear in said policy.
4. General utility easements necessary for the development of the Property.

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**ANNEX A**

**Defined Terms**

**Acquisition Loan** - The indebtedness evidenced by the Acquisition Note and all other amounts now or hereafter owing to AmSouth under or in connection with the Acquisition Loan Documents.

**Acquisition Loan Documents** - The following described documents and all other documents, heretofore or hereafter executed, evidencing, securing or otherwise executed in connection with the Acquisition Loan, as amended from time to time:

(a) the Acquisition Note;

(b) Assignment and Security Agreement dated as of November 4, 1986, between Daniel Realty Investment Corporation, Daniel U.S. Properties Investment Corporation and AmSouth, as amended by First Amendment thereto dated as of May 13, 1988, and by Second Amendment thereto dated the Closing Date; and

(c) Second Restated Term Loan Agreement dated November 4, 1986, between Daniel Realty Corporation, Daniel Realty Company, Daniel Commercial and AmSouth.

**Acquisition Note** - Consolidating Promissory Note, dated the Closing Date, in the principal amount of \$750,000, executed by Daniel Realty Corporation, Daniel Realty Company and Daniel Commercial, payable to AmSouth.

**AmSouth** - AmSouth Bank N.A., a national banking association.

**Closing Date** - June 6, 1991.

**Daniel Commercial** - Daniel Commercial Properties, Ltd., a Virginia limited partnership.

**Daniel Corporation** - Daniel Corporation, an Alabama corporation.

**Daniel Links** - Daniel Links Limited Partnership, an Alabama limited partnership.

**Daniel Oak Mountain** - Daniel Oak Mountain Limited Partnership, an Alabama limited partnership.

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Daniel Obligors - Daniel Corporation, Daniel Links, Daniel Oak Mountain, Daniel Realty Company, Daniel Realty Corporation, DRIC and Daniel Commercial.

Daniel Realty Company - Daniel Realty Company, a New York general partnership.

Daniel Realty Corporation - Daniel Realty Corporation, an Alabama corporation.

DRIC - Daniel Realty Investment Corporation - Oak Mountain, an Alabama corporation and the sole general partner of Daniel Oak Mountain and Daniel Links.

Existing USF&G Reimbursement Obligation - The obligation of Daniel Oak Mountain and Daniel Realty Company to reimburse AmSouth in the principal amount of \$1,981,232, representing the amount drawn, by draft dated March 19, 1991, by USF&G on AmSouth's Letter of Credit No. S302630, as amended, issued by AmSouth to USF&G at the request of Daniel Realty Company, together with interest thereon and other fees and charges payable with respect thereto, evidenced by the Existing USF&G Reimbursement Obligation Note.

Existing USF&G Reimbursement Obligation Note - Reimbursement Note, dated the Closing Date, in the principal amount of \$1,981,232, executed by Daniel Oak Mountain and Daniel Realty Company, payable to AmSouth, evidencing the Existing USF&G Reimbursement Obligation.

Forbearance Agreement - Forbearance and Modification Agreement, dated as of the Closing Date, between AmSouth, the Daniel Obligors and other parties.

Forbearance Period - The period of time during which AmSouth agrees, under the terms of the Forbearance Agreement, to forbear from exercising its rights and remedies on account of any default under the Loan Documents.

Golf Course Loan - The indebtedness evidenced by the Golf Course Note and all other amounts now or hereafter owing to AmSouth under or in connection with the Golf Course Loan Documents.

Golf Course Loan Documents - The following described documents, and all other documents, heretofore or hereafter executed, evidencing, securing or otherwise executed in connection with the Golf Course Loan, as amended from time to time:

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- (a) the Golf Course Loan Note;
  - (b) the Golf Course Loan Mortgage;
  - (c) Guaranty of Payment and Completion dated September 28, 1990, executed by Daniel Realty Company, Daniel Realty Corporation and Daniel Corporation in favor of AmSouth;
  - (d) Assignment of Rents and Leases dated September 28, 1990, executed by Daniel Oak Mountain and Daniel Links in favor of AmSouth and recorded in the Probate Office in Book 312, page 372;
  - (e) various Uniform Commercial Code Financing Statements filed in the Probate Office and in the Office of the Secretary of State of Alabama;
  - (f) Construction Loan Agreement between Daniel Oak Mountain, Daniel Links and AmSouth dated September 28, 1990;
  - (g) Borrower's Affidavit executed by DRIC dated September 28, 1990;
  - (h) Assignment of Borrower's Interest in Contract Documents dated September 28, 1990, executed by Daniel Oak Mountain and Daniel Links in favor of AmSouth;
  - (i) Assignment and Security Agreement dated September 28, 1990, executed by DRIC and Daniel Realty Corporation in favor of AmSouth and related financing statements filed in the Office of the Secretary of State of Alabama;
  - (j) Inter-Creditor Agreement dated September 28, 1990, between USF&G, AmSouth, Daniel Oak Mountain and Daniel Links, recorded in the Probate Office in Book 312, page 392;
  - (k) the Golf Course Loan Tri-Party Agreement;
  - (l) Pledge Agreement dated September 28, 1990, executed by Daniel Oak Mountain in favor of AmSouth; and
  - (m) Term Loan Agreement dated September 28, 1990, between Daniel Oak Mountain, Daniel Links, Daniel Realty Company and AmSouth.
- Golf Course Loan Mortgage - Mortgage and Security Agreement dated September 28, 1990, executed by Daniel Oak

Mountain and Daniel Links in favor of AmSouth and recorded in the Probate Office in Book 312, page 331, as amended by First Amendment thereto dated the Closing Date.

Golf Course Loan Note - Promissory Note dated September 28, 1990, in the principal amount of \$7,000,000 executed by Daniel Oak Mountain and Daniel Links payable to AmSouth, as amended by First Amendment thereto dated the Closing Date.

Golf Course Loan Tri-Party Agreement - The letter agreement dated September 28, 1990, executed by Daniel Oak Mountain, Daniel Corporation, DRIC, Daniel Realty Corporation, AmSouth and USF&G.

Golf Course Property - The real property situated in Shelby County, Alabama, described in Exhibit A-1 to the Golf Course Mortgage.

Greystone Loan Documents - The Golf Course Loan Documents, the Infrastructure Loan Documents, the New AmSouth Loan Documents and the \$143,000 Loan Documents.

Greystone Obligations - All Obligations under the Greystone Loan Documents.

Hawkins Letter of Credit - AmSouth's Irrevocable Standby Letter of Credit No. S303461 in the amount of \$1,000,000, dated March 2, 1990, issued in favor of Dorothy Deanna Hawkins for the account of Daniel Oak Mountain.

Hawkins/Singleton Reimbursement Agreement - Reimbursement Agreement between Daniel Oak Mountain and AmSouth dated February 16, 1990, with respect to the Hawkins Letter of Credit and the Singleton Letter of Credit, as amended by First Amendment thereto dated the Closing Date.

Hawkins/Singleton Reimbursement Obligation Notes - Two Reimbursement Notes, each dated the Closing Date, in the principal amount of \$1,000,000 each, executed by Daniel Oak Mountain, payable to AmSouth, evidencing the Hawkins/Singleton Reimbursement Obligations.

Hawkins/Singleton Reimbursement Obligations - The obligation of Daniel Oak Mountain under the Hawkins/Singleton Reimbursement Agreement to reimburse AmSouth for all amounts drawn under the Hawkins Letter of Credit or the Singleton Letter of Credit, or both, together with interest thereon and all other fees and charges with

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respect thereto, evidenced by the Hawkins/Singleton Reimbursement Obligation Notes.

Infrastructure Debt - The Infrastructure Loan, the Existing USF&G Reimbursement Obligation, the Hawkins/Singleton Reimbursement Obligations, the \$143,000 Loan and all other amounts now or hereafter owing to AmSouth under or in connection with the Infrastructure Loan Documents.

Infrastructure Loan - The indebtedness evidenced by the Infrastructure Loan Note.

Infrastructure Loan Documents - The following documents, and all other documents, heretofore or hereafter executed, evidencing, securing or otherwise executed in connection with the Infrastructure Debt, as amended from time to time:

- (a) the Infrastructure Loan Note;
- (b) the Infrastructure Loan Mortgage;
- (c) Guaranty of Payment and Completion dated November 7, 1989, executed by Daniel Realty Company in favor of AmSouth;
- (d) Guaranty of Payment and Completion dated September 28, 1990, executed by Daniel Realty Company, Daniel Realty Corporation and Daniel Corporation in favor of AmSouth;
- (e) Borrower's Affidavit dated November 7, 1989, executed by DRIC;
- (f) Construction Loan Agreement dated November 7, 1989, executed by AmSouth and Daniel Oak Mountain;
- (g) Assignment of Rents and Leases dated November 7, 1989, executed by Daniel Oak Mountain in favor of AmSouth and recorded in the Probate Office in Book 265, page 443, as amended by First Amendment thereto dated the Closing Date;
- (h) various Uniform Commercial Code Financing Statements filed in the Probate Office and the Office of the Secretary of State of Alabama;
- (i) Assignment and Security Agreement dated November 7, 1989, between AmSouth, Daniel Oak Mountain and Daniel Realty Corporation, as amended by First

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Amendment thereto dated September 28, 1990, and by Second Amendment thereto dated the Closing Date;

(j) Accommodation Agreement dated November 7, 1989, between Daniel Realty Corporation, Daniel Oak Mountain and AmSouth, as amended by First Amendment thereto dated September 28, 1990;

(k) Subordination Agreement dated November 7, 1989, executed by Daniel Oak Mountain, Daniel Realty Company and Daniel Realty Corporation in favor of AmSouth;

(l) Assignment and Security Agreement dated November 7, 1989, executed by DRIC and Daniel Realty Corporation in favor of AmSouth, as amended by First Amendment thereto dated September 28, 1990, and by Second Amendment thereto dated the Closing Date;

(m) Assignment of Borrower's Interest in Contract Documents dated November 7, 1989, executed by Daniel Oak Mountain in favor of AmSouth;

(n) Term Loan Agreement dated November 7, 1989, between Daniel Oak Mountain and AmSouth;

(o) Application dated March 2, 1990, by Daniel Oak Mountain for Hawkins Letter of Credit;

(p) Application dated March 2, 1990, by Daniel Oak Mountain for Singleton Letter of Credit;

(q) the Hawkins/Singleton Reimbursement Agreement, as amended by First Amendment thereto dated the Closing Date;

(r) the Hawkins/Singleton Reimbursement Obligation Notes;

(s) Guaranty dated February 16, 1990, executed by Daniel Realty Company in favor of AmSouth in connection with the issuance of the Hawkins Letter of Credit and the Singleton Letter of Credit;

(t) Application dated November 7, 1989, executed by Daniel Realty Company and Daniel Oak Mountain in connection with the issuance of AmSouth's Letter of Credit No. S302630, issued by AmSouth to USF&G, as amended by Section 7 of the Forbearance Agreement; and

(u) the Existing USF&G Reimbursement Obligation Note.

Infrastructure Loan Mortgage - Mortgage and Security Agreement executed by Daniel Oak Mountain dated November 7, 1989, recorded in the Probate Office in Book 265, page 415, as amended by First Modification thereto dated February 16, 1990, recorded in the Probate Office in Book 281, page 4, by Second Modification thereto dated August 29, 1990, recorded in the Probate Office in Book 312, page 189, by Third Modification thereto dated September 7, 1990, recorded in the Probate Office in Book 312, page 194, by Fourth Modification thereto dated September 28, 1990, recorded in the Probate Office in Book 312, page 199, and by Fifth Modification thereto dated the Closing Date.

Infrastructure Loan Note - Amended and Restated Note dated September 28, 1990, in the principal amount of \$6,831,655.96 executed by Daniel Oak Mountain payable to AmSouth.

Infrastructure Property - The real property situated in Shelby County, Alabama, described in and now covered by the Infrastructure Mortgage.

Line of Credit - The indebtedness evidenced by the Line of Credit Note (including both loan advances made and reimbursement obligations with respect to letters of credit issued by AmSouth) and all other amounts now or hereafter owing to AmSouth under or in connection with the Line of Credit Documents.

Line of Credit Documents - The following described documents, and all other documents, heretofore or hereafter executed, evidencing, securing or otherwise executed in connection with the Line of Credit, as amended from time to time:

- (a) the Line of Credit Note;
- (b) Loan Agreement dated as of February 26, 1987, between Daniel Realty Company and AmSouth, as amended by First Amendment thereto dated the Closing Date;
- (c) Assignment and Security Agreement dated February 26, 1987, between Daniel Realty Company, Daniel Realty Corporation and AmSouth, as amended by First Amendment thereto dated the Closing Date; and
- (d) Accommodation Agreement dated February 26, 1987, executed by Daniel Realty Corporation, AmSouth



and the other parties signatory thereto and referred to therein as the "Owners".

Line of Credit Note - Amended Demand Promissory Note dated the Closing Date, executed by Daniel Realty Company payable to AmSouth, in the principal amount of \$3,500,000.

Loan Documents - Collectively, the Infrastructure Loan Documents, the Golf Course Loan Documents, the New AmSouth Loan Documents, the Line of Credit Documents, the Acquisition Loan Documents, the \$143,000 Loan Documents and all other documents, heretofore or hereafter executed, evidencing, securing or otherwise executed in connection with any of the Obligations. Such term shall include all amendments, modifications, substitutions, extensions and renewals of any documents, whether executed or effected before, after or contemporaneously with the instrument to which this Annex A is attached.

Membership Fees - "Membership Fees" as defined in the New AmSouth Loan Security Agreement.

New AmSouth Loan - The loan in the maximum principal amount of \$3,873,660 made or to be made by AmSouth to Daniel Oak Mountain under the terms of the New AmSouth Construction Loan Agreement, and evidenced by the New AmSouth Loan Note, and all other amounts now or hereafter owing to AmSouth under or in connection with the New AmSouth Loan Documents.

New AmSouth Loan Construction Loan Agreement - Construction Loan Agreement dated the Closing Date, between Daniel Oak Mountain and AmSouth and joined in by Daniel Links.

New AmSouth Loan Documents - The following described documents and all other documents, heretofore or hereafter executed, evidencing, securing or otherwise executed in connection with the New AmSouth Loan, as amended from time to time:

- (a) the New AmSouth Loan Note;
- (b) the New AmSouth Loan Mortgage;
- (c) the New AmSouth Loan Construction Loan Agreement;
- (d) Guaranty Agreement dated the Closing Date and executed by Daniel Realty Company, Daniel Realty

Corporation and Daniel Corporation in favor of AmSouth;  
and

(e) the New AmSouth Loan Security Agreement.

New AmSouth Loan Mortgage - Mortgage and Security Agreement dated the Closing Date and executed by Daniel Oak Mountain in favor of AmSouth securing the New AmSouth Loan and all the other Obligations.

New AmSouth Loan Note - Promissory Note in the principal amount of the New AmSouth Loan, dated the Closing Date and executed by Daniel Oak Mountain payable to AmSouth.

New AmSouth Loan Property - The real estate situated in Shelby County, Alabama, described in Exhibit A to the New AmSouth Loan Mortgage.

New AmSouth Loan Security Agreement - Security Agreement and Assignment dated the Closing Date, executed by Daniel Oak Mountain and Daniel Links in favor of AmSouth.

Obligations - (i) the principal of the New AmSouth Loan, all interest thereon and all other amounts payable under the New AmSouth Note; (ii) the principal of, all interest on, and all other amounts payable in connection with the following obligations of the Daniel Obligors (or any one or more of them) to AmSouth, whether now existing or hereafter incurred, contracted or arising: the \$143,000 Loan, the Line of Credit, the Acquisition Loan, the Infrastructure Loan, the Existing USF&G Reimbursement Obligations, the Hawkins/Singleton Reimbursement Obligations and the Golf Course Loan; (iii) all other sums becoming due and payable by Daniel Oak Mountain, Daniel Links or any of the other Daniel Obligors under the terms of any of the Loan Documents, including sums advanced by AmSouth pursuant to the terms of any of the Loan Documents; (iv) all other indebtedness, obligations and liability of Daniel Oak Mountain to AmSouth (including obligations of performance) of every kind and description whatsoever, arising directly between Daniel Oak Mountain and AmSouth or acquired outright, as a participation or as collateral security from another by AmSouth, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter incurred, contracted or arising, joint or several, liquidated or unliquidated, regardless of how they arise or by what agreement or instrument they may be evidenced or whether they are evidenced by agreement or instrument, and whether incurred as maker, endorser, surety or guarantor; excluding, however, any indebtedness, obligations and liability arising solely by virtue of the

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fact that Daniel Oak Mountain is a member of a partnership, syndicate, joint venture, association or other group, or otherwise; (v) and any and all extensions, renewals, amendments and modifications of any of the indebtednesses and obligations described in clauses (i) through (iv) above, whether or not any extension, renewal, amendment or modification agreement is executed in connection therewith; and (vi) the compliance with all of the stipulations, covenants, agreements, representations, warranties and conditions contained in the Loan Documents.

Probate Office - The office of the Judge of Probate of Shelby County, Alabama.

Singleton Letter of Credit - AmSouth's Irrevocable Standby Letter of Credit No. S303462 in the amount of \$1,000,000, dated March 2, 1990, issued in favor of Elizabeth R. Singleton for the account of Daniel Oak Mountain.

Third-Party Lender - William W. McDonald and Allan J. McDonald.

Third-Party Loan - The loan in the principal amount of \$1,750,000 made or to be made by the Third-Party Lender to Daniel Oak Mountain under the Third-Party Loan Documents.

Third-Party Loan Documents - The following described documents:

(a) Note in the principal amount of \$1,750,000 executed by Daniel Oak Mountain payable to the Third-Party Lender;

(b) Mortgage and Security Agreement executed by Daniel Oak Mountain in favor of the Third-Party Lender; and

(c) Residual Participation Agreement executed by Daniel Oak Mountain, Daniel Links, DRIC, Daniel Realty Corporation and the Third-Party Lender.

USF&G - United States Fidelity & Guaranty Company, a Maryland corporation.

USF&G Loan - The indebtedness evidenced by the USF&G Note.

USF&G Mortgage - Mortgage and Security Agreement dated as of November 7, 1989, executed by Daniel Oak Mountain in favor of USF&G, recorded in the Probate Office in Book 265,

page 374, as modified by instrument recorded in the Probate Office in Book 282, page 85, by Amended and Restated Mortgage and Security Agreement dated September 28, 1990, recorded in the Probate Office in Book 312, page 208 and by Partial Release of Mortgage to be recorded contemporaneously with the New AmSouth Loan Mortgage.

USF&G Note - Promissory Note dated November 7, 1989, in the principal amount of \$14,773,000 executed by Daniel Oak Mountain, payable to USF&G.

\$143,000 Loan - The indebtedness evidenced by the \$143,000 Note and all other amounts now or hereafter owing to AmSouth under or in connection with the \$143,000 Loan Documents.

\$143,000 Loan Documents - The \$143,000 Note and the First Amendment to Guaranty of Payment and Completion and letter agreement, both dated April 4, 1991, executed in connection with the \$143,000 Note, and all other documents, heretofore or hereafter executed, evidencing, securing or otherwise executed in connection with the \$143,000 Loan, as amended from time to time.

\$143,000 Note - Promissory Note, dated April 4, 1991, in the principal amount of \$143,000 executed by Daniel Oak Mountain payable to AmSouth.

This Annex A is a master list of defined terms used in several documents to which this Annex A is attached. Any term defined herein but neither used in, nor used in defining terms used in, the document to which this Annex A is attached shall not apply to such document.

1. Debt Tax	10,443.50
2. Int. Tax	173.00
3. Int. Tax	3.00
4. Int. Tax	1.00
5. Int. Tax	1.00
6. Int. Tax	1.00
Total	10,622.50

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

91 JUN 14 AM 10:16

JUDGE OF PROBATE