

STATE OF ALABAMA
COUNTY OF SHELBY

MORTGAGE
AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT, made this 6th day of June, 1991, between DANIEL OAK MOUNTAIN LIMITED PARTNERSHIP, an Alabama limited partnership, (hereinafter called the "Borrower"), Mortgagor, whose address is 1200 Meadowbrook Corporate Park, Birmingham, Alabama, and WILLIAM W. McDONALD and ALLAN J. McDONALD (hereinafter collectively called the "Lender"), Mortgagee, whose address is 1910 First Avenue North, Birmingham, Alabama 35203, Attention: Allan J. McDonald.

W I T N E S S E T H:

WHEREAS, Borrower is justly indebted to Lender in the principal sum of One Million Seven Hundred Fifty Thousand and No/100 Dollars (\$1,750,000.00), as evidenced by a certain Note of even date herewith, payable to Lender in installments with interest thereon (said Note, as the same may hereafter be renewed, extended or modified, being herein called the "Note").

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NOW, THEREFORE, the undersigned, in consideration of the indebtedness above mentioned, and to secure the prompt payment of same, including future advances up to such principal sum, with the interest thereon, and any extensions or renewals of same, and further to secure the performance of the covenants, conditions, and agreements as set forth in any agreement executed in connection herewith and as hereinafter set forth, have bargained and sold and do hereby grant, bargain, sell, alien, and convey unto the Lender, its successors and assigns, the following described land, real estate, buildings, improvements, fixtures, furniture, and other personal property (which together with any additional such property hereafter acquired by the Borrower and subject to the lien of this mortgage, or intended to be so, as the same may be from time to time constituted is hereinafter sometimes referred to as the "Mortgaged Property") to-wit:

(a) All the tract(s) or parcel(s) of land particularly described in Exhibit A attached hereto and made a part hereof.

(b) All buildings, structures, and improvements of every nature whatsoever now or hereafter situated on the property described in Exhibit A, and all fixtures, machinery, equipment, furniture, furnishings, and personal property of every nature whatsoever now or hereafter owned by the Borrower and located in, on, or used or intended to be used in connection with or with the

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operation of said property, buildings, structures, or other improvements, including all extensions, additions, improvements, betterments, renewals and replacements to any of the foregoing.

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

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

(a) All rents, profits, issues, and revenues of the Mortgaged Property from time to time accruing, whether under leases or tenancies now existing or hereafter created, reserving to Borrower, however, so long as Borrower is not in default hereunder, the right to receive and retain the rents, issues, and profits thereof; and

(b) All judgments, awards of damages, and settlements hereafter made resulting from condemnation proceedings or the taking of the premises or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the premises or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including any award for change of grade or streets. Lender hereby is authorized on behalf and in the name of Borrower to execute and deliver valid acquittances for, and appeal from, any such judgments or awards. Lender may apply to all such sums or any part thereof so received, after the payment of all its expenses, including costs and attorney's fees, on the indebtedness secured hereby in such manner as it elects, or at its option, the entire amount or any part thereof so received may be released.

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

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Borrower shall pay or cause to be paid to the Lender the principal and interest and other indebtedness (including future advances) payable in respect to the Note and this mortgage, at the times and in the manner stipulated therein and herein, all

without any deduction or credit for taxes or other similar charges paid by the Borrower, and shall keep, perform, and observe all and singular the covenants and promises in the Note, and in this mortgage expressed to be kept, performed, and observed by and on the part of the Borrower, all without fraud or delay, then this mortgage, and all the properties, interest, and rights hereby granted, bargained, and sold shall cease, determine, and be void, but shall otherwise remain in full force and effect.

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

ARTICLE I

1.01. **Performance of Note and Mortgage.** The Borrower will perform, observe and comply with all provisions hereof, of the Note secured hereby and of any agreement in connection herewith, and duly and punctually will pay to the Lender the sum of money expressed in the Note with interest thereon and all other sums required to be paid by the Borrower pursuant to the provisions of this mortgage or any agreement executed in connection herewith, all without any deductions or credit for taxes or other similar charges paid by the Borrower.

1.02. **Warranty of Title.** The Borrower is lawfully seized of an indefeasible estate in fee simple in the land and real property hereby mortgaged and has good and absolute title to all existing personal property hereby mortgaged and has good right, full power and lawful authority to sell, convey and mortgage the same in the manner and form aforesaid; that, except as otherwise set forth on Exhibit A hereto, the same is free and clear of all liens, charges, and encumbrances whatsoever, including, as to the personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature, and that Borrower shall and will warrant and forever defend the title thereto unto the Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

1.03. **Intentionally Omitted.**

1.04. **Other Taxes, Utilities and Liens.**

(a) The Borrower will pay promptly, when and as due, and will exhibit promptly to the Lender receipts for the payment of, all taxes, assessments, water rates, dues, charges, fines and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon the interest of the Lender in the Mortgaged Property (other than any of the same for which provision has been made in Section 1.03 hereof), as well as all income taxes, assessments and other governmental charges lawfully

levied and imposed by the United States of America or any state, county, municipality, borough or other taxing authority upon the Borrower or in respect of the Mortgaged Property or any part thereof, or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property.

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

(c) The Borrower shall pay promptly all charges for labor and materials and will not suffer any mechanic's, laborer's, statutory, or other lien to be filed against any of the Mortgaged Property, unless arrangements satisfactory to Lender are made with respect thereto.

(d) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes so as to affect adversely the Lender, Borrower will pay the same to the extent permitted by applicable law; otherwise the entire balance of the principal sum secured by this mortgage and all interest accrued thereon shall become due and payable 180 days therefrom at the option of the Lender.

(e) Notwithstanding any provision to the contrary contained in this Section 1.04, Borrower shall have the right to contest, in good faith, any such taxes or liens upon the posting of an adequate bond or other security reasonably satisfactory to the Lender.

1.05. **Insurance.** The Borrower will procure for, deliver to, and maintain for the benefit of, the Lender during the life of this mortgage, liability insurance in the amount of not less than \$1,000,000.00. The form of such policies and the companies issuing them shall be reasonably acceptable to the Lender. All policies shall contain a New York standard, non-contributory mortgagee endorsement making losses payable to the Lender. At least fifteen (15) days prior to the expiration date of all such policies, renewals thereof satisfactory to the Lender shall be delivered to the Lender. The Borrower shall deliver to the Lender receipts evidencing the payment of all such insurance policies and renewals. In the event of the foreclosure of this mortgage or any other transfer of title to the Mortgaged Property in extinguishment of the indebtedness secured hereby, all right, title and interest of the Borrower in and to all insurance policies then in force shall pass to the purchaser or grantee.

1.06. **Condemnation.** If all or any part of the Mortgaged Property shall be damaged or taken through condemnation (which

term when used in this mortgage shall include any damage or taking by any governmental authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire indebtedness secured hereby shall at the option of the Lender become immediately due and payable. The Lender shall be entitled to all compensation, awards, and other payments or relief therefor and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or the Borrower's name, any action or proceedings relating to any condemnation, and to settle or compromise any claim in connection therewith. Notwithstanding any provision of this paragraph to the contrary, any settlement or compromise shall be subject to the approval of both Borrower and Lender and, in the event the Borrower and Lender are unable to agree upon the amount of any compromise or settlement within thirty (30) days following good faith negotiations, the decision of the Lender shall prevail. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by the Borrower to the Lender, who, after deducting therefrom all its expenses, including attorney's fees, may release any moneys so received by it without affecting the lien of this mortgage or may apply the same in such manner as the Lender shall determine to the reduction of the sums secured hereby, whether then matured or to mature in the future, and any balance of such moneys then remaining shall be paid to the Borrower. The Borrower agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as the Lender may require.

1.07. Care of the Property.

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

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

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

1.08. Further Assurances; After Acquired Property. At any time, and from time to time, upon request by the Lender, the Borrower will make, execute and deliver or cause to be made, executed and delivered, to the Lender and, where appropriate, to cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by the Lender any and all

such other and further mortgages, instruments of further assurance, certificates and other documents as may, in the opinion of the Lender, be necessary or desirable in order to effectuate, complete, enlarge, or perfect, or to continue and preserve the obligation of the Borrower under the Note and this mortgage, and the lien of this mortgage as a first and prior lien upon all of the Mortgaged Property subject to the matters described in Exhibit A, whether now owned or hereafter acquired by the Borrower. Upon any failure by the Borrower so to do, the Lender may make, execute, and record any and all such mortgages, instruments, certificates, and documents for and in the name of the Borrower and the Borrower hereby irrevocably appoints the Lender the agent and attorney-in-fact of the Borrower so to do. The lien hereof will automatically attach, without further act, to all after acquired property attached to and/or used in the operation of the Mortgaged Property or any part thereof.

1.09. Intentionally Omitted.

1.10. Expenses. The Borrower will pay or reimburse the Lender for all reasonable attorney's fees, costs, and expenses incurred by the Lender in any proceeding involving the estate of a decedent or an insolvent, or in any action, proceeding, or dispute of any kind in which the Lender is made a party, or appears as party plaintiff or defendant, affecting the Note, this mortgage, Borrower, or the Mortgaged Property, including but not limited to the foreclosure of this mortgage, any condemnation action involving the Mortgaged Property, or any action to protect the security hereof; and any such amounts paid by the Lender shall bear interest at a rate equal to four percent (4%) in excess of the interest rate then borne by the Note, shall be payable upon demand, and shall be secured by the lien of this mortgage.

1.11. Performance by Lender of Defaults by Borrower. If the Borrower shall default in the payment of any tax, lien, assessment, or charge levied or assessed against the premises; in the payment of any utility charge, whether public or private; in the payment of insurance premium; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any covenant, condition, or term of this mortgage, then the Lender, at its option, may perform or observe the same, and all payments made for costs or incurred by the Lender in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by the Borrower to the Lender with interest thereon at a rate equal to four percent (4%) in excess of the rate then borne by the Note. The Lender shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium; of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. The Lender is hereby empowered to enter and to authorize others to enter upon the premises or any part thereof for the purpose of performing or

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observing any such defaulted covenant, condition or term, without thereby becoming liable to the Borrower or any person in possession holding under the Borrower.

1.12. **Books and Records.** The Borrower shall keep and maintain at all times full, true and accurate books of accounts and records, adequate to reflect correctly the results of the operation of the Borrower. The Borrower will furnish to the Lender within thirty (30) days after the end of the Borrower's fiscal quarter, a balance sheet and a statement of income and expenses, cash flow statement, all in reasonable detail and form satisfactory to Lender and certified by the Borrower (or an officer or general partner thereof), or if required by the Lender, a certified public accountant satisfactory to the Lender.

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

ARTICLE II

2.01. **Event of Default.** The term Event of Default, wherever used in the mortgage, shall mean any one or more of the following events:

(a) Failure by the Borrower to pay as and when due (subject to any applicable cure period contained in the Note) and payable under the Note, this mortgage or any agreement executed in connection herewith any principal, interest or other sums due; or

(b) Failure by the Borrower duly to observe any other covenant, condition, or agreement of the Note, this mortgage, any agreement executed in connection herewith, or any other document or instrument evidencing, securing or guaranteeing the indebtedness secured hereby, which failure continues for thirty (30) days or more after written notice to Borrower in the manner set forth herein, or the occurrence of an Event of Default under any such document or instrument; or

(c) The sale or other transfer of all or any portion of the Mortgaged Property, or any interest therein without the prior written consent of the Lender; or

(d) The creation or suffering to exist by the Borrower of any lien or encumbrance on the Mortgaged Property, other than the lien of this mortgage, the lien for ad valorem taxes not then delinquent, and matters set forth on Exhibit A, if any, unless the written consent of the Lender is first obtained, which consent may be granted or refused by the Lender in its sole discretion; or

(e) In the event of a change in the composition of the general partner of the Borrower, unless the control of the general partner is another general partner controlled by the present owners of Daniel Realty Company; or

(f) Any material representation or warranty provided herein, in any loan agreement executed in connection herewith, in any document or instrument evidencing, securing or guaranteeing the indebtedness secured hereby or in any document, instrument, financial statement or other material given or provided by or on behalf of Borrower in connection with the loan secured hereby, is false or materially misleading in any material respect at the time given or provided.

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

2.03. **Right of Lender to Enter and Take Possession.**

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

(b) Upon every such entering upon or taking of possession, the Lender may hold, store, use, operate, manage, and control the Mortgaged Property and conduct the business thereof, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments, and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty, and other property; (ii) insure or keep the Mortgaged Property insured; (iii) manage and operate the Mortgaged Property and exercise all the rights and powers of the Borrower in Borrower's name or otherwise, with respect to the same; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted the Lender, all as the Lender from time to time may determine to be to its best advantage; and the Lender may collect and receive all the income, revenues, rents, issues and profits of the same including those past due as well as those accruing thereafter, and, after deducting (A) all expenses of taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes); (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements,

purchases, and acquisitions; (C) the cost of such insurance; (D) such taxes, assessments, and other charges prior to the lien of this mortgage as the Lender may determine to pay; (E) other proper charges upon the Mortgaged Property or any part thereof; and (F) the reasonable compensation, expenses, and disbursements of the attorneys and agents of the Lender; shall apply the remainder of the moneys so received by the Lender to the payment of accrued interest, to the payment of tax and insurance deposits required in Sections 1.03 and 1.05 hereof, and to the payment of overdue installments of principal, all in such order and priority as the Lender may determine.

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

2.04. Receiver.

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

(b) The Borrower will pay to the Lender upon demand all expenses, including receiver's fees, attorney's fees and costs, and agent's compensation, incurred pursuant to the provisions contained in this Section 2.04; and all such expenses shall be secured by this mortgage.

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

2.06. **Power of Sale.** If an Event of Default shall have occurred, Lender may sell the Mortgaged Property at public outcry

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

2.07. **Application of Foreclosure Proceeds.** The proceeds of any foreclosure sale pursuant to Section 2.06 shall be applied as follows:

(a) First, to the expenses of making the sale, including a reasonable attorney's fee for such services as may be necessary in the collection of said indebtedness or the foreclosure of this mortgage;

(b) Second, to the repayment of any money, with interest thereon at a rate equal to four percent (4%) in excess of the rate borne by the Note, which Lender may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided;

(c) Third, to the payment and satisfaction of the indebtedness hereby secured with interest to date of sale; and

(d) Fourth, the balance, if any, shall be paid to the Lender pursuant to the provisions of Section 3.09 hereof.

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

2.09. **Waiver of Exemption.** Borrower waives all rights of exemption pertaining to real or personal property as to any

indebtedness secured by or that may be secured by this mortgage, and Borrower waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the premises be set off against any part of the indebtedness secured hereby.

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

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

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

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

If the Lender (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted herein or in the Note; (d) releases any part of the Mortgaged Property from the lien of this mortgage or otherwise changes any of the terms of the Note or this mortgage; (e) consents to the filing of any map, plat, or replat thereof; (f) consents to the granting of any easement thereon; or (g) makes or consents to any agreement subordinating the lien or

change hereof, any such act or omission shall not release, discharge, modify, change, or affect the original liability under the Note, this mortgage or otherwise of the Borrower or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety, or guarantor; nor shall any such act or omission preclude the Lender from exercising any right, power, or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Lender, shall the lien of this mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, the Lender, at its option, without notice to any person or corporation hereby is authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

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

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

ARTICLE III

3.01. Successors and Assigns Included in Parties. Whenever in this mortgage one of the parties hereto is named or referred to, the heirs, administrators, executors, successors, and assigns of such party shall be included, and all covenants and agreements contained in this mortgage by or on behalf of the Borrower or by or on behalf of Lender shall bind and inure to the benefit of its respective heirs, administrators, executors, successors, and assigns, whether so expressed or not.

3.02. Headings, etc. The headings of the articles, sections, paragraphs, and subdivisions of this mortgage are for

convenience of reference only, are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms hereof.

3.03. **Invalid Provisions to Affect No Others.** In case any one or more of the covenants, agreements, terms, or provisions contained in this mortgage or in the Note shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining covenants, agreements, terms, and provisions contained herein and in the Note shall in no way be affected, prejudiced, or disturbed thereby.

3.04. **Intentionally Omitted.**

3.05. **Intentionally Omitted.**

3.06. **Intentionally Omitted.**

3.07 **Environmental Matters.** Borrower represents and warrants to Lender that, to the best of its knowledge, neither the Mortgaged Property nor Borrower is in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority or any remedial obligations under any applicable laws, rules or regulations pertaining to health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), and the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"), and Borrower further represents and warrants that, to the best of its knowledge, there are no facts, conditions or circumstances known to it which could result in any such investigation or inquiry if such facts, conditions and circumstances, if any, were fully disclosed to the applicable governmental authority. Borrower represents and warrants that, to the best of its knowledge, it has not obtained and is not required to obtain any permits, licenses, or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures or equipment in connection with the Mortgaged Property or improvements constructed or to be constructed by reason of any environmental laws, rules or regulations. Borrower represents and warrants that no oil, toxic or hazardous substances or solid wastes have been disposed of or released on the Mortgaged Property, and Borrower agrees that it will not in its use of the Mortgaged Property dispose of or release oil, toxic or hazardous substances or solid wastes on the Mortgaged Property (the terms "hazardous substance" and "release" shall have the meanings specified in CERCLA, and the terms "solid waste" and "disposal", "dispose" or "disposed" shall have the meanings specified in RCRA, except that if such acts are amended to broaden the meanings thereof, the broader meaning shall apply herein). Notwithstanding anything to the contrary herein, Borrower shall indemnify and hold Lender harmless from and against any fines, charges, expenses, fees, attorney fees and costs incurred by Lender in the event the

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Borrower or the Mortgaged Property (whether or not due to any fault of Borrower) is hereafter determined to be in violation of any environmental laws, rules or regulations applicable thereto, and this indemnity shall survive any foreclosure or deed in lieu of foreclosure.

3.08 Representations and Warranties. Borrower represents and warrants to Lender, knowing that Lender will rely on such representations and warranties as incentive to make the loan to Borrower, that:

(a) Borrower is a duly organized and existing limited partnership having full power and authority to consummate the transactions contemplated by this mortgage.

(b) There are no actions, suits, or proceedings pending or, to the best of Borrower's knowledge, threatened, which might adversely affect the financial condition of Borrower or any guarantor of the Note or which might impair the value of any collateral taken or to be taken by Lender in connection with this loan transaction. Neither Borrower nor any guarantor of the Note is in violation of any agreement the violation of which might reasonably be expected to have a materially adverse effect on such Borrower's or guarantor's business or assets, and neither Borrower nor any guarantor is in violation of any order, judgment, or decree of any court, or any statute or governmental regulation to which Borrower or any guarantor is subject. Neither the execution and performance of this mortgage, the Note, or any other document executed in connection herewith by Borrower or any guarantor of the Note will result in any breach of any mortgage, security deed, lease, credit or loan agreement or any other instrument which may bind or affect Borrower or any guarantor.

(c) All financial statements of Borrower, any guarantor of the Note and other business enterprises in which Borrower or any guarantor has an interest heretofore given and hereafter to be given to Lender are and will be true and complete in all material respects as of its respective dates and prepared in accordance with generally accepted accounting principles consistently applied, and fairly represent the financial conditions of the business or persons to which they pertain, and no materially adverse change has occurred in the financial conditions reflected therein since the respective date thereof.

(d) There are no proceedings pending, or, to the best of Borrower's knowledge, threatened, to acquire any power of condemnation or eminent domain with respect to the Mortgaged Property, or any interest therein, or to enjoin or similarly prevent the use of any of the Mortgaged Property as presently used.

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(e) To the best of Borrower's knowledge, all documents furnished to Lender by or on behalf of Borrower as part of or in support of the letter of intent between the parties dated March 22, 1991, or pursuant to such letter of intent issued by Lender are true, correct, complete and accurately represent in all material respects the matters to which they pertain.

3.09 Surplus Upon Foreclosure. In the event of a foreclosure of this Mortgage, and as a result of the sale of the Mortgaged Property a surplus results, notwithstanding any provision of law to the contrary, Lender shall be entitled to all such surplus. Borrower does hereby transfer, setover, assign, and grant a security interest to Lender in any surplus resulting from a foreclosure sale, it being acknowledged by Borrower and Lender, and any party who hereafter has a lien on the Mortgaged Property which has been approved by Lender, that the assignment of such surplus is a material consideration for Lender making the loan secured. The parties further acknowledge and agree that, in the event for any reason that, following a foreclosure sale, a surplus exists and Lender is deemed not to be entitled to such surplus, the provisions of paragraph 3.10 hereof, and the corresponding provision in the Note secured hereby, shall be null and void and of no force and effect and Borrower shall be fully liable to Lender for any surplusage which Lender is required to pay to a third party.

3.10 Exculpation. Notwithstanding anything provided herein or in the Note to the contrary, the liability of Borrower with respect to the payment of principal, interest and any other amounts due hereunder or under the Note and the performance by the Borrower of its covenants, agreements and obligations hereunder or under the Note hereunder shall be "non-recourse" and, accordingly, Lender's sole source of satisfaction of said indebtedness and Borrower's other obligations hereunder and under the Note shall be limited to the Mortgaged Property and Lender's receipt of the rents, issues, and profits from the Mortgaged Property and Lender shall not seek to procure payment out of any other assets of Borrower, or any person or entity comprising Borrower, nor to seek judgment for any sums which are or may be payable under this Mortgage or the Note, as well as any claim or judgment (except as hereafter provided) for any deficiency remaining after foreclosure of this Mortgage. Notwithstanding the above, nothing herein contained shall be deemed to be a release or impairment of the indebtedness evidenced by the Note or this Mortgage or any other agreement between Borrower and Lender or be deemed to preclude Lender from exercising its rights to foreclose this Mortgage. In addition, nothing in this section shall affect the obligations of the Borrower or Daniel Links Limited Partnership under the Participation Agreement described in the Note.

Notwithstanding the foregoing, it is expressly understood and agreed that the aforesaid limitation on liability shall in no way

affect or apply to Borrower's continued personal liability for any damages suffered or incurred by Lender due to:

(1) intentional fraud or misrepresentation made in or in connection with the Note, the Participation Agreement or any other agreement between Borrower and Lender governing, securing or pertaining to the payment hereof or the performance of any of the obligations under any such agreements;

(2) failure to pay taxes or assessments prior to delinquency, or to pay charges for labor, materials or other charges which can create liens on any portion of the Mortgaged Property which is security for the Note;

(3) the misapplication of (i) proceeds of insurance covering any portion of the Mortgaged Property; or (ii) proceeds of the sale or condemnation of any portion of the Mortgaged Property;

(4) all court cost and reasonable attorneys' fees actually incurred which are provided for in the Note or in this Mortgage or in any other agreement governing, securing, or pertaining to the payment of the Note;

(5) (i) the removal of any chemical, material or substance, exposure to which is prohibited, limited, or regulated by any Federal, State, County, Regional or Local Authority which may or could pose a hazard to the health and safety of the occupants of the Mortgaged Property regardless of the source of origination; (ii) the restoration of the Mortgaged Property to comply with all governmental regulations pertaining to hazardous waste found in, on or under the Mortgaged Property, regardless of the source of origination; and (iii) any indemnity or other agreement to hold the Lender harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses of any and every kind arising under paragraph 3.07 of this Mortgage; provided, however, that Borrower shall not be liable for removal of any of the materials described above if such materials were placed on the Mortgaged Property subsequent to a foreclosure of the Mortgage, the taking of the Mortgaged Property by the Lender of a deed in lieu of foreclosure, or subsequent to any transfer of ownership of the Mortgaged Property by means of a transfer approved by Lender; and

(6) the failure of Lender to receive surplus foreclosure proceeds pursuant to the provisions of Section 3.09 of the Mortgage.

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IN WITNESS WHEREOF, the Borrower has executed this mortgage, or has caused this mortgage to be executed, on the day and year first above written.

BORROWER:

DANIEL OAK MOUNTAIN LIMITED
PARTNERSHIP, an Alabama
limited partnership

By: Daniel Realty Investment
Corporation - Oak Mountain,
an Alabama corporation, its
General Partner

ATTEST:

By

Its: Secretary

By: Donald K. Lloyd

Its: Gen. VP

STATE OF ALABAMA)

COUNTY OF SHELBY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Donald K. Lloyd, whose name as Senior Vice President of the Daniel Realty Investment Corporation - Oak Mountain, an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he as such officer and with full authority, executed the same voluntarily for and as the act of said corporation, acting in its capacity as General Partner of Daniel Oak Mountain Limited Partnership, an Alabama limited partnership.

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

Shirley D. Ellis
NOTARY PUBLIC

My Commission Expires: 2/26/94

EXHIBIT A

TRACT 5 - A

To locate the point of beginning commence at the southeast corner of Section 27, Township 18 South, Range 1 West, Shelby County, Alabama; thence South $89^{\circ}35'37''$ West on the south boundary of said Section 27 a distance of 961.13 feet to the point of beginning; thence South $30^{\circ}07'13''$ West a distance of 915.79 feet to a point; thence South $10^{\circ}31'03''$ West a distance of 428.55 feet to a point on the north right-of-way of Hugh Daniel Drive; thence South $68^{\circ}34'25''$ East on the north right-of-way of Hugh Daniel Drive a distance of 323.09 feet to a point, said point being the intersection of the north right-of-way of Hugh Daniel Drive and the northwest right-of-way of Dunavant Valley Road; thence, along a curve to the right, said curve having a central angle of $19^{\circ}50'13''$ and a centerline radius of 5729.57 feet, thence North $27^{\circ}27'33''$ East a chord distance of 1399.05 feet to a point; thence North $77^{\circ}33'08''$ West a distance of 417.93 feet to a point; thence South $30^{\circ}07'13''$ West a distance of 176.20 feet to the point of beginning. All lying and being in the NE $1/4$ of the NE $1/4$ of Section 34 and the SE $1/4$ of the SE $1/4$ of Section 27, Township 18 South, Range 1 West, Shelby County, Alabama and containing 12.000 acres.

TRACT 5 - B

To locate the point of beginning commence at the southeast corner of Section 27, Township 18 South, Range 1 West, Shelby County, Alabama; thence South $89^{\circ}35'37''$ West on the south boundary of said Section 27 a distance of 961.13 feet to a point; thence North $30^{\circ}07'13''$ East a distance of 176.20 feet to a point of beginning; thence South $77^{\circ}38'08''$ East a distance of 417.93 feet to a point, said point being on the northwest right-of-way of Dunavant Valley Road; thence, along a curve to the right, said curve having a central angle of $19^{\circ}50'13''$ and a centerline radius of 5729.57 feet, thence North $35^{\circ}05'51''$ East a chord distance of 135.82 feet to a point; thence North $64^{\circ}21'31''$ West a distance of 241.24 feet to a point; thence South $64^{\circ}58'38''$ West a distance of 296.55 feet to the point of beginning. All lying and being in the SE $1/4$ of the SE $1/4$ of Section 27, Township 18 South, Range 1 West, Shelby County, Alabama and containing 1.236 acres.

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BOOK

TRACT 5 - D

To locate the point of beginning commence at the southeast corner of Section 27, Township 18 South, Range 1 West, Shelby County, Alabama; thence South $89^{\circ}35'37''$ West on the south boundary of said Section 27 a distance of 961.13 feet to a point; thence North $30^{\circ}07'13''$ East a distance of 580.70 feet to a point; thence North $36^{\circ}49'59''$ East a distance of 196.00 feet to the point of beginning; thence South $10^{\circ}11'34''$ East a distance of 231.75 feet to a point; thence South $57^{\circ}16'23''$ East a distance of 253.90 feet to a point, said point being on the northwest right-of-way of Dunavant Valley Road; thence North $36^{\circ}48'15''$ East on the northwest right-of-way of Dunavant Valley Road a distance of 682.26 feet to a point; thence North $53^{\circ}09'22''$ West a distance of 422.46 feet to a point; thence South $36^{\circ}49'59''$ West a distance of 542.54 feet to the point of beginning. All lying and being in the SE $1/4$ of the SE $1/4$ of Section 27, and the SW $1/4$ of the SW $1/4$ of Section 26, Township 18 South, Range 1 West, Shelby County, Alabama and containing 6.436 acres.

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TRACT 6

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To locate the point of beginning commence at the southwest corner of the NE 1/4 of Section 34, Township 18 South, Range 1 West, Shelby County, Alabama; thence South 89°36'14" East on the south boundary of the NE 1/4 of Section 34 a distance of 1124.27 feet to a point on the northwest right-of-way of Dunavant Valley Road, County Road No. 41; thence North 17°04'05" East on the northwest right-of-way of said Dunavant Valley Road a distance of 1189.04 feet to the point of curve; thence northeasterly along a curve to the right, said curve having a central angle of 19°50'13" and a centerline radius of 5729.57 feet, a chord distance of 351.06 feet to a point on the northerly right-of-way of Hugh Daniel Drive; thence North 68°34'25" West on the northerly right-of-way of Hugh Daniel Drive a distance of 323.09 feet to a point; thence North 74°50'20" West on the northerly right-of-way of Hugh Daniel Drive a distance of 100.37 feet to the point of beginning; thence North 10°30'53" East a distance of 378.49 feet to a point; thence South 77°43'44" West a distance of 1727.79 feet to a point; thence North 55°44'00" West a distance of 407.82 feet to a point; thence South 23°39'03" West a distance of 618.94 feet to a point on the northerly right-of-way of Hugh Daniel Drive; thence South 68°29'40" East on the northerly right-of-way of Hugh Daniel Drive a distance of 409.95 feet to the point of curve; thence South 61°08'39" East on the northerly right-of-way of Hugh Daniel Drive a chord distance of 388.34 feet along a curve to the right having a central angle of 14°42'00" and a radius of 1517.79 feet to the point of reverse curve; thence North 79°12'23" East on the northerly right-of-way of Hugh Daniel Drive a chord distance of 212.10 feet along a curve to the left having a central angle of 94°00'00" and a radius of 145.00 feet to the point of tangent; thence North 32°12'21" East on the northerly right-of-way of Hugh Daniel Drive a distance of 164.89 feet to the point of curve; thence North 53°50'56" East on the northerly right-of-way of Hugh Daniel Drive a chord distance of 398.33 feet along a curve to the right having a central angle of 43°17'11" and a radius of 540.00 feet to the point of tangent; thence North 75°29'32" East on the northerly right-of-way of Hugh Daniel Drive a distance of 455.56 feet to the point of curve; thence North 69°29'45" East on the northerly right-of-way of Hugh Daniel Drive a chord distance of 61.26 feet along a curve to the left having a central angle of 11°59'33" and a radius of 293.21 feet to the point of tangent; thence North 63°29'59" East on the northerly right-of-way of Hugh Daniel Drive a distance of 195.02 feet to the point of curve; thence North 80°10'17" East on the northerly right-of-way of Hugh Daniel Drive a chord distance of 195.08 feet along a curve to the right having a central angle of 33°20'37" and a radius of 340.00 feet to the point of beginning. All lying in the N 1/2 of Section 34, Township 18 South, Range 1 West, Shelby County, Alabama.

TRACT 11

For the point of beginning commence at the northeast corner of the SW 1/4 of Section 34, Township 18 South, Range 1 West, Shelby County, Alabama; thence South 1°12'39" West on the east boundary of said SW 1/4 a distance of 1372.77 feet to a point; thence North 44°52'01" West a distance of 798.93 feet to a point; thence North 6°29'40" East a distance of 1590.53 feet to a point; thence North 36°12'25" East a distance of 120.00 feet to a point on the south right-of-way of Hugh Daniel Drive; said point being the end of a curve to the left, said curve having a central angle of 94°00'04" and a radius of 225.00 feet; thence North 79°22'23" East a chord distance of 329.11 feet to the point of tangent; thence North 32°12'21" East on the southeast right-of-way of Hugh Daniel Drive a distance of 164.89 feet to a curve to the right, said curve having a central angle of 43°17'11" and a radius of 460.00 feet; thence North 53°50'56" East a chord distance of 339.32 feet to the point of tangent; thence North 75°29'32" East on the southeast right-of-way of said Hugh Daniel Drive a distance of 455.56 feet to a curve to the left, said curve having a central angle of 11°59'33" and a radius of 373.21 feet; thence North 69°29'45" East a chord distance of 77.97 feet to the point of tangent; thence North 63°29'59" East on the southeast right-of-way of said Hugh Daniel Drive a distance of 195.02 feet to a curve to the right, said curve having a central angle of 47°55'36" and a radius of 260.00 feet; thence North 87°27'47" East a chord distance of 211.20 feet to the point of tangent; thence South 68°34'25" East on the south right-of-way of said Hugh Daniel Drive a distance of 339.12 feet to the intersection of the south right-of-way of Hugh Daniel Drive and the northwest right-of-way of Dunavant Valley Road; thence along a curve to the left having a central angle of 2°41'32" and a centerline radius of 5729.57 feet; thence South 18°21'17" West a chord distance of 271.06 feet to the point of tangent; thence South 17°04'05" West on the northwest right-of-way of Dunavant Valley Road a distance of 1189.04 feet to a point on the south boundary of the NE 1/4 of said Section 34; thence North 89°36'14" West on the south boundary of said NE 1/4 a distance of 1124.27 feet to the point of beginning. All lying and being in the E 1/2 of the SW 1/4 and the SE 1/4 of the NW 1/4 and the NE 1/4 of Section 34, Township 18 South, Range 1 West, Shelby County, Alabama.

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TOGETHER 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 or 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 either at law or in equity, and possession or expectancy of, in or to the same;

(b) A permanent, perpetual and non-exclusive easement, over, across, through, under and upon Hugh Daniel Drive as described in EXHIBIT C to that certain Reciprocal Easement Agreement dated as of January 1, 1990 between Daniel Oak Mountain Limited Partnership and Daniel Links Limited Partnership recorded in Real 312, Page 274 in the Probate Office of Shelby County, Alabama, as amended by First Amendment thereto dated November 6, 1990 recorded in Real 317, Page 253 in said Probate Office which easement to and rights to use Hugh Daniel Drive shall be subject to and used in common with Daniel Oak Mountain Limited Partnership, its successors and assigns, and any other parties have any 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; and

(c) All rights of Daniel Oak Mountain Limited Partnership under that certain Easement Agreement dated November 7, 1989 between Charles W. Daniel and Daniel Oak Mountain Limited Partnership recorded in Real 263, Page 361 in the Probate Office of Shelby County, Alabama.

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BOOK 348 PAGE 300

This conveyance is made subject to the following:

1. General and special taxes or assessments for 1991 and subsequent years not yet due and payable.
2. Amended and Restated restrictive covenants including building setback lines and specific provisions for dense buffer along Hugh Daniel Drive, all as set out in instrument recorded in Real 265, Page 96 in the Probate Office, and which said building setback lines and dense buffer are shown on survey of Charley Foster dated February 2, 1990.
3. Rights of others to use of Hugh Daniel Drive as described in instrument recorded in Deed Book 301, Page 799 in Probate Office.
4. Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto, including rights set out in Deed Book 121, Page 294 and Deed Book 60, Page 260 in Probate Office.
5. Agreement in regard to water service and covenants set out therein between Dantract and Shelby County as set out in Real 235, Page 574 in Probate Office.
6. Easement Agreement between Charles W. Daniel and Daniel Oak Mountain Limited Partnership, an Alabama limited partnership dated November 7, 1989 and recorded in Real 265, Page 361 in Probate Office.
7. Reciprocal Easement Agreement between Daniel Oak Mountain Limited Partnership, an Alabama limited partnership and Daniel Links Limited Partnership dated January 1, 1991 and recorded in Real 312, Page 274 in said Probate Office, as amended by First Amendment thereto dated November 6, 1990 and recorded in Real 317, Page 253 in Probate Office.
8. Mortgage executed by Daniel Oak Mountain Limited Partnership to Elizabeth Rose Sheets Singleton and Dorothy Deanna Sheets Hawkins recorded in Real Book 281, Page 23 in Probate Office (only with respect to Tract 5-A described above).

All instruments referenced above are recorded in the Probate Office of Shelby County, Alabama.

| | | |
|-------|----------|-------|
| 1 | Deed Tax | _____ |
| 2 | | 26.50 |
| 3 | | 3.50 |
| 4 | | 3.00 |
| 5 | | 1.00 |
| 6 | | _____ |
| Total | | 26.50 |

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

91 JUN 14 AM 10:28

JUDGE OF PROBATE

