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**ATTENTION:** Please cross reference this instrument to the Mortgage Assignment of Rents and Security Agreement recorded at Real Record 086, Page 359, Office of the Judge of Probate of Shelby County, Alabama

**THERE IS NO NEW MONEY  
ADVANCED SECURED HEREBY**

Prepared by:  
William J. Thompson, Esquire  
Powell, Goldstein, Frazer & Murphy  
16th Floor,  
191 Peachtree Street  
Atlanta, Georgia 30303  
Aetna Loan No. 197261

### **THIRD AMENDMENT TO MORTGAGE**

THIS THIRD AMENDMENT TO MORTGAGE ASSIGNMENT OF RENTS AND TRUST SECURITY AGREEMENT (the "Third Amendment") made and entered into as of the 21<sup>st</sup> day of April, 1994, by and between SCI-ALABAMA (3) INCORPORATED, AS TRUSTEE FOR SECURITY CAPITAL ALABAMA MULTIFAMILY TRUST, (hereinafter called "Mortgagor", the term "Mortgagor" to include its successor and assigns) and AETNA LIFE INSURANCE COMPANY, a Connecticut corporation (hereinafter called "Mortgagee", the term "Mortgagee" to include its successors and assigns);

### **WITNESSETH THAT:**

WHEREAS, DANIEL PROPERTIES LIMITED PARTNERSHIP, a Virginia limited partnership f/k/a DANIEL PROPERTIES XV (hereinafter called the "Original Mortgagor") delivered to Mortgagee that certain Promissory Note in the original principal amount of SIX MILLION SEVEN HUNDRED TWENTY-FIVE THOUSAND AND NO/100ths DOLLARS (\$6,725,000.00) dated August 14, 1986, as amended and modified by that certain First Modification of Promissory Note dated as of September 1, 1991, between Mortgagee and Mortgagor as further amended and modified by that certain Second Modification of Promissory Note dated as of April 21, 1994 between the Original Mortgagor and Mortgagee; (the Promissory Note, as amended and modified, being hereinafter collectively referred to as the "Note"); and

WHEREAS, the Note is secured by that certain Mortgage Assignment of Rents and Security Agreement dated August 14, 1986, from the Original Mortgagor in favor of Mortgagee recorded in Real Record 086, Page 359, in the Office of Judge of Probate of Shelby County, Alabama, as amended by Amendment to Mortgage dated as of October 17th, 1989, recorded in Real Record 268, Page 44 aforesaid records (the "First Amendment") as further amended by Second Amendment to Mortgage dated as of September 1, 1991 recorded as instrument #1992-15239 in the aforesaid Office of Probate (the "Second Amendment"), the Mortgage Assignment of Rents and Security Agreement, as amended and modified by the First Amendment and Second Amendment, being hereinafter referred to as the "Mortgage"; and

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WHEREAS, the Original Mortgagor conveyed the property encumbered by the Mortgage to Mortgagee;

WHEREAS, Mortgagor has requested an amendment to the Mortgage and Mortgagee has agreed to amend the Mortgage as hereinafter provided.

NOW, THEREFORE, for and in consideration of the foregoing premises, in consideration of the covenants and agreements hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor and Mortgagee hereby amend and modify the Mortgage as follows:

1.

The Mortgage is amended such that all references therein to the term "Note" shall mean the Note as defined in this Third Amendment to Mortgage.

2.

The Mortgage is amended and modified so as to delete Section 1.23 of Article I as set forth in Paragraph 2 of the Second Amendment.

3.

The Mortgage is amended and modified so as to delete Paragraph (f) of Section 4.01 of Article IV as set forth in Paragraph 3 of the Second Amendment.

4.

Mortgagor hereby reaffirms unto Mortgagee the covenants of Section 6.10 of the Mortgage as set forth in Paragraph 6 of the Second Amendment.

5.

The Mortgage is amended and modified by adding the following new paragraph designated Paragraph 6.11:

"6.11 Capital Improvement Expenditures. Mortgagor covenants and agrees unto Mortgagee either (i) to expend not less than \$50,000 on Capital Improvements, as that term is hereinafter defined, during each of the following two (2) designated six (6) month periods, or (ii) to place in escrow with Mortgagee within thirty (30) days following the end of each of the six (6) month periods or within ten (10) days after demand by Mortgagee if an audit by Mortgagee determines that an appropriate amount has not been previously placed in escrow by Mortgagor as herewith provided, the difference between \$50,000 and the cost of Capital Improvements made during the preceding six (6) months period. The term "Capital Improvements" shall, for the purposes of this Mortgage, mean all repairs, maintenance and improvements, the cost ("cost" to include all costs and expenses of



repair, maintenance and improvements including, without limitation, repair and maintenance payroll and landscaping expenses) of which exceeds a six (6) month expenditure of \$82,800.00 (the aforesaid number is based on an average expenditure of \$900 per unit per year), the costs for which have been paid by Mortgagor. The six month periods shall be a period from April 21, 1994 through October 20 1994 and October 21, 1994 through April 20 1995. Mortgagee shall submit an annual budget on or before May / 1, 1994 that reflects the proposed Capital Improvements to the Property and Improvements totalling not less than \$100,000 to be completed during the two six (6) month periods. Within thirty (30) days after the end of each six (6) month period Mortgagor shall submit evidence satisfactory to Mortgagee (which may include, without limitation, invoices, receipts, confirming payments and lien waivers) evidencing that a minimum of \$50,000 has been expended for Capital Improvements during the preceding six (6) month period. Mortgagee may require an inspection be completed by an engineer approved by Mortgagor, whose expense shall be borne by Mortgagor and paid upon demand of Mortgagee to verify that the Capital Improvements have been completed in a good and workmanlike manner. Funds held in escrow by Mortgagee shall be held as additional security for the indebtedness secured by the Mortgage. Such funds held in escrow shall be held under the same terms and conditions as funds held in escrow for taxes pursuant to Section 1.08 (e) of the Mortgage. Upon funds being placed in escrow pursuant to this Section 6.11, such funds will be disbursed by Mortgagee during the subsequent six (6) month period or at any time following the end of the subsequent six (6) month period provided (x) no event of default has occurred under the Mortgage and not been cured and (y) Mortgagee has received evidence satisfactory to Mortgagee that \$100,000 has been expended for Capital Improvements completed in a good and workmanlike manner. Upon the occurrence of an event of default under the Mortgage, Mortgagee may apply the amount held in escrow to any amounts secured by the Mortgage."

6.

Section 6.02 of the Mortgage is hereby deleted effective with the transfer of the premises to SCI-(3) Incorporated as Trustee and therein inserted in lieu thereof the following new Section 6.02:

"6.02 Transfers by Mortgagor. In addition to the events of default set forth in Section 4.01 of the Mortgage, the following events shall constitute additional events of default unless Mortgagor has received the written consent of Mortgagee prior to the occurrence of the event, which consent may be withheld in Mortgagee's sole discretion or may be conditioned upon payment of a fee and/or modification of the terms of the loan Instruments:

(a) The sale or transfer of all or any portion of the premises to any party other than a sale or transfer to i) SCI-Alabama (4) Incorporated ii) Security Capital Atlantic Incorporated iii) a wholly-owned subsidiary or subsidiaries of Security Capital Atlantic Incorporated or iv) any transfer associated with the change in the identity of the trustee or beneficiary of the Security Capital Alabama Multifamily Trust, so long as the successor trustee and beneficiary are wholly owned subsidiaries of Security Capital Atlantic Incorporated.

(b) The recording of a condominium declaration with respect to the Property or Improvements; or

(c) The encumbering of all or any portion of the premises or any beneficial ownership in the premises with subordinate financing except where the encumbrance is held or owned by a party to whom the premises may be conveyed pursuant to (a) above; or

(d) Any share or certificate of beneficial ownership in Security Capital Alabama Multifamily Trust being owned or held by any party other than a party to whom the premises may be conveyed pursuant to (a) above; or

(e) The encumbrance of any share or certificate of beneficial ownership in the Security Capital Alabama Multifamily Trust except where the encumbrance is held and owned by a party to whom the premises may be conveyed pursuant to (a) above; or

(f) The transfer, assignment or pledge by Security Capital Atlantic Incorporated of any stock or ownership of any wholly-owned subsidiary of Security Capital Atlantic Incorporated during such time that such subsidiary holds or owns any equitable or beneficial interest in any share or certificate of beneficial ownership in Security Capital Alabama Multifamily Trust.

7.

In clause (i) of Section 6.07 of the Second Amendment, the word "partners" is hereby deleted, and the following substituted therefor: "trustees or beneficiaries."

8.

Mortgagor and Mortgagee acknowledge that the Mortgage, as herein modified, remains otherwise in full force and effect in accordance with its terms, the Mortgagor and Mortgagee hereby ratifying and affirming the same. Mortgagor hereby acknowledges unto Mortgagee as of the date of the execution of this Third Amendment to Mortgage, the Mortgagor has no set-off, counterclaim or defense to Mortgagor's obligations under the Note secured the Mortgage as amended hereby or the indebtedness evidenced by the Note or the Mortgage as amended hereby and Mortgagor hereby waives and releases all set-offs, counterclaims, or defenses to the obligations of Mortgagor under the Note, the Mortgage as amended hereby the indebtedness secured thereby.

**[SIGNATURES BEGIN ON NEXT PAGE]**

IN WITNESS WHEREOF, Mortgagor has caused this Third Amendment to Mortgage to be executed by its duly authorized general partner and its seals to be affixed hereto as of the day and year above written, this 21 day of April, 1994.

SCI-ALABAMA (3) INCORPORATED, AS  
TRUSTEE FOR SECURITY CAPITAL  
ALABAMA MULTIFAMILY TRUST

By: [Signature]  
Its: VP

[CORPORATE SEAL]

STATE OF Georgia  
COUNTY OF Fulton

I, the undersigned authority, a Notary Public in and for said County and State, do hereby certify that Karen Knudson whose name as vice President of SCI ALABAMA (3) INCORPORATED, is signed to the foregoing Third Amendment to Mortgage, 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 ~~and partnership~~.

Given under my hand and official seal this 20th day of April, 1994.

\* as Trustee of Security Capital Alabama  
Multifamily Trust

\*\* in its capacity as Trustee as aforesaid

Lori Dryer  
NOTARY PUBLIC

NOTARY PUBLIC, ROCKDALE COUNTY, GEORGIA  
MY COMMISSION EXPIRES DECEMBER 14, 1998  
My Commission Expires: \_\_\_\_\_



IN WHEREOF, Mortgagee has caused this Third Amendment to Mortgage to be executed by its duly authorized officers and its corporate seal affixed hereto as of the day and year above written, this 21<sup>st</sup> day of April, 1994.

AETNA LIFE INSURANCE COMPANY,  
a Connecticut corporation

By: Linda C. Sparrock

Title: Act Vice President

Attest: William E. Buzzo

Title: ASSISTANT SECRETARY

[CORPORATE SEAL]

STATE OF CONNECTICUT)

COUNTY OF HARTFORD

I, the undersigned authority, a Notary Public in and for said County and State, do hereby certify that Linda C. Sparrock whose name as AVP of Aetna Life Insurance Company is signed to the foregoing Third Amendment to Mortgage, 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 and partnership.

Given under my hand and official seal this 20 day of April, 1994.

Laurie A. Economidy  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

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LAURIE A. ECONOMIDY  
NOTARY PUBLIC  
MY COMMISSION EXPIRES NOV. 30, 1998

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