

1874

STATE OF ALABAMA)
SHELBY COUNTY)

**FOURTH MODIFICATION TO MORTGAGE
AND OTHER LOAN DOCUMENTS**

THIS AGREEMENT made as of the 28th day of September, 1990, by and between DANIEL OAK MOUNTAIN LIMITED PARTNERSHIP, an Alabama limited partnership ("Borrower"); DANIEL REALTY COMPANY, a New York general partnership ("DRCompany"); Daniel Realty Corporation, an Alabama corporation ("DRC"); Daniel Corporation, an Alabama corporation ("DC"); and AMSOUTH BANK N.A. ("Lender"). DRCompany, DRC and DC are sometimes collectively and severally referred to as the "Guarantors". Borrower and Guarantor are sometimes collectively and severally referred to as the "Obligors."

R E C I T A L S:

A. The Lender is the holder of a Promissory Note (the "Original Note") dated November 7, 1989, in the principal amount of \$5,404,000, executed by Borrower in favor of Lender. The Original Note is secured by the Loan Documents described therein, including without limitation, the following (all dated November 7, 1989, except as otherwise indicated):

1. Mortgage and Security Agreement executed by Borrower in favor of Lender, recorded in Book 265, at Page 415, in the Probate Office of Shelby County, Alabama ("the Mortgage").
2. Assignment of Rents and Leases executed by Borrower in favor of Lender, recorded in Book 265, at Page 443, in the Probate Office of Shelby County, Alabama.
3. Construction Loan Agreement executed by Lender and Borrower.
4. Guaranty of Payment and Completion executed by Guarantors.
5. Term Loan Agreement executed by Borrower and Lender, as amended and restated by Term Loan Agreement ("the Term Loan Agreement") executed this date by and among Borrower, Daniel Links Limited Partnership and Lender.

The documents described in this Paragraph A, as amended by First Modification to Mortgage and Other Loan Documents dated February 16, 1990 and recorded in Book 281, Page 4, in the Probate Office of Shelby County, Alabama; as further amended by Second Modification to Mortgage and other Loan Documents, dated August 29, 1990, and recorded simultaneously herewith; and as further amended by Third Modification to Mortgage and other Loan Documents, dated September 7, 1990, and recorded simultaneously herewith together with all other documents further securing the Note or described in such documents, are referred to as the

Daniel Links

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"Construction Loan Documents."

B. The Lender is also the holder of an Amended and Restated Promissory Note (the "Restated Note") dated this date, in the principal amount of \$6,831,655.96, which amends and restates the Original Note in its entirety. The Restated Note is secured by the Loan Documents described therein, included but not limited to the following:

1. The Construction Loan Documents.
2. Guaranty of Payment and Completion dated this date executed by Guarantors (the "Guaranty").

The documents described in this Paragraph B, together with all other documents which secure the Restated Note as referred to as the "Additional Loan Documents."

C. As used in this agreement, the Original Note and the Restated Note, are referred to as the "Notes," and the term "Security Documents" shall refer collectively to (i) this instrument, (ii) the Notes, (iii) the Construction Loan Documents, (iv) additional Loan Documents, (v) all other documents executed by or on behalf of any Obligor in favor of Lender to evidence or secure any of the Notes, and (vi) all supplements, renewals, restatements, and other modifications to the foregoing, all as modified by this instrument. The term "Secured Obligations" shall refer to all the indebtednesses, debts, and obligations of any Obligor or Guarantor, owing to Lender and evidenced or secured by the Notes and other Security Documents. All the real and personal properties secured by the Security Documents are referred to as the "Properties."

D. This modification agreement contains various other covenants and agreements respecting the foregoing transactions, as more particularly set forth below.

W I T N E S S E T H:

NOW THEREFORE, in consideration of the premises and of other due good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **References in the Construction Loan Documents.** All references in the Construction Loan Documents to the words "\$5,404,000" and to "FIVE MILLION FOUR HUNDRED FOUR THOUSAND AND NO/100 DOLLARS" are deleted and the words "\$6,831,655.96" and "SIX MILLION EIGHT HUNDRED THIRTY-ONE THOUSAND SIX HUNDRED FIFTY-FIVE AND 96/100 DOLLARS" are substituted in lieu thereof, respectively. All references in the Construction Loan Documents to the word "Note" shall refer to the Note as amended and restated by the Restated Note.

2. **Use of Proceeds.** The difference between the full amounts of the Note and Restated Note has been used by Borrower for Phase I lot improvements and development of lands covered by a separate mortgage executed by Borrower and Daniel Links Limited Partnership to Lender this date.

3. **Release.** Article IV, Paragraph 4.23 of the Mortgage is hereby deleted and the following is hereby substituted in its stead thereof:

4.23 **Release.** The Lender agrees to release individual lots or parcels ("Release Tract") comprising portions of the property from the lien of this Mortgage, provided, however, that each of the following conditions shall have been fully met prior to Lender's obligation to execute any release: (a) the Lender shall have been provided with copies of the sales contract, closing statement, and deed executed with respect to each Release Tract; (b) provided, however, that no default shall exist under any of the Loan Documents, nor shall any state of facts exist which, with the passage of time or otherwise, shall be reasonably calculated to result in an event of default; (c) the gross sales price for each Release Tract shall be no less than the price approved by Lender in its sole discretion; and (d) the Lender shall receive, simultaneously with the execution of any release, an amount equal to the "net sales proceeds" (as herein defined) from the sale of the respective Release Tract. "Net sales proceeds" shall mean (i) the gross sales price for the Release Tract to an unrelated third-party purchaser, less (ii) brokerage commissions to unrelated third-party agents not to exceed seven percent (7%) of the gross sales price, title insurance premium, proration of ad valorem taxes, and other ordinary, reasonable and necessary closing expenses payable to unrelated third parties, provided that the total of the costs described in (ii) shall not exceed ten percent (10%) of the gross sales price for the corresponding Release Tract. Notwithstanding the foregoing, however, so long as no default exists under the Loan Documents, the first net sales proceeds up to \$2,341,582.80 shall not be applied to the Loan but shall be deposited into certificates of deposit issued by Lender which shall be pledged to Lender so that Lender has a first perfected security interest in the same. Such CD's shall further secure the Loan and shall be paid or disbursed in such manner and in such order as Lender may direct.

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4. **No Piecemeal Foreclosure.** The following is added to the Mortgage as Paragraph 4.25 thereof:

4.25 **No Piecemeal Foreclosure.** Borrower acknowledges that a primary inducement to Lender in making the Loan secured hereby is the ability, in event of foreclosure, to offer for sale at foreclosure and to sell and foreclose on all parcels secured by this Mortgage, whether such parcels are described in Exhibit A attached hereto or are added by modifications of this Mortgage hereafter, as described above, en masse rather than parcel by parcel. To induce Lender to make the Loan, the Borrower specifically waives any right to compel the Lender to offer the Mortgaged Property first by parcel rather than en masse, in the event of foreclosure, and consents to the offering by Lender of the Mortgaged Property en masse, at the option of Lender, rather than by parcel. Borrower further forever releases, quitclaims, acquits, and discharges, Lender from any liability or claims of any nature resulting from the offering by Lender of the Mortgaged Property en masse at any foreclosure sale, and the purchase at any such foreclosure sale by any party of the Mortgaged Property en masse rather than by separate parcel(s); and if the Mortgaged Property is purchased at any foreclosure sale en masse, Borrower further waives any right to redeem the

Mortgaged Property or any part thereof on a parcel by parcel basis rather than en masse. The foregoing waivers and releases shall be binding on Borrower and the successors, representatives, lienors, creditors, and assigns of Borrower.

5. **Survival of Lien.** Each Security Document shall remain valid and shall be in full force and effect until all the Secured Obligations are paid in full. Notwithstanding any other provision of the Security Documents to the contrary, the Security Documents and all representations and covenants of each Obligor contained therein and the lien of each shall survive the maturity of and the repayment in full of all amounts due under any one of the Notes; and the Security Documents and the lien of each shall continue in full force and effect and Borrower shall not have the right to release of any of the collateral from the encumbrance of the Security Documents or to a release of any other security for the Notes until all Secured Obligations have been paid and performed in full.

6. **Cross Default/Cross-Collateralization.** Each Security Document shall be cross-defaulted and cross-collateralized pursuant to the terms of the Term Loan Agreement.

7. **References to Loan Documents.** All references in the Security Documents to the term "Loan Documents" shall refer to the Security Documents described herein.

8. **Costs.** Without limiting the provisions of the Security Documents, Obligors agree to pay the reasonable attorneys' fees and costs in connection with preparation of this agreement and the other Security Documents, together with all fees and costs of collecting any indebtednesses due under any of the Security Documents.

9. **Project Budget.** Borrower acknowledges that the Restated Note is fully disbursed.

10. **No Waiver.** Obligors agree that neither Lender's execution of this instrument nor any other instrument herewith, nor any forbearance, act, failure, delay, or omission by Lender, including without limitation any delay in exercising any rights or remedies under the Security Documents with respect to any default now or hereafter existing under the Security Documents, shall release, discharge, or otherwise constitute a waiver of, or preclude Lender from exercising, any right, power or privilege granted in the Security Documents; and Obligors confirm that the Security Documents state the entire agreement between the parties, that no agreements, representations, or understandings (verbal or written) binding upon Lender exist other than as stated in the Security Documents (as modified herewith). The foregoing is without limitation of any similar provisions of the Security Documents.

11. **Miscellaneous.** Except as expressly modified herein, all of the terms, covenants, conditions, agreements and stipulations of the Security Documents shall remain in full force and effect and are hereby ratified and confirmed by each Obligor. The term "Obligor" refers to each Obligor and every Obligor.

12. Sugar Land. Daniel Realty Corporation ("DRC") has agreed to collaterally assign its interest in a certain future contract covering property in Houston, Texas, subject to a letter agreement dated this date. Any failure of DRC to execute such collateral assignment or deliver notices to Lender under this letter agreement shall constitute an event of default under the Loan Documents, at Lender's option.

"BORROWER:"

DANIEL OAK MOUNTAIN LIMITED
PARTNERSHIP, an Alabama limited partnership

By: DANIEL REALTY INVESTMENT CORPORATION -
OAK MOUNTAIN, an Alabama corporation,
its sole General Partner

ATTEST:

By: 
Name: Stephen R. Monk
Its: Secretary

By:  [SEAL]
Name: T. Charles Tickle
Its: Recorded

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"GUARANTORS:"

- (1) DANIEL REALTY COMPANY, a
New York general partnership

By: Daniel Equity Partners Limited
Partnership, a Virginia
limited partnership, general partner

By: Daniel Equity Corporation I, a
Virginia corporation, general
partner

Attest:

By:

Name: Stephen R. Monk

Its:

Secretary

By:

Name: T. Charles Tickle

Its:

President

- (2) DANIEL REALTY CORPORATION, an
Alabama corporation

Attest:

By:

Name: Stephen R. Monk

Its:

Secretary

By:

Name: T. Charles Tickle

Its:

President

- (3) DANIEL CORPORATION, an Alabama
corporation

Attest:

By:

Name: Stephen R. Monk

Its:

Secretary

By:

Name: T. Charles Tickle

Its:

President

ATTEST: WITNESS

By: Martin G. Woosley
Name: Martin G. Woosley
Its: Attorney

"BANK:"

AMSOUTH BANK N.A.

By: Robert E. Nesbitt [SEAL]
Name: ROBERT E. NESBITT
Its: VICE PRESIDENT

STATE OF ALABAMA)
 SHELBY)
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in said County in said State, hereby certify that T. Charles Tickle, whose name as President 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, as General Partner of said limited partnership.

GIVEN under my hand and official seal of office, this 28th day of September, 1990.

[NOTARIAL SEAL]

Sheila D. Ellis
Notary Public

My Commission expires: 2/26/94

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STATE OF ALABAMA)

COUNTY OF SHELBY)

I, the undersigned, a Notary Public in said County in said State, hereby certify that T. Charles Tickle, whose name as President of DANIEL EQUITY CORPORATION I, a Virginia corporation, General Partner of DANIEL EQUITY PARTNERS LIMITED PARTNERSHIP, a Virginia limited partnership, General Partner of DANIEL REALTY COMPANY, a New York general 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, as General Partner of said limited partnership, as General Partner of said general partnership.

GIVEN under my hand and official seal of office, this 28th day of September, 1990.

Sheila D. Ellis

Notary Public

My Commission expires: 2/26/94

STATE OF ALABAMA)

COUNTY OF SHELBY)

I, the undersigned, a Notary Public in said County in said State, hereby certify that T. Charles Tickle, whose name as President of DANIEL REALTY CORPORATION, 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 said instrument, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said corporation.

GIVEN under my hand and official seal of office, this 28th day of September, 1990.

Sheila D. Ellis

Notary Public

My Commission expires: 2/26/94

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STATE OF ALABAMA)
COUNTY OF SHELBY)

I, the undersigned, a Notary Public in said County in said State, hereby certify that T. Charles Tickle, whose name as President of DANIEL CORPORATION, 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 said instrument, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said corporation.

GIVEN under my hand and official seal of office, this 28th day of September, 1990.

Sheila D. Ellis
Notary Public

My Commission expires: 2/26/94

STATE OF ALABAMA)
COUNTY OF Jefferson)

I, the undersigned, a Notary Public in said County in said State, hereby certify that Robert E. Nesbitt, whose name as Vice President of AMSOUTH BANK N.A., a national banking association, 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 banking association on the day the same bears date.

GIVEN under my hand and official seal of office, this 28th day of September, 1990.

[NOTARIAL SEAL]

Rebecca A. Tumbelin
Notary Public

STATE OF ALA. SHELBY CO.
I CERTIFY THAT MY Commission expires
INSTRUMENT WAS FILED

NOTARY PUBLIC, STATE OF ALABAMA AT LARGE.
MY COMMISSION EXPIRES: JULY 22, 1993.
THRU NOTARY PUBLIC UNDERWRITERS.

90 OCT -1 PM 1:40

Rebecca A. Tumbelin
JUDGE OF PROBATE

1. Doc. Fee	3
2. Imp. Fee	2
3. Notary Fee	22.50
4. Notary Fee	3.00
5. Notary Fee	1.00
6. Notary Fee	1.00
Total	26.50