

MORTGAGE FILING PRIVILEGE TAXES HAVE PREVIOUSLY BEEN PAID ON INDEBTEDNESS IN THE AMOUNT OF \$1,397,500 IN CONNECTION WITH THE RECORDATION OF THAT CERTAIN FUTURE ADVANCE MORTGAGE DATED DECEMBER 17, 1999 RECORDED WITH THE JUDGE OF PROBATE OF SHELBY COUNTY, ALABAMA AS INSTRUMENT # 2000-00577. NO ADDITIONAL FILING PRIVILEGE TAXES ARE DUE ON THE INDEBTEDNESS SECURED BY SUCH FUTURE ADVANCE MORTGAGE, AS AMENDED BY THIS AMENDMENT.

STATE OF ALABAMA)
SHELBY COUNTY)

**FIRST AMENDMENT TO MORTGAGE
AND OTHER CREDIT DOCUMENTS**

THIS FIRST AMENDMENT TO MORTGAGE AND OTHER CREDIT DOCUMENTS ("this Amendment") is entered into as of March 21, 2002 (the "Effective Date"), by **DANIEL REALTY COMPANY**, an Alabama general partnership (the "Borrower") and **NATIONAL BANK OF COMMERCE OF BIRMINGHAM**, a national banking association (the "Lender").

Inst # 2002-13489

Recitals

A. The Borrower and the Lender have previously entered into a Credit Agreement dated December 17, 1999 (the "Credit Agreement"), pursuant to which the Lender agreed to make a development loan (the "Loan") available to the Borrower in the maximum principal amount of \$1,397,500 to finance the acquisition and development of the Project, as more particularly described in the Credit Agreement. Capitalized terms used in this Amendment and not otherwise defined herein have the respective meanings attributed thereto in said Credit Agreement.

B. The Loan is evidenced by that certain Promissory Note dated December 17, 1999 in said principal amount (the "Note"), which Note bears interest as provided therein and is payable in accordance with the terms thereof.

C. To secure the Obligations and to induce the Lender to extend Credit to the Borrower under the Credit Agreement and the other Credit Documents as described therein, the Borrower executed certain Security Documents more particularly described in said Credit Agreement, including, among others, a Future Advance Mortgage dated December 17, 1999 (the "Mortgage"), which has been duly recorded in the Office of the Judge of Probate of Shelby County, Alabama and encumbers the Land (as defined in the Mortgage).

D. Subsequent to the making of the Loan, the Borrower has agreed to exchange the Land for certain other real property located in Shelby County (the "Replacement Land"), and in connection therewith, the Lender has required that the Borrower execute this Amendment in order to (i) amend the Mortgage to encumber all of the Replacement Land and (ii) amend the Credit Agreement and the other Security Documents to reflect the new definition of "Project" and related

concepts that must be revised in connection with the exchange of the Land for the Replacement Land.

Agreement

NOW, THEREFORE, in consideration of the premises and the mutual agreements set forth in this Amendment, effective as of the Effective Date, the Borrower and the Lender hereby agree as follows:

1. Capitalized terms used in this Amendment and not otherwise defined herein have the respective meanings attributed thereto in the Credit Agreement and the Security Documents.

2. The General Rules of Construction set forth in Section 1.1 of the Mortgage shall govern the construction and interpretation of this Amendment.

3. From and after the Effective Date, all references in the Credit Documents to the defined term "Credit Documents" shall refer to the Credit Documents as amended by this Amendment.

4. From and after the Effective Date, the Credit Agreement shall be, and it is hereby, amended as follows:

(a) Section 3.11 is hereby replaced in its entirety with the following:

SECTION 3.11 Project. (1) The Real Property has convenient and adequate access at or within the perimeter of the Land to all electric, gas, water, storm sewer, sanitary sewer and telephone services, such utilities are available to the Borrower in sufficient quantities to accommodate the development of the Real Property and to comply with all Governmental Requirements applicable thereto; and (2) the Real Property has access to existing public roads and highways (including all necessary rights and governmental approvals for related ingress and egress).

5. From and after the Effective Date, the Mortgage shall be, and it is hereby, amended as follows:

(a) Section 1.2(f) is hereby replaced in its entirety with the following:

(af) **Project** means the acquisition of an undeveloped tract of land located in Shelby County, Alabama.

(b) **Exhibit A** of the Mortgage is hereby replaced in its entirety with **Revised Exhibit A** attached hereto and made a part hereof.

(c) Exhibit B of the Mortgage is hereby replaced in its entirety with Revised Exhibit B attached hereto and made a part hereof.

(d) Exhibit C of the Mortgage is hereby replaced in its entirety with Revised Exhibit B attached hereto and made a part hereof.

6. The Environmental Indemnity Agreement dated December 17, 1999 executed by the Borrower is hereby amended by (i) replacing Exhibit A attached thereto with Revised Exhibit A attached hereto and made a part hereof and (ii) replacing Exhibit B attached thereto with Revised Exhibit B attached hereto and made a part hereof.

7. All references in the Credit Documents to Contractors, Development Consultants, Development Contracts, Development Documents, Development Schedule, Engineers, Plans, Project Budget, Watershed Plan and the development of the Land are hereby deleted. All references in the Credit Documents to the Land shall hereinafter refer to the Replacement Land. All other provisions of the Credit Documents that are inconsistent with this Amendment are hereby modified so as to be consistent herewith.

8. Except as specifically modified and amended hereby, the Credit Documents shall remain in full force and effect in accordance with their respective terms.

9. Notwithstanding the execution of this Amendment, all of the indebtedness evidenced by the Note shall remain in full force and effect, as modified hereby, and except for the Land described in the Mortgage, all Property described in the Mortgage and the Collateral described in the Security Documents, as amended hereby, shall remain subject to the liens, security interests and assignments of the Credit Documents as security for the indebtedness evidenced by the Note and all other indebtedness described therein; and the Borrower agrees that as to such Property and Collateral nothing contained in this Amendment shall be construed to constitute a novation of the indebtedness evidenced by the Note or to release, satisfy, discharge, terminate or otherwise affect or impair in any manner whatsoever (a) the validity or enforceability of the indebtedness evidenced by the Note; (b) the liens, security interests, assignments and conveyances effected by the Credit Documents, or the priority thereof; (c) the liability of any maker, endorser, surety, guarantor or other person that may now or hereafter be liable under or on account of the Note or the Credit Documents; or (d) any other security or instrument now or hereafter held by the Lender as security for or as evidence of any of the above-described indebtedness.

10. The Borrower hereby represents and warrants to the Lender that (a) all representations and warranties contained in the Credit Documents are true and correct as of the date hereof (except any such representations and warranties that are expressly limited to another date and those heretofore specifically waived, in writing, by the Lender for the specific instances and purposes set forth therein); and (b) no Event of Default nor any event that, upon notice or

lapse of time or both, would constitute an Event of Default, has occurred and is continuing (except any such Event of Default that has been expressly and specifically waived, in writing, by the Lender for the specific instances and purposes set forth therein).

IN WITNESS WHEREOF, each of the undersigned has executed this Amendment or caused this Amendment to be executed in its name and on its behalf by its officer thereunto duly authorized, all as of the date first set forth above.

DANIEL REALTY COMPANY, an Alabama
general partnership

By: Daniel Equity Partners Limited Partnership, its
Managing Partner

By: Daniel Equity Corporation I, its General
Partner

By: Christopher A. Beon
Its: Senior Vice President

**NATIONAL BANK OF COMMERCE OF
BIRMINGHAM**, a national banking association

By: J. Cotten Volman
J. Cotten Volman,
Its Senior Vice President

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Christopher A. Brown, whose name as Senior Vice President of Daniel Equity Corporation I, a Virginia corporation, as general partner of Daniel Equity Partners Limited Partnership, a Virginia limited partnership, in its capacity as Managing Partner of Daniel Realty Company, an Alabama 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, (s)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, acting in its capacity as Managing Partner of said general partnership as aforesaid.

Given under my hand and official seal, this 20th day of March, 2002.

Benee Snell Warden
Notary Public

AFFIX SEAL

My Commission Expires 12/5/05

My commission expires: _____

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that J. Cotten Volman, whose name as Senior Vice President of National Bank of Commerce of Birmingham, 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 national banking association.

Given under my hand and official seal, this the 20th day of March, 2002.

Benee Snell Warden
Notary Public

AFFIX SEAL

My Commission Expires 12/5/05

My commission expires: _____

This Instrument Prepared By:
Stephen W. Stallcup, Esq.
Maynard, Cooper & Gale, P.C.
1901 Sixth Avenue North, Suite 2400
Birmingham, Alabama 35203-2618
(205) 254-1000

REVISED
EXHIBIT "A"

LEGAL DESCRIPTION

A parcel of land situated in the NW 1/4 of the NW 1/4 of Section 25, and the NE 1/4 of Section 26, all in Township 19 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Northwest corner of Section 25, Township 19 South, Range 3 West; thence in an Easterly direction along the North line of said section a distance of 443.58 feet to a point on the Southwesterly Right-of-Way line of Old Montgomery Highway; thence 61°03'15" to the right in a Southeastery direction along said right-of-way line a distance of 671.75 feet to the POINT OF BEGINNING; thence 90° to the right in a Southwesterly direction (leaving said right-of-way line) a distance of 78.30 feet to the P.C. (Point of Curve) of a curve to the left having a radius of 750.00 feet and a central angle of 21°03'11"; thence in a Southwesterly direction along the arc of said curve a distance of 275.58 feet to the P.T. (Point of Tangent) of said curve; thence tangent to said curve in a Southwesterly direction a distance of 83.54 feet to a point; thence 90° to the right in a Northwesterly direction a distance of 133.58 feet to a point; thence 86°19'06" to the left in a Southwesterly direction a distance of 42.41 feet to a point; thence 9°56'24" to the left in a Southwesterly direction a distance of 129.97 feet to a point; thence 25°30'35" to the right in a Southwesterly direction a distance of 151.42 feet to a point; thence 21°32'21" to the right in a Westerly direction a distance of 34.15 feet to a point; thence 64°19'39" to the right in a Northwesterly direction a distance of 992.32 feet to a point; thence 67°53'00" to the left in a Southwesterly direction a distance of 62.60 feet to a point; thence 0°11'35" to the right in a Southwesterly direction a distance of 480.88 feet to a point; thence 4°42'48" to the right in a Southwesterly direction a distance of 407.59 feet to a point; thence 24°25'38" to the left in a Southwesterly direction a distance of 44.50 feet to a point; thence 15°26'00" to the left in a Southwesterly direction a distance of 119.97 feet to a point; thence 19°15'05" to the left in a Southwesterly direction a distance of 257.37 feet to a point; thence 22°03'56" to the left in a Southerly direction a distance of 354.88 feet to a point; thence 60°12'52" to the left in a Southeastery direction a distance of 131.94 feet to a point; thence 40°59'03" to the right in a Southeastery direction a distance of 62.70 feet to a point; thence 41°28'17" to the right in a Southwesterly direction a distance of 201.22 feet to a point; thence 32°27'09" to the left in a Southeastery direction a distance of 246.56 feet to a point; thence 35°43'12" to the left in a Southeastery direction a distance of 204.66 feet to a point; thence 29°29'50" to the right in a Southerly direction a distance of 19.08 feet to a point; thence 13°45'39" to the right in a Northwesterly direction a distance of 174.95 feet to a point; thence 102°30'05" to the right in a Southwesterly direction a distance of 72.01 feet to a point; thence 89°43'20" to the left in a Southeastery direction a distance of 100.02 feet to a point; thence 91°16'40" to the left in a Southeastery direction a distance of 72.25 feet to a point; thence 58°37'28" to the right in a Southeastery direction a distance of 297.94 feet to a point; thence 7°13'09" to the left in a Southeastery direction a distance of 107.23 feet to a point; thence 40°09'27" to the left in a Southeastery direction a distance of 87.68 feet to a point; thence 0°15'10" to the right in a Southeastery direction a distance of 39.45 feet to a point; thence 35°25'37" to the left in a

EXHIBIT "A"

Northeasterly direction a distance of 195.43 feet to a point; thence 90° to the left in a
Northwesterly direction a distance of 70.00 feet to a point; thence 65°18'07" to the left in a
Northwesterly direction a distance of 100.28 feet to a point; thence 48°23'20" to the right in a
Northwesterly direction a distance of 65.18 feet to a point; thence 49°28'41" to the right in a
Northeasterly direction a distance of 376.50 feet to a point; thence 35°24'22" to the right in a
Northeasterly direction a distance of 233.40 feet to a point; thence 23°30'41" to the right in a
Northeasterly direction a distance of 100.91 feet to a point; thence 26°30'01" to the left in a
Northeasterly direction a distance of 129.19 feet to a point; thence 8°53'41" to the left in a
Northeasterly direction a distance of 75.72 feet to a point; thence 15°21'37" to the left in a
Northeasterly direction a distance of 120.35 feet to a point; thence 22°07'53" to the left in a
Northeasterly direction a distance of 109.82 feet to a point; thence 89°20'09" to the right in an
Easterly direction a distance of 31.27 feet to a point; thence 61°28'24" to the right in a
Southeasterly direction a distance of 140.23 feet to a point; thence 80°55'55" to the left in a
Northeasterly direction a distance of 54.85 feet to a point; thence 6°53'37" to the left in a
Northeasterly direction a distance of 45.23 feet to a point; thence 7°42'21" to the left in a
Northeasterly direction a distance of 49.36 feet to a point; thence 4°47'44" to the left in a
Northeasterly direction a distance of 226.95 feet to a point at the Southwest corner of a parcel for
a pumping station, said point also being on the East line of Lot 53, Chase Plantation 4th Sector as
recorded in Map Book 9, Page 156 A and B in the office of the Judge of Probate of Shelby County,
Alabama; thence 55°51'44" to the left in a Northerly direction along the common line between said
pumping station parcel and said Lot 53 a distance of 50.08 feet to a point on the South line of the
NE 1/4 of the NE 1/4 of Section 26, Township 19 South, Range 3 West; thence 90°02'47" to the right
in an Easterly direction along the South line of said 1/4 - 1/4 section and the North line of the
Resurvey of Lots 1, 2, 3, 4, 5, 6, 7 & 8 Chase Plantation 3rd Sector as recorded in Map Book 9, Page
62 in the office of the Judge of Probate of Shelby County, Alabama a distance of 83.99 feet to the
Southeast corner of said 1/4 - 1/4 section; thence 0°14'20" to the left in an Easterly direction
along the South line of the NW 1/4 of the NW 1/4 of Section 25, Township 19 South, Range 3 West and
the North line of the Resurvey of Lots 1, 2, 3, 4, 5, 6, 7 & 8 Chase Plantation 3rd Sector, the
North line of Chase Plantation 3rd Sector as recorded in Map Book 9, Page 47 A and B in the office
of the Judge of Probate of Shelby County, Alabama, the North line of A Resurvey of Lots 15, 16, 17,
18, 19 & 20 Chase Plantation 3rd Sector as recorded in Map Book 9, Page 118 in the office of the
Judge of Probate of Shelby County, Alabama, the North line of a Resurvey of Lots 14, 15, 16 & 17
Amended Map of Chase Plantation as recorded in Map Book 8, Page 92 in the office of the Judge of
Probate of Shelby County, Alabama, the North line of a Resurvey of Lots 18, 19, 20, 21, 22, 23 and
24 Amended Map of Chase Plantation as recorded in Map Book 8, Page 111 in the office of the Judge of
Probate of Shelby County, Alabama and the North line of a Resurvey of Lots 25, 26, 27, 28, 29, 30,
31 and 32 Amended Map of Chase Plantation as recorded in Map Book 8, Page 117 in the office of the
Judge of probate of Shelby County, Alabama a distance of 1177.15 feet to a point on the
Southwesterly Right-of-Way line of Old Montgomery Highway, said point being on a curve to the right
having a radius of 368.32 feet and a central angle of 16°44'49"; thence 135°34'57" to the left
(Angle Measured to tangent) in a Northwesterly direction along the arc of said curve and along said
right-of-way line a distance of 107.66 feet to the P.T. (Point of Tangent) of said curve; thence
tangent to said curve in a Northwesterly direction along said right-of-way line a distance of 743.62
feet to the Point of Beginning.

Containing 65.5 acres.

Revised Exhibit B

(Credit Documents)

The "**Credit Documents**" referred to in this Agreement include the following:

- (a) Credit Agreement dated of even date herewith executed by the Borrower and the Lender, as amended hereby.
- (b) Promissory Note dated December 17, 1999 in the original principal amount of One Million Three Hundred Ninety-Seven Thousand Five Hundred Dollars (\$1,397,500) executed by the Borrower in favor of the Lender.
- (c) Future Advance Mortgage dated December 17, 1999 executed by the Borrower in favor of the Lender, as amended hereby.
- (d) Environmental Indemnity Agreement dated December 17, 1999 executed by the Borrower in favor of the Lender, as amended hereby.

Revised Exhibit C

(Permitted Encumbrances)

1. The Lien for ad valorem taxes on the Replacement Property so long as such taxes are not delinquent.

2. The exceptions set forth in Schedule B of the mortgagee's title insurance policy issued or to be issued pursuant to that certain Commitment to Issue Title Insurance bearing File No. 137493 prepared by Cahaba Title, Inc. as agent for First American Title Insurance Company having an effective date of February 11, 2002, at 8:00 a.m. (as marked down by said title insurance agent through the date of closing), 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.

Inst # 2002-13489

00760796.2

B-2

**03/21/2002-13489
04:15 PM CERTIFIED**

**SHELBY COUNTY JUDGE OF PROBATE
D11 MSB 45.00**