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FIRST MODIFICATION TO MORTGAGE AND OTHER LOAN DOCUMENTS

THIS AGREEMENT is made by and between the undersigned Borrower and Lender, on this the 16th day of February, 1990.

RECITALS:

A. The Lender is the holder of a Promissory Note in the principal amount of \$5,404,000, dated November 7, 1989, made by Borrower in favor of Lender (the "Note"). The Note is secured by the following documents and instruments:

1. Mortgage and Security Agreement dated November 7, 1989, and recorded in Real Book 265, Page 415, in the Office of the Judge of Probate of Shelby County, Alabama (the "Mortgage").
2. Assignment of Rents and Leases dated November 7, 1989, and recorded in Real Book 265, Page 443, in the Office of the Judge of Probate of Shelby County, Alabama (the "Assignment").
3. UCC-1 Financing Statement filed with the Office of the Judge of Probate of Shelby County, Alabama under file #024207.
4. UCC-1 Financing Statement filed with the Office of the Secretary of State of Alabama under file #89-15354 FS.

All of the documents and instruments referred to or described in this Paragraph A, together with all documents further securing the Note, are referred to as the "Loan Documents." The real property described in and conveyed under the Mortgage is referred to as the "Original Property."

B. Simultaneously with the execution of this Agreement, the Borrower is to acquire certain additional property (the "Hawkins Tract") and plans to add that portion of the Hawkins Tract containing 28.511 acres described on Exhibit A attached hereto ("Tract XV") and that portion of the Hawkins Tract containing 39.660 acres described on Exhibit B attached hereto ("Tract XIV") to the Original Property. The Borrower is to execute promissory notes (the "Purchase Money Notes") in favor of Elizabeth R. Singleton and Dorothy Deanna Hawkins (collectively referred to as the "Purchase Money Lender") to be partially secured by a purchase money mortgage (the "Purchase Money Mortgage").

All of the documents and instruments described in this Paragraph B, together with all documents further securing the Purchase Money Notes, are referred to as the "Purchase Money Loan Documents."

This instrument prepared by
✓ *Martin G. Woodley*
Lewis & Martin, P.C.
2020 AmSouth/Herbert Plaza
Birmingham, AL 35203

C. Borrower has agreed to grant to the Lender (i) a first mortgage on Tract XV, (ii) a second mortgage on Tract XIV which shall be second and subordinate to the Purchase Money Mortgage, and (iii) a second mortgage on a 64.345-acre tract of real property which is more particularly described in Exhibit C attached hereto ("Tract XI").

D. Borrower has requested and Lender has agreed to (i) release a portion of the Original Property from the lien of its Mortgage and (ii) subordinate the lien of its Mortgage in and to that portion of the Original Property described in Exhibit D attached hereto (consisting of Tracts V and VI as described therein).

E. The Lender is to issue letters of credit in favor of the Purchase Money Lender in the aggregate amount of \$2,000,000 (the "Letters of Credit"). To induce the Lender to issue the Letters of Credit, the Borrower has executed a Reimbursement Agreement in favor of the Lender which provides for the reimbursement to the Lender of any moneys advanced by Lender under the Letters of Credit, provides for the payment of certain fees by the Borrower to the Lender in connection with the issuance of the Letters of Credit, and contains various other obligations for the account of Borrower. Another purpose of this Agreement is to provide that the Loan Documents secure all amounts payable under the Reimbursement Agreement.

F. Capitalized terms used herein but not defined shall have the meanings ascribed to them in the Loan Documents.

The Reimbursement Agreement and all the other documents and instruments securing Borrower's obligations to Lender in connection with the issuance of the Letters of Credit, are referred to, together with the Loan Documents as the "Security Documents."

WITNESSETH:

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

1. **Additional Property.** The Borrower does hereby grant, bargain, sell, and convey unto Lender, Tract XV, Tract XIV and Tract XI (hereinafter collectively referred to as the "Additional Property") which are described, respectively, in attached Exhibits A, B, and C, subject to the terms, conditions, and provisions of the Mortgage and Loan Documents. All references in the Mortgage and other Loan Documents to "Mortgaged Property" or "property" shall also refer to the Additional Property.

2. **Subordination.** Lender hereby agrees that until the Purchase Money Mortgage has been satisfied in full, the Mortgage and the Assignment and the lien created thereby on Tract XIV, as described in Exhibit B attached hereto, Tract XI, as described in Exhibit C attached hereto and on that property described on Exhibit

D attached hereto are and shall be in all respects subject and subordinate to the Purchase Money Mortgage and all indebtednesses, liabilities, and obligations secured thereby. Provided, however, the Mortgage and the lien created thereby shall not be subject and subordinate to any future advances made by the Purchase Money Lender above the original indebtedness secured by the Purchase Money Mortgage except for such amounts advanced to protect the security of the Purchase Money Mortgage or enforce any right or remedy of the Purchase Money Lender under the Purchase Money Mortgage and the obligations secured thereunder and the Purchase Money Notes and the obligations evidenced thereby, to the extent such obligations are secured by the Purchase Money Mortgage.

3. Cross-Default and Cross-Collateralization. (a) The Mortgage and other Loan Documents shall secure, in addition to all indebtednesses and obligations secured under the terms thereof, all amounts due and owing to the Lender under and by virtue of the Reimbursement Agreement, the payment of any amounts expended by Lender in curing any defaults under the Purchase Money Loan Documents, and all other indebtednesses, obligations and liabilities of the Borrower to the Lender of every kind and description whatsoever, so long as the indebtednesses, obligations and liabilities relate to the Mortgaged Property or the Improvements (as described in the Mortgage).

(b) Borrower agrees that any default under any one or more of the Security Documents shall, at the option of the Lender, constitute a default under each of the other Security Documents; and that any default under any one or more of the Purchase Money Loan Documents shall, at the option of the Lender, constitute a default under the Security Documents. Borrower further agrees that each of the Security Documents shall secure the obligations and indebtednesses of Borrower under each of the other Security Documents; and wherever the term "indebtedness", "debt", or "obligations" appears in any one of the Security Documents, the same shall also refer to and include all of the indebtednesses, debt and obligation set forth in and secured by all of the documents comprising the Security Documents. The intention of the parties is that all of the Security Documents shall be cross-defaulted and cross-secured in all respects.

(c) Borrower further agrees that in the event of default under any one or more of the Security Documents or Purchase Money Loan Documents, Lender may exercise any one or more of its rights or remedies under any one or more of the Security Documents, simultaneously or successively, and in any order that the Lender may elect, including but not being limited to foreclosure and/or suit, and Borrower hereby authorizes the Lender to cause any of the collateral secured by any of the Security Documents to be offered for sale and sold as a whole without offering the same in any other manner. Borrower waives any rights to direct the order or manner in which any of the collateral covered by any of the Security Documents will be sold in the event of any sale under any of the Security Documents, and also any right to have any of the collateral covered by the Security Documents marshalled upon any such sale.

4. Survival of Lien. The Loan Documents shall remain valid and shall be in full force and effect as to each and every advance made thereunder regardless of any prepayments thereunder made as a result of any release or as a result of any other occurrence, and notwithstanding the fact that by reason of any such prepayments, there may be times when no monetary indebtedness is outstanding

under the Loan Documents. Notwithstanding any other provision of the Loan Documents to the contrary, the Loan Documents and all representations and covenants of the Borrower contained therein and the lien of the Mortgage and the Assignment shall survive the maturity and the repayment in full of all amounts due under the Note; and the Loan Documents and the lien of the Mortgage and Assignment 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 Mortgage or the Assignment or to release of any other security for the Loan until Borrower's obligations under the Security Documents have been paid and performed in full.

5. References to Loan Documents. All references in the Loan Documents to the term "Loan Documents" shall refer to the Loan Documents as amended by this Agreement and to the Reimbursement Agreement.

6. Ratification. Except as expressly modified herein, all the terms, covenants, conditions, agreements, and stipulations of the Loan Documents shall remain in full force and effect and are hereby ratified and confirmed by the Borrower. The Borrower and Lender hereby covenant that there are no modifications or amendments to any of the Loan Documents other than those specifically set forth herein.

IN WITNESS WHEREOF, the undersigned have executed this instrument as of the date first above written.

"LENDER:"

AMSOUTH BANK N.A.

By: Robert E. Nesbitt [SEAL]
Name: Robert E. Nesbitt
Its: Vice-President

"BORROWER:"

**DANIEL OAK MOUNTAIN LIMITED
PARTNERSHIP, an Alabama limited partnership**

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

By: Gary W. Hutto [SEAL]
Name: Gary W. Hutto
Its: Vice President

STATE OF ALABAMA)
COUNTY OF Jefferson ;

I, the undersigned, a Notary Public in and for 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 corporation on the day the same bears date.

Given under my hand and official seal this 16th day of February, 1990.

[NOTARIAL SEAL]

Amey D. Staley
Notary Public

My Commission Expires: MY COMMISSION EXPIRES 4-26-93

STATE OF ALABAMA)

COUNTY OF Jefferson

I, the undersigned, a Notary Public in said County in said State, hereby certify that Cary W. Butts, whose name as Vice 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 19th day of February 1990.

[NOTARIAL SEAL]

Rebecca A. Tumbelin

Notary Public
NOTARY PUBLIC OF ALABAMA BY EXCEL
MY COMMISSION EXPIRES: JULY 22, 1993.
BONDED THRU NOTARY PUBLIC UNDERWRITERS.

My Commission Expires: _____

BOOK 281 PAGE 09

EXHIBIT A

TRACT XV

For the point of beginning, commence at the Southwest corner of the NE 1/4 of Section 32, Township 18 South, Range 1 West, Shelby County, Alabama; thence North 1 deg. 24 min. 12 sec. East on the west boundary of said NE 1/4 a distance of 2226.61 feet to a point; thence South 59 deg. 11 min. 45 sec. East a distance of 1179.62 feet to a point; thence South 26 deg. 12 min. 02 sec. West a distance of 456.28 feet to a point; thence South 46 deg. 16 min. 16 Sec. West a distance of 300.00 feet to a point; thence South 21 deg. 16 min. 16 Sec. West a distance of 700.00 feet to a point; thence South 48 deg. 16 min. 16 sec. West a distance of 530.00 feet to the point of beginning.

All lying and being in the NE 1/4 of Section 32, Township 18 South, Range 1 West, Shelby County, Alabama.

EXHIBIT B

TRACT XIV

For the point of beginning, commence at the Southwest corner of the NE 1/4 of Section 32, Township 18 South, Range 1 West, Shelby County, Alabama; thence South 88 deg. 43 min. 44 sec. East on the south boundary of said NE 1/4 a distance of 939.50 feet to a point; thence North 29 deg. 19 min. 23 sec. East a distance of 351.26 feet to a point; thence North 30 deg. 16 min. 12 sec. West a distance of 55.00 feet to a point; thence North 27 deg. 36 min. 44 sec. East a distance of 772.61 feet to a point; thence North 23 deg. 13 min. 31 sec. East a distance of 680.74 feet to a point; thence North 53 deg. 59 min. 16 sec. East a distance of 200.14 feet to a point; thence North 10 deg. 16 min. 43 sec. East a distance of 711.55 feet to the top of a ridge; thence North 41 deg. 07 min. 32 sec. East and on the top of said ridge a distance of 155.00 feet to the north boundary of said NE 1/4; thence North 88 deg. 56 min. 57 sec. West on the north boundary of said NE 1/4 a distance of 483.06 feet to the centerline of a creek; thence South 15 deg. 31 min. 46 sec. West along centerline of said creek a distance of 67.26 feet to a point; thence South 13 deg. 44 min. 40 sec. East along centerline of said creek a distance of 88.62 feet to a point; thence South 23 deg. 30 min. 19 sec. West along centerline of said creek a distance of 211.09 feet to a point; thence South 51 deg. 59 min. 09 sec. West along centerline of said creek a distance of 196.93 feet to a point; thence South 41 deg. 58 min. 37 sec. West along the centerline of said creek a distance of 117.86 feet to a point; thence South 34 deg. 21 min. 43 sec. West along the centerline of said creek a distance of 102.79 feet to a point; thence South 8 deg. 16 min. 34 sec. West along the centerline of said creek a distance of 103.33 feet to a point; thence South 29 deg. 21 min. 58 sec. West along the centerline of said creek a distance of 108.36 feet to a point; thence South 40 deg. 02 min. 42 sec. West along the centerline of said creek a distance of 169.50 feet to a point; thence South 26 deg. 12 min. 02 sec. West a distance of 456.28 feet to a point; thence South 46 deg. 16 min. 16 sec. West a distance of 300.00 feet to a point; thence South 21 deg. 16 min. 16 sec. West a distance of 700.00 feet to a point; thence South 48 deg. 16 min. 16 sec. West a distance of 530.00 feet to the point of beginning.

All lying and being in the NE 1/4 of Section 32, Township 18 South, Range 1 West, Shelby County, Alabama.

EXHIBIT C

Tract XI

For the point of beginning commence at the northeast corner of the SW $\frac{1}{4}$ of Section 34, Township 18 South, Range 1 West, Shelby County, Alabama; thence S1°12'39"W on the east boundary of said SW $\frac{1}{4}$ a distance of 1372.77 feet to a point; thence N44°52'01"W a distance of 798.93 feet to a point; thence N6°29'40"E a distance of 1590.53 feet to a point; thence N36°12'25"E 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 N79°22'23"E a chord distance of 329.11 feet to the point of tangent; thence N32°12'21"E 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 N53°50'56"E a chord distance of 339.32 feet to the point of tangent; thence N75°29'32"E 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 N69°29'45"E a chord distance of 77.97 feet to the point of tangent; thence N63°29'59"E 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 N87°27'47"E a chord distance of 211.20 feet to the point of tangent; thence S68°34'25"E on the south right-of-way of said Hugh Daniel Drive a distance 339.12 feet to the intersection of the south right-of-way of Hugh Daniel Drive and the northwest right-of-way of Dunnavant 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 S18°21'17"W a chord distance of 271.06 feet to the point of tangent; thence S17°04'05"W on the northwest right-of-way of Dunnavant Valley Road a distance of 1189.04 feet to a point on the south boundary of the NE $\frac{1}{4}$ of said Section 34; thence N89°36'14"W on the south boundary of said NE $\frac{1}{4}$ a distance of 1124.27 feet to the point of beginning.

All lying and being in the E $\frac{1}{2}$ of the SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ and the NE $\frac{1}{4}$ of Section 34, Township 18 South, Range 1 West, Shelby County, Alabama and containing 64.345 acres.

EXHIBIT D (PAGE 1 OF 2)

Tract V-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 deg. 35 min. 37 sec. West on the south boundary of said Section 27, a distance of 961.13 feet to the point of beginning; thence South 30 deg. 07 min. 13 Sec. West a distance of 915.79 feet to a point; thence South 10 deg. 31 min. 03 sec. West a distance of 428.55 feet to a point on the north right of way of Hugh Daniel Drive; thence south 68 deg. 34 min. 25 sec. East on the north right of way of said 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 Dunnivant Valley Road; thence along a curve to the right, said curve having a central angle of 19 deg. 50 min. 13 sec. and a centerline radius of 5729.57 feet, thence North 27 deg. 27 min. 33 sec. East a chord distance of 1399.05 feet to a point; thence North 77 deg. 33 min. 08 sec. West a distance of 417.93 feet to a point; thence South 30 deg. 07 min. 13 Sec. 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, All in Township 18 South, Range 1 West, Shelby County, Alabama.

TRACT V-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 deg. 35 min. 37 Sec. West on the south boundary of said Section 27, a distance of 961.13 feet to a point; thence North 30 deg. 07 min. 13 Sec. East a distance of 176.20 feet to the point of beginning; thence South 77 deg. 38 min. 08 Sec. East a distance of 417.93 feet to a point, said point being on the northwest right of way of Dunnivant Valley Road, thence along a curve to the right, said curve having a central angle of 19 deg. 50 min. 13 sec. and a centerline radius of 5729.57 feet; thence North 35 deg. 05 min. 51 sec. East a chord distance of 135.82 feet to a point; thence North 64 deg. 21 min. 31 sec. West a distance of 241.24 feet to a point; thence South 64 deg. 58 min. 38 sec. 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.

TRACT V-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 deg. 35 min. 37 sec. West on the South boundary of said Section 27, a distance of 961.13 feet to a point; thence North 30 deg. 07 min. 13 Sec. East a distance of 580.70 feet to a point; thence North 36 deg. 49 min. 59 Sec. East a distance of 196.00 feet to the point of beginning; thence South 10 deg. 11 min. 34 sec. East a distance of 231.75 feet to a point; thence South 57 deg. 16 min. 23 Sec. East a distance of 253.90 feet to a point, said point being on the Northwest right of way of Dunnivant Valley Road; thence North 36 deg. 48 min. 15 Sec. East on the Northwest right of way of Dunnivant Valley Road a distance of 682.26 feet to a point; thence North 53 deg. 09 min. 22 Sec. West a distance of 422.46 feet to a point; thence South 36 deg. 49 min. 59 Sec. West a distance of 542.54 feet to the point of beginning.

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, all in Township 18 South, Range 1 West, Shelby County, Alabama.

Tract VI

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 S89°36'14"E 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 Dunnivant Valley Road, County Road No. 41; thence N17°04'05"E on the northwest right-of-way of said Dunnivant 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 3729.57 feet, a chord distance of 351.06 feet to a point on the northerly right-of-way of Hugh Daniel Drive; thence N68°34'25"W on the northerly right-of-way of Hugh Daniel Drive a distance of 323.09 feet to a point; thence N74°50'20"W on the northerly right-of-way of Hugh Daniel Drive a distance of 100.37 feet to the point of beginning; thence N10°30'53"E a distance of 378.49 feet to a point; thence S77°43'44"W a distance of 1727.79 feet to a point; thence N55°44'00"W a distance of 407.82 feet to a point; thence S23°39'03"W a distance of 618.74 feet to a point on the northerly right-of-way of Hugh Daniel Drive; thence S68°29'40"E on the northerly right-of-way of Hugh Daniel Drive a distance of 409.95 feet to the point of curve; thence S61°08'39"E 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 N79°12'23"E 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 N32°12'21"E on the northerly right-of-way of Hugh Daniel Drive a distance of 164.89 feet to the point of curve; thence N53°50'56"E 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 N75°29'32"E on the northerly right-of-way of Hugh Daniel Drive a distance of 455.56 feet to the point of curve; thence N69°29'45"E 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 N63°29'59"E on the northerly right-of-way of Hugh Daniel Drive a distance of 195.02 feet to the point of curve; thence N80°10'17"E 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 NE 1/4 of Section 34, Township 18 South, Range 1 West, Shelby County, Alabama and containing 23.100 acres.

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

90 MAR -5 AM 9:09

Rec 27.50
Ind 3.00
Ced. 1.00

V.50