

STATE OF ALABAMA)
SHELBY COUNTY)

1873

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

THIS AGREEMENT made as of the 7th 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 ("Guarantor"); and AMSOUTH BANK N.A. ("Lender"). Borrower and Guarantor are sometimes collectively and severally referred to as the "Obligors."

RECITALS:

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

1. Mortgage and Security Agreement (the "Mortgage") executed by Borrower in favor of Lender, recorded in Book 265, at Page 415, in the Probate Office of Shelby County, Alabama.
2. Assignment of Rents and Leases executed by Borrower in favor of Lender, recorded in Book 285, at Page 443, in the Probate Office of Shelby County, Alabama, as modified by the First Modification.
3. Construction Loan Agreement executed by Lender and Borrower.
4. Guaranty of Payment and Completion executed by Guarantor.

The documents described in this Paragraph A, as modified by First Modification to Mortgage and Other Loan Documents (the "First Modification") dated February 15, 1990 and recorded in Book 281, Page 4, in the Probate Office of Shelby County, Alabama, and further modified by Second Modification to Mortgage and Other Loan Documents (the "Second Modification") dated as of August 29, 1990, and recorded in the Probate Office of Shelby County, Alabama, simultaneously herewith, together with all other documents further securing the Note, are referred to as the "Construction Loan Documents."

B. The Lender is also the holder of Promissory Notes dated February 26, 1987, in the principal amounts of \$7,000,000 and \$3,000,000 (referred to, as amended heretofore, as the "Line of Credit Notes") made by Guarantor, which Line of Credit Notes are secured by the Loan Documents described therein, including without limitation the Assignment and Security Agreement executed by Guarantor and Daniel Realty Corporation in favor of Lender, and by a Loan Agreement executed by Guarantor in favor of Lender. The documents described in this Paragraph B, as modified by the Second Modification, together with all other documents further securing the Line of Credit Notes, are referred to as the "Line of Credit Loan Documents."

C. The Lender is also the holder of a Promissory Note (the "New Note") executed by Borrower in the principal amount of \$1,915,000.00 dated this date. The New Note is secured by a Guaranty of Payment executed by Guarantor (the "Guaranty").

D. As used in this agreement, the Note, Line of Credit Notes, and the New 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) the Line of Credit 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, and any other person to Lender evidenced and secured by the Notes and other Security Documents, including without limitation existing indebtednesses, future advances, liquidated, unliquidated, and contingent obligations. All the real and personal properties secured by the Security Documents are referred to as the "Properties."

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

WITNESSETH:

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. **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.

2. **Cross-Collateralization.** Each Security Document shall secure, in addition to all indebtednesses and obligations secured under the terms thereof, all the Secured Obligations.

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

4. **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.

5. **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 Obligor 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.

8. **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.

"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:

Name: Allan D. Worthington

Its: Senor V.P.

"GUARANTOR:"

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: Allan D. Worthington

Its: Senor V.P.

"BANK:"

ATTEST:

AMSOUTH BANK N.A.

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

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

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in said County in said State, hereby certify that ALLAN D. WORTHINGTON, whose name as SR. 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 7th day of September, 1990.

[NOTARIAL SEAL]

Shirley A. Ellis
Notary Public

My Commission expires: MY COMMISSION EXPIRES FEBRUARY 26, 1994

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in said County in said State, hereby certify that ALLAN D. WORTHINGTON, whose name as SR. VICE 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 7th day of September, 1990.

[NOTARIAL SEAL]

Sheila H. Ellis
Notary Public

My Commission expires: MY COMMISSION EXPIRES FEBRUARY 26, 1994

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]

Sheila H. Ellis
Notary Public

My Commission expires: 2/26/94

BOOK 312 PAGE 198

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

90 OCT -1 PM 1:39

JUDGE OF PROBATE

| | |
|-------------|-------|
| 1. Paid Fee | 3 |
| 2. Paid Fee | 12.50 |
| 3. Paid Fee | 3.00 |
| 4. Paid Fee | 1.00 |
| 5. Paid Fee | |
| 6. Paid Fee | 16.50 |
| Total | |