

[EXECUTION COPY]

STATE OF ALABAMA )

SHELBY COUNTY )

**FIRST AMENDMENT TO MORTGAGE**  
**(DUSPL II Loan)**

THIS FIRST AMENDMENT TO MORTGAGE, dated as of March 31, 1994 ("this Agreement"), is entered into by DANIEL U.S. PROPERTIES LIMITED PARTNERSHIP II, an Alabama limited partnership (the "Borrower"), DANIEL REALTY COMPANY, a New York general partnership ("DR Company"), DANIEL REALTY CORPORATION, an Alabama corporation ("DRC"), DANIEL CORPORATION, an Alabama corporation ("DC"), and AMSOUTH BANK N.A., a national banking association ("AmSouth"). DR Company, DRC and DC are sometimes collectively referred to herein as the "Guarantors." The Borrower and the Guarantors are sometimes collectively referred to herein as the "Obligors."

**Recitals**

A. AmSouth is the holder of a note dated March 1, 1994, in the original principal amount of \$1,562,500, executed by the Borrower in favor of AmSouth. The Note is secured by, among other things, a Mortgage executed by the Borrower dated March 1, 1994, recorded in the Office of the Judge of Probate of Shelby County, Alabama, as Instrument No. 1994-06933 (the "Mortgage").

B. The Obligors have requested that the Mortgage be amended as hereinafter set forth.

**Agreement**

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree that Section 6.22 of the Mortgage be, and the same is hereby, amended to read, in its entirety, as follows:

SECTION 6.22. Release of Property. So long as no Event of Default shall have occurred and is continuing, the Borrower shall be entitled to obtain the release of the Property, in whole or in part, from the Lien of this Agreement and the other Credit Documents on the following terms:

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(a) The whole of the Property shall be released upon the payment in full of the then unpaid principal balance of the Credit, together with all interest accrued thereon to the date of the release.

(b) Any lot that is part of a recorded subdivision plat or any other part of the Property shall be released only if the Lender has approved the size, configuration, location and sale price of the lot or other part of the Property being released, and the proceeds of the sale thereof shall be paid over to the Lender to be applied as set forth in the Third Master Modification Agreement dated as of March 31, 1994, entered into by the Obligors, AmSouth and certain other parties (the "Third Master Modification Agreement"); provided, however, that if such proceeds exceed \$75,000 per acre (or a fractional part thereof) of the lot or other part of the Property sold, the Borrower may retain from said excess (i) an amount that, when added to the aggregate amount of all other sums theretofore retained by the Borrower under this proviso, or under the proviso in Section 6.15(b) of the Mortgage, Security Agreement and Assignment of Rents and Leases dated March 27, 1992, executed by Daniel U.S. Properties Limited Partnership, a Virginia limited partnership, in favor of the Lender, recorded in the Office of the Judge of Probate of Shelby County, Alabama, in Real 398, page 915, as amended (the "DUSPL Loan Mortgage"), would not exceed \$310,000 and (ii) after said \$310,000 sum has been retained, 50% of any remaining amount of said excess. The payment by the Borrower to the Lender of the amount required to be paid by the Borrower for the release of any lot or other part of the Property (but not the whole of the Property) under either this clause (b) or clause (b) of the DUSPL Loan Mortgage shall entitle the Borrower to a release of said lot or other part of the Property both from the Lien of this Agreement and the Lien of the DUSPL Loan Mortgage.

Upon payment to the Lender of the required release price with respect to the Property or any part thereof, the Lender shall execute and deliver to the Borrower a full release of the Property (in the case of a release of the Property in whole) or a partial release of any lot or other part of the Property released (in the case of a release of only a lot or other part of the Property) from the Lien of this Agreement prepared by the Borrower and satisfactory to the Lender. The Lender shall apply all release payments received from the Borrower under this Section 6.22 as provided in the Third Master Modification Agreement.

No release under this Section 6.22 shall release any of the Property from, or otherwise adversely affect, the DUSPL Loan Mortgage or the Lien thereof on the Property.

The Guarantors join in the execution of this Agreement to evidence their consent to and approval of the same.

Except as hereby expressly modified and amended, the Mortgage shall remain in full force and effect in accordance with its terms.

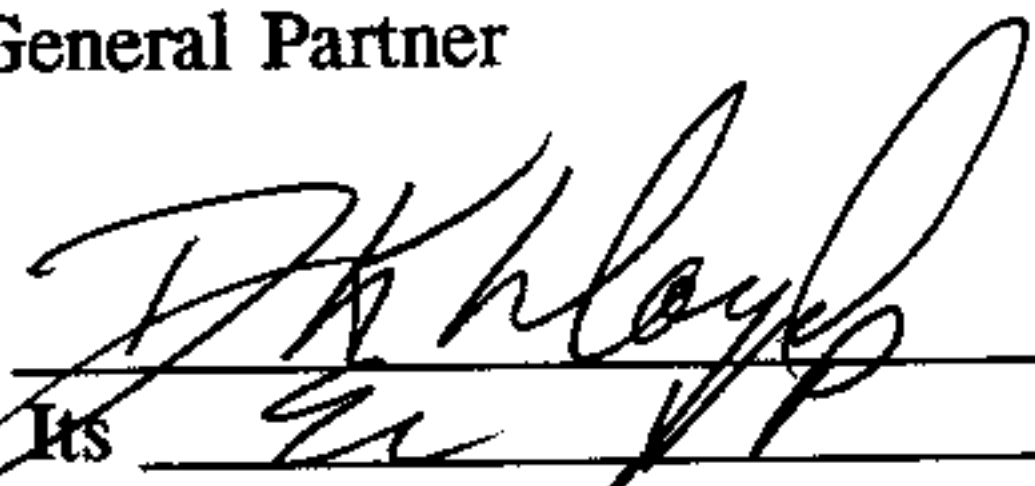
IN WITNESS WHEREOF, each of the undersigned parties hereto has executed this Agreement, effective as of the day and year first above written, although each of them has actually executed this Agreement on the date of such party's acknowledgment set forth below.

**DANIEL U.S. PROPERTIES LIMITED  
PARTNERSHIP II**

By: **DANIEL REALTY INVESTMENT  
CORPORATION**  
Its General Partner

ATTEST:

Kim M. Foster  
Its \_\_\_\_\_

By:   
Its \_\_\_\_\_

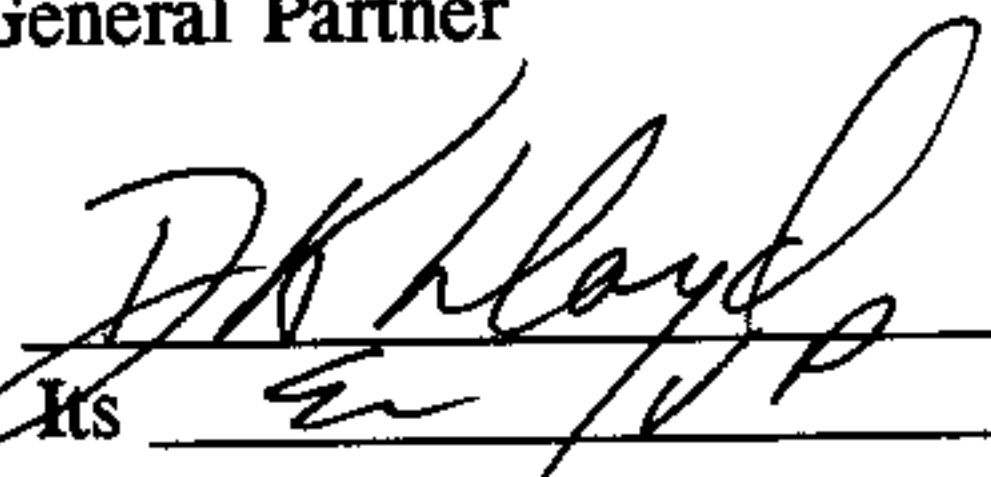
**DANIEL REALTY COMPANY**

By: **DANIEL EQUITY PARTNERS LIMITED  
PARTNERSHIP, its General Partner**

ATTEST:

Kim M. Foster  
Its \_\_\_\_\_

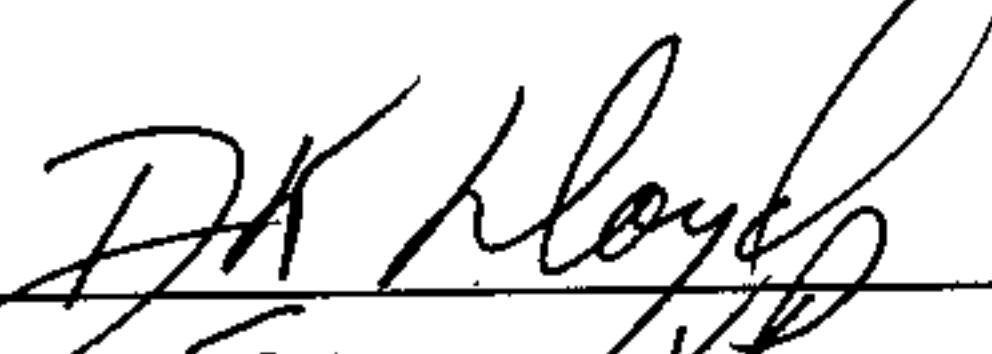
By: **DANIEL EQUITY CORPORATION I,**  
its General Partner

By:   
Its \_\_\_\_\_

ATTEST:

Kim M. Foster  
Its \_\_\_\_\_

**DANIEL REALTY CORPORATION**

By:   
Its \_\_\_\_\_



ATTEST:

Kim M. Foster  
Its \_\_\_\_\_

DANIEL CORPORATION

By: D.K. Lloyd  
Its \_\_\_\_\_

AMSOUTH BANK N.A.

By: Arthur J. Sharkey II  
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 D.K. Lloyd, whose name as Sr. V.P. of DANIEL REALTY INVESTMENT CORPORATION, a Virginia corporation, General Partner of DANIEL U.S. PROPERTIES LIMITED PARTNERSHIP II, 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, acting in its capacity as General Partner of said limited partnership.

GIVEN under my hand and official seal this 30<sup>th</sup> day of March, 1994.

Carl J. Williams  
(Notary Public)

[NOTARIAL SEAL]

My Commission expires: 9/25/94

STATE OF ALABAMA )

COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that D.K. Lloyd, whose name as Sr. V.P. 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, acting in its capacity as General Partner of Daniel Equity Partners Limited Partnership, acting in its capacity as General Partner of Daniel Realty Company.

GIVEN under my hand and official seal this 30<sup>th</sup> day of March, 1994.

Carol J. Williams  
Notary Public

[NOTARIAL SEAL]

My Commission expires: 9/25/94

STATE OF ALABAMA )

COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that D.K. Lloyd, whose name as Sr. V.P. 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 this 30<sup>th</sup> day of March, 1994.

Carol J. Williams  
Notary Public

[NOTARIAL SEAL]

My Commission expires: 9/25/94

STATE OF ALABAMA )

COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that D.K. Lloyd, whose name as Sr. V.P. 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 this 3<sup>th</sup> day of March, 1994.

Carol Williams

Notary Public

[NOTARIAL SEAL]

My Commission expires: 9/25/94

STATE OF ALABAMA )

COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Arthur J. Sharbel, III whose name as Vice Pres. 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/she 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 30<sup>th</sup> day of March, 1994.

Carol Williams

Notary Public

[NOTARIAL SEAL]

My Commission expires: 9/25/94

This instrument was prepared by:

George F. Maynard  
Maynard, Cooper & Gale, P.C.  
1901 Sixth Avenue North  
2400 AmSouth/Harbert Plaza  
Birmingham, Alabama 35203-2602  
(205) 254-1000

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