

**CERTIFICATE AND AGREEMENT OF LIMITED PARTNERSHIP
OF
DANIEL REALTY SERVICES LIMITED PARTNERSHIP**

THIS CERTIFICATE AND AGREEMENT OF LIMITED PARTNERSHIP AGREEMENT is made and entered into as of the 12th day of February, 1997 by and between DANIEL REALTY CORPORATION, an Alabama corporation (the "General Partner"), and DANIEL REALTY SERVICES, L.L.C., an Alabama limited liability company (the "Limited Partner").

In consideration of the capital contributions referred to below and the mutual promises, covenants and agreements contained herein, the General Partner and the Limited Partner hereby form a limited partnership under the Alabama Revised Uniform Limited Partnership Act, as amended, for the purposes set forth herein and, by execution of this Certificate and Agreement of Limited Partnership, the General Partner and the Limited Partner do hereby certify, for the purpose of filing this Certificate and Agreement with the Office of Probate of Shelby County, Alabama, in accordance with the provisions of Section 10-9A-20 of the Code of Alabama (1975), as amended, as follows:

Inst # 1997-04678

1. **Name.** The name of the Partnership is Daniel Realty Services Limited Partnership (the "Partnership").

2. **Business.** The business of the Partnership is to acquire, own, develop, construct, manage, maintain, operate, improve, lease, mortgage, sell, exchange and otherwise deal with real estate and in connection with or incidental to the accomplishment of such purposes, to enter into any kind of activity and to perform and carry out contracts and otherwise engage in any lawful act, purpose, activity or business.

3. **Principal Office and Registered Agent.** The principal office of the Partnership is at 1200 Corporate Drive, Meadow Brook Corporate Park, Birmingham, Alabama 35242. The registered agent of the Partnership is Sheila D. Ellis, who is a resident of the State of Alabama. The address of the registered agent is 1200 Corporate Drive, Meadow Brook Corporate Park, Birmingham, Alabama 35242.

4. **Partners.** The names and residences of the General Partner and the Limited Partner (hereinafter sometimes referred to as a "Partner" and collectively as the "Partners") and the capital contribution made by each of them to the Partnership are as follows:

General Partner:

| <u>Name</u> | <u>Address</u> | <u>Capital Contribution</u> |
|---|---|-----------------------------|
| Daniel Realty Corporation an Alabama corporation | 1200 Corporate Drive Meadow Brook Corporate Park Birmingham, AL 35242 | \$ 100 |

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Limited Partner:

| <u>Name</u> | <u>Address</u> | <u>Capital Contribution</u> |
|--|---|-----------------------------|
| Daniel Realty Services, L.L.C. an Alabama limited liability company | 1200 Corporate Drive Meadow Brook Corporate Park Birmingham, AL 35242 | \$9,900 |

5. **Term.** The Partnership shall continue until December 31, 2047, except that the Partnership shall be dissolved prior to such date upon the happening of any of the following:

(a) the sale or other disposition of all or substantially all of the assets of the Partnership; or

(b) subject to the provisions of Paragraph 14 below, the retirement (which term includes the dissolution, bankruptcy or withdrawal for any reason) of the General Partner; or

(c) the decision of the General Partner to terminate the Partnership.

6. **Capital Contributions.** The Partners have made capital contributions to the Partnership in the amounts set forth in Paragraph 4 above.

7. **Additional Contributions.** No Partner shall be obligated to make any additional capital contributions to the Partnership or lend funds to the Partnership although any Partner may do so from time to time with the consent of the General Partner.

8. **Capital Accounts and Returns.** A capital account ("Capital Account") shall be established and maintained for each Partner in accordance with Treasury Regulations Section 1.704-1 (b) (2) (iv) promulgated under the Internal Revenue Code of 1986, as amended (the "Code"). No time has been agreed upon for the return of the capital contributions of the Partners. No interest shall be paid on any capital contribution and, except as expressly provided in this Agreement, no Partner shall be entitled to demand or receive a return of its capital contribution.

9. **Allocation of Profits and Losses.**

(a) Profits and losses of the Partnership shall be allocated 1% to the General Partner and 99% to the Limited Partner.

(b) Notwithstanding any other provisions of this Paragraph 9 to the contrary, any interest income associated with a loan by the Partnership to a Partner shall be allocated to such Partner.

(c) Notwithstanding any other provisions of this Paragraph 9 to the contrary, nonrecourse deductions shall be allocated to the Partner that bears the economic risk of loss for such debt (within the meaning of Section 1.752-2 of the Treasury Regulations of the Code (the "Treasury Regulations") and the Partnership will comply with the requirements of Treasury Regulations Sections 1.704-2 (f) and 1.704-2 (j) ("minimum gain chargeback") and Treasury Regulation Section 1.704-1 (b) (2) (ii) (d) ("qualified income offset").

(d) The foregoing provisions and other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulations Section 1.704-1(b) and Section 1.704-2 which shall supersede any inconsistent provision in this Agreement, and the provisions of this Agreement shall be interpreted and applied in a manner consistent with those Treasury Regulations. The General Partner shall have the authority, in its sole and absolute discretion, to make any appropriate modifications in the manner in which Capital Accounts, or any debits or credits thereto, are computed in order to comply with the Treasury Regulations if events might otherwise cause this Agreement not to comply with Section 1.704-1 (b) or Section 1.704-2 of the Treasury Regulations.

10. **Distributions.**

(i) Distributions shall be distributed between the Partners as follows:

(i) First, to those Partners who have paid interest to the Partnership in connection with a loan by the Partnership to such Partners, an amount equal to the excess of any such interest over amounts previously distributed to such Partners pursuant to this Paragraph 10(a) (i) to be apportioned among such Partners based on the ratios of (1) the excess of interest paid by each such Partner over the amounts previously distributed to such Partner over (2) the excess of interest paid by all such Partners over the amounts previously distributed to all such Partners; and

(ii) Second, 1% to the General Partner and 99% to the Limited Partner.

(b) Upon liquidation of the Partnership, after payment of, or adequate provision for, the debts and obligations of the Partnership, the remaining assets of the Partnership shall be distributed to the Partners in accordance with their positive Capital Account balances, as determined after taking into account all Capital Account adjustments for the tax year during which such termination occurs other than those made pursuant to this Paragraph 10(b) and Paragraph 10(c), by the end of such tax year, or, if later, within 90 days after the date of such liquidation.

(c) If the General Partner has a deficit balance in its Capital Account following the distributions pursuant to Paragraph 10(b) above, as determined after taking into account all Capital Account adjustments for the tax year during which such termination occurs other than those made pursuant to this Paragraph 10(c), then such General Partner shall contribute to the Partnership cash equal to the amount of such deficit balance by the end of such tax year, or, if later, within 90 days after the date of such termination to be distributed to other Partners in accordance with their positive Capital Account balances. No Limited Partner shall be obligated to restore a deficit balance in its Capital Account.

11. **Assignments.**

(a) In no event shall all or any part of a Partner's interest in the Partnership be assigned, pledged or transferred, conveyed, encumbered or hypothecated without the prior written consent of all Partners, and any such attempted assignment shall be void and ineffectual and shall not bind the Partnership. Any substitute partner ("Substitute Partner") to whom a Partner has transferred and assigned its interest (with the prior written consent of all Partners) shall execute, acknowledge

and deliver an instrument to the remaining Partners signifying its agreement to be bound by all the provisions of the Partnership Agreement, as last amended, and shall accept such other terms as the Partners, in their exclusive discretion, may determine as a condition to permitting such substitution.

(b) In the event of the death, incapacity, bankruptcy or dissolution of a Partner, its legal representatives shall have the same status as an assignee of the Partner unless and until the remaining Partners shall permit such legal representatives to become a Substitute Partner on the same terms and conditions as herein provided for assignees generally. The death, bankruptcy or dissolution of a Limited Partner shall not dissolve the Partnership.

(c) Any Partner who shall assign all its interest in the Partnership in accordance with the terms and provisions of this Paragraph 11 shall cease to be a Partner of the Partnership and shall no longer have any rights or privileges of a Partner.

(d) If any assignment of the interest of a Partner shall be made (and be consented to by all Partners), there shall be filed with the Partnership a duly executed and acknowledged counterpart of the instrument making such assignment, and such instrument must evidence the written acceptance of the assignee to all the terms and provisions of this Partnership Agreement and if such an instrument is not so filed, the Partnership need not recognize any such assignment for any purpose hereunder.

12. **Additional Limited Partners.** The General Partner is authorized at any time and from time to time, to admit to the Partnership additional Limited Partners upon each such additional Limited Partner's making, or agreeing to make, such contributions to the capital of the Partnership as the General Partner shall determine.

13. **Priorities.** No Partner shall have any right of priority over any other Partner as to contributions or as to compensation by way of income.

14. **Continuation.** Upon the dissolution, bankruptcy or withdrawal from the Partnership of the General Partner, any remaining or surviving General Partner or Limited Partner may elect to continue the business of the Partnership in accordance with the applicable provisions of the Revised Uniform Limited Partnership Act of the State of Alabama.

15. **Demands for Property.** A Limited Partner has no right to demand and receive property in return for its capital contribution.

16. **Additional Provisions.**

(a) Management and control of the business and affairs of the Partnership shall be vested solely in the General Partner; except as otherwise expressly provided herein, no Limited Partner shall have or exercise any rights in connection with the management of such business. The General Partner shall devote such time to the conduct of the business of the Partnership as may be reasonably necessary, but it shall not be precluded from conducting other businesses as well, even if in so doing it competes directly or indirectly with the Partnership or any of the property of the Partnership.

(b) The General Partner shall have all powers, rights and authority necessary to conduct the business and affairs of the Partnership, including, without limitation, the power to take any and all action in furtherance of the purposes of the Partnership. In connection with the authority granted herein to the General Partner, the General Partner shall have the right to take all action on behalf of the Partnership which the General Partner, in its sole and absolute discretion, determines to be necessary or appropriate with respect to the conduct of the business and affairs of the Partnership including, without limitation, the right, power and authority, without obtaining or any requirement to obtain the consent or approval of any of the Limited Partners, to (a) sell, convey and otherwise dispose of all or substantially all or any part of the real property (whether improved or unimproved) or personal property, tangible or intangible (the "Assets"), owned by the Partnership, (b) obtain and incur financing and other indebtedness on behalf of the Partnership, (c) purchase and acquire assets of any nature on behalf of the Partnership, (d) execute and deliver, on behalf of the Partnership, any and all documents, instruments and agreements relating to the acquisition, construction, development, financing, leasing, operation, management and sale of any Partnership property or the Assets and (e) do any and all further acts on behalf of the Partnership which the General Partner, in its sole and absolute discretion, determines to be advisable or in the interests of the Partnership.

(c) The General Partner is authorized to act as Tax Matters Partner for the Partnership as provided in Section 6221 through 6232 of the Code.

(d) The Limited Partner (including a Substitute or additional Limited Partner) and any additional General Partner hereby irrevocably constitutes, and empowers to act alone, the General Partner, from time to time serving in such capacity, as attorney-in-fact for such Partners, with full power of substitution, with authority to execute, acknowledge and swear to all instruments and file all documents requisite to carrying out the intention and purpose of this Agreement, including, without limitation, all business certificates and necessary certificates of limited partnership and amendments thereto from time to time in accordance with all applicable laws. The General Partner shall not be required to provide Limited Partners with copies of any such certificate. The foregoing appointment shall be deemed to be a power coupled with an interest in recognition of the fact that each of the Partners under this Agreement will be relying upon the power of the General Partner to act as contemplated by this Agreement in such filing and other action on behalf of the Partnership and the Partners. The foregoing power of attorney shall survive the assignment by any Partner of the whole or any part of his or its interest hereunder or the retirement of any appointing General Partner.

17. **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Alabama.

IN WITNESS WHEREOF, the undersigned have subscribed and sworn to this Certificate and Agreement of Limited Partnership as of the 12th day of February, 1997.

GENERAL PARTNER:

DANIEL REALTY CORPORATION
an Alabama corporation

By: Donald K. Lloyd
Donald K. Lloyd
Senior Vice President

LIMITED PARTNER:

DANIEL REALTY SERVICES, L.L.C.
an Alabama limited liability company

By: Donald K. Lloyd
Donald K. Lloyd
Senior Vice President

STATE OF ALABAMA)

SHELBY COUNTY)

I, the undersigned, a Notary Public in and for said county, in said state, hereby certify that Donald K. Lloyd whose name as Senior Vice 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 on the day the same bears date for and as the act of such corporation.

Given under my hand and official seal, this the 12th day of February, 1997.

Sheila A. Ellis
Notary Public
My Commission Expires: 2/26/98

STATE OF ALABAMA)

SHELBY COUNTY)

I, the undersigned, a Notary Public in and for said county, in said state, hereby certify that Donald K. Lloyd whose name as Senior Vice President of DANIEL REALTY SERVICES, L.L.C., an Alabama limited liability company, 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 on the day the same bears date for and as the act of such limited liability company.

Given under my hand and official seal, this the 12th day of February, 1997.

Shirley H. Ellis
Notary Public
My Commission Expires: 2/26/98

This instrument prepared by and upon recording should be returned to:

Stephen R. Monk, Esq.
Bradley Arant Rose & White LLP
2001 Park Place North, Suite 1400
Birmingham, AL 35203

Inst # 1997-04678