

**RECORDER NOTE: THIS MORTGAGE AMENDMENT IS GIVEN AS ADDITIONAL COLLATERAL FOR A MORTGAGE AMENDMENT BETWEEN GREYSTONE DEVELOPMENT COMPANY, L.L.C, AND SOUTHTRUST BANK, SUCH MORTGAGE AMENDMENT BEING RECORDED CONTEMPORANEOUSLY HERewith IN THE OFFICE OF THE JUDGE OF PROBATE OF SHELBY COUNTY, ALABAMA, UPON WHICH MORTGAGE TAX IS BEING PAID. NO ADDITIONAL RECORDING TAX WILL BE PAYABLE UPON THE RECORDING OF THIS MORTGAGE AMENDMENT, WHICH IS GIVEN AS ADDITIONAL COLLATERAL.**

THIS INSTRUMENT PREPARED BY:

Gail Livingston Mills  
Burr & Forman LLP  
3100 SouthTrust Tower  
420 North 20<sup>th</sup> Street  
Birmingham, Alabama 35203

STATE OF ALABAMA     )  
SHELBY COUNTY         )

**AMENDMENT TO MORTGAGE AND SECURITY AGREEMENT**

**THIS AMENDMENT TO MORTGAGE AND SECURITY AGREEMENT** (this "Agreement"), made as of the 8<sup>th</sup> day of September, 2003, is between **DANIEL OAK MOUNTAIN LIMITED PARTNERSHIP**, an Alabama limited partnership, as mortgagor, whose address is c/o Daniel Realty Corporation, 3595 Grandview Parkway, Suite 4000, Birmingham, Alabama, 35243-1930, Attention: Christopher A. Brown (hereinafter called "Daniel Oak Mountain"), and **SOUTHTRUST BANK**, an Alabama banking corporation, as mortgagee and secured party, whose address is Post Office Box 2554, Birmingham, Alabama 35290, Attention: Real Estate Loan Department (hereinafter called "Lender").

**RECITALS**

A. Lender is owner and holder of that certain Mortgage and Security Agreement from the Daniel Oak Mountain in favor Lender, dated December 21, 2000, recorded as Instrument Number 2001-02190 with the Office of the Judge of Probate of Shelby County, Alabama, as amended by that certain Second Amended and Ratification Agreement dated November 14, 2002 among Daniel Oak Mountain, Greystone Development Company, LLC, an Alabama limited liability company ("GDC"), Daniel Realty Company, an Alabama general partnership ("Guarantor"), and Lender (as amended, the "Mortgage/Phase I"). The Mortgage/Phase I secures a loan (the "Development Loan") made by the Lender to GDC in the original principal amount of \$9,195,858.08, which Development Loan has been restated by a Second Amended and Restated Promissory Note dated November 14, 2002, in the principal amount of \$3,761,832.64, and which has a current outstanding principal balance of \$1,145,034.29.

B. GDC has requested that Lender re-advance to GDC up to Two Million Two Hundred Thousand Dollars (\$2,200,000) of the Development Loan proceeds which have been

repaid by GDC (the "Loan Increase"). Lender has agreed to make such Loan Increase, provided that, among other things, the parties execute, deliver, and record this Agreement.

C. Daniel Oak Mountain and Lender desire to amend the Mortgage/Phase I to include the Loan Increase, and to secure the Loan Increase by the lien of said Mortgage/Phase I.

### **AGREEMENT**

**NOW, THEREFORE**, in consideration of the Loan Increase, and in order to secure the same, the parties agree as follows:

1. All defined terms used in this Agreement without definition shall have the meaning set forth in the Mortgage/Phase I.

2. The Mortgage/Phase I is hereby modified and amended to provide that it shall henceforth secure the Loan Increase as well as the original Loan. Accordingly, all references in such documents to the "Loan" shall henceforth refer to a Loan in the original stated principal amount of \$3,345,034.29 (which amount includes the Loan Increase). Furthermore, all references in the Mortgage/Phase I to the "Note" shall henceforth refer to that certain Third Amended and Restated Promissory Note of even date herewith payable by GDC to the order of the Lender, and all references in the Mortgage/Phase I to the "Loan Agreement" shall henceforth refer to that certain Third Amended and Restated Loan Agreement of even date herewith between GDC and Lender. It is the express intent of the parties that the Loan Increase shall be secured by the Mortgage/Phase I to the same extent as if such Loan Increase had been made on the date of the execution of said Mortgage/Phase I. GDC, Daniel Oak Mountain, Daniel Real Company, and Lender have entered into that certain Third Amendment and Ratification Agreement of even date herewith, which such document shall henceforth be deemed a "Loan Document" secured by the Mortgage/Phase I. All references in the Mortgage/Phase I to the Assignment and Pledge/Development Funds Escrow, the "Assignment and Pledge/Lot Deposits," the "Environmental Indemnity/Phase I," the "Environmental Indemnity/Phase II," the "Assignment and Pledge/Lot Contracts Phase II," and the "Guaranty" shall henceforth be deemed to refer to such documents.

3. The Mortgage/Phase I is hereby further modified and amended to delete from the Exhibit "A" attached to the Mortgage/Phase I those certain tracts of property which are more particularly described on Exhibit "A-1" attached hereto, which such tracts are being conveyed on or about the date hereby by Daniel Oak Mountain to Greystone Golf, LLC. This is a partial release of collateral, and all other collateral not specifically released remains encumbered thereby and unaffected by this Partial Release. Nothing herein shall be deemed a payment in full of the debt secured by the Mortgage/Phase I.

4. Daniel Oak Mountain represents and warrants that all representations and warranties set forth in the Mortgage/Phase I are true and correct in all material respects on the



date hereof. Daniel Oak Mountain further represents and warrants that, to the best of its knowledge, no Default or Event of Default has occurred or exists under the Mortgage/Phase I.

5. No right of Lender with respect to the Mortgage/Phase I or other Loan Documents is or will be in any manner released, destroyed, diminished, or otherwise adversely affected by this Amendment.

6. All references in the Loan Documents to the Mortgage/Phase I shall be deemed to refer, from and after the date hereof, to the Mortgage/Phase I, as amended hereby, and as the same may be hereafter amended.

7. Except as hereby expressly modified and amended, the Mortgage/Phase I shall remain in full force and effect, and the Mortgage/Phase I, as so amended, are hereby ratified and affirmed in all respects. Daniel Oak Mountain confirms that it has no defenses or setoffs with respect to its obligations pursuant to the Mortgage/Phase I, as herein amended.

8. This Amendment shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns.

9. This Amendment may be executed in counterparts, each of which shall be an original, but all of which when taken together shall constitute one and the same instrument.


10. BORROWER HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (i) ARISING OUT OF OR IN ANY WAY PERTAINING OR RELATING TO THIS AGREEMENT, THE MORTGAGE/PHASE I, OR THE OTHER LOAN DOCUMENTS, OR (ii) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THIS AGREEMENT, THE MORTGAGE/PHASE I, OR THE OTHER LOAN DOCUMENTS OR IN CONNECTION WITH THE TRANSACTIONS RELATED THERETO OR CONTEMPLATED THEREBY OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES THEREUNDER, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. BORROWER AGREES THAT LENDER MAY FILE A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED AGREEMENT OF BORROWER IRREVOCABLY TO WAIVE ITS RIGHT TO TRIAL BY JURY, AND THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN BORROWER AND LENDER SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be properly executed and delivered on the date of the notary acknowledgments set forth below, to be effective as of the day and year first above written.

**DANIEL OAK MOUNTAIN:**


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

BY: **DANIEL REALTY INVESTMENT CORPORATION--**  
**OAK MOUNTAIN, an Alabama corporation**  
Its General Partner

BY:   
Christopher A. Brown  
Its Senior Vice President

**LENDER:**

**SOUTHTRUST BANK**  
an Alabama banking corporation

BY:   
Stephen T. Hodges  
Its Group Vice President

STATE OF ALABAMA     )  
JEFFERSON COUNTY    )

I, the undersigned, 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 Realty Investment Corporation--Oak Mountain, an Alabama corporation, as general partner of Daniel Oak Mountain Limited Partnership, an Alabama limited partnership, is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of said conveyance, he/she, 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, as aforesaid.

Given under my hand and seal of office this 25<sup>th</sup> day of August, 2003.

*Ringer A. M. Coyle*  
Notary Public

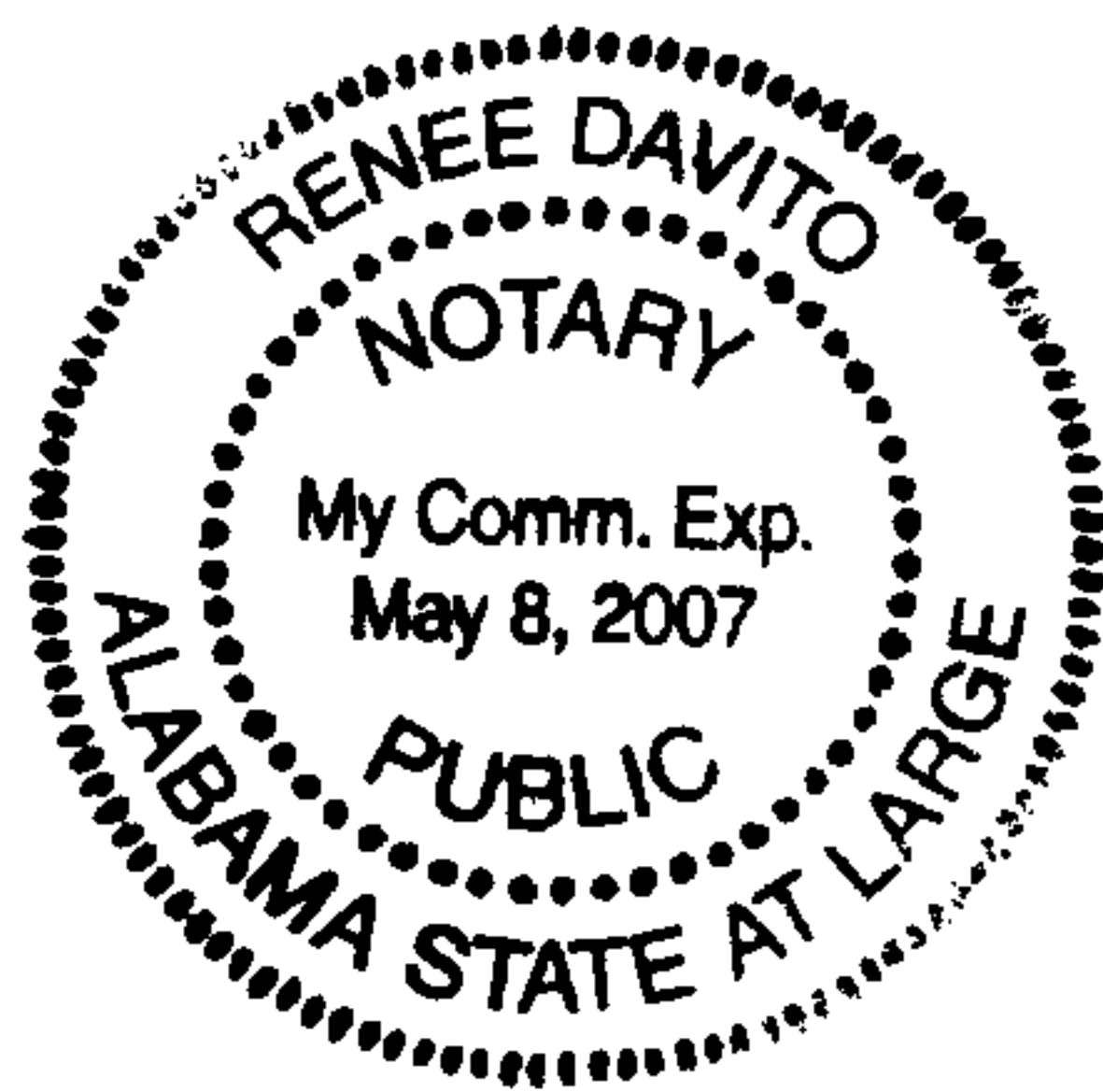
[NOTARIAL SEAL]

My commission expires: MY COMMISSION EXPIRES AUGUST 2, 2004

STATE OF ALABAMA     )  
JEFFERSON COUNTY    )

I, the undersigned, hereby certify that Stephen T. Hodges, whose name as Group Vice President of SouthTrust Bank, an Alabama banking corporation, 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 the instrument, he, as such officer, executed the same voluntarily and with full authority for and as the act of said association.

Given under my hand and seal of office this 27<sup>th</sup> day of August, 2003.



*Renee Davito*  
Notary Public

My commission expires: 5/8/07



## **EXHIBIT A-1**

### **Real Property Deleted from Mortgage/Phase I**

#### **Parcel I**

A parcel of land situated in Section 27, Township 18 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

Begin at an iron pin found at the Northeast corner of Lot 57A of a Resurvey of Lots 57 and 58 Greystone 8<sup>th</sup> Sector, as recorded in Map Book 26 on Page 120, in the Office of the Judge of Probate, Shelby County, Alabama, said point also being on the Southwest right-of-way line of Castlehill Road, in said Greystone 8<sup>th</sup> Sector; thence run in a Southeasterly direction along the Northeast line of Lot 57A for a distance of 65.95 feet to an iron pin found; thence turn an angle to the left of 116 degrees, 06 minutes, 23 seconds and run in a Northeasterly direction for a distance of 80.74 feet to an iron pin found; thence turn an angle to the left of 78 degrees, 42 minutes, 15 seconds and run in a Northwesterly direction for a distance of 64.91 feet to an iron pin set on the Southeast right-of-way line of said Castlehill Road; thence turn an angle to the left of 105 degrees, 54 minutes, 12 seconds and run in a Southwesterly direction along the Southeast right-of-way line of said Castlehill Road for a distance of 20.01 feet to an iron pin found on a curve to the right having a central angle of 02 degrees, 00 minutes, 54 seconds and a radius of 1,267.11 feet; thence run in a Southwesterly direction along the arc of said curve for a distance of 44.56 feet to the point of beginning; said parcel of land containing 4,400 square feet, more or less.

#### **Parcel II**

A parcel of land situated in the South half of Section 28, Township 18 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Northeast corner of Lot 2, Greystone 9<sup>th</sup> Sector, as recorded in Map Book 21 on Page 143, in the Office of the Judge of Probate, Shelby County, Alabama, said point also being on the South right of way line of Greystone Way, as recorded in said Greystone 9<sup>th</sup> Sector; thence run in a Northwesterly direction along the North line of said Lot 2 and also along the South line of said Greystone Way for a distance of 110.53 feet to a point; thence turn an angle to the right of 90 degrees, 00 minutes, 00 seconds and run in a Northeasterly direction for a distance of 60.00 feet to a point on a curve to the left, having a central angle of 02 degrees, 20 minutes, 08 seconds and a radius of 510.49 feet, said point also being on the North right of way line of said Greystone Way; thence run in a Northwesterly direction along the North line of said Greystone Way for a distance of 20.81 feet to the point of beginning; said point of beginning also being on the North right of way line of said Greystone Way; thence turn an angle to the right from the chord of said curve of 114 degrees, 32 minutes, 26 seconds and run in a Northeasterly direction for a distance of 537.97 feet to a point; thence turn an angle to the left of 79 degrees, 39 minutes,

20 seconds and run in a Northwesterly direction for a distance of 85.75 feet to a point; thence turn an angle to the left of 141 degrees, 22 minutes, 27 seconds and run in a Southeasterly direction for a distance of 39.43 feet to a point; thence turn an angle to the right of 31 degrees, 30 minutes, 12 seconds and run in a Southwesterly direction for a distance of 58.48 feet to a point; thence turn an angle to the right of 13 degrees, 26 minutes, 12 seconds and run in a Southwesterly direction for a distance of 86.05 feet to a point; thence turn an angle to the right of 06 degrees, 40 minutes, 17 seconds and run in a Southwesterly direction for a distance of 385.36 feet to a point; thence turn an angle to the right of 36 degrees, 12 minutes, 53 seconds and run in a Southwesterly direction for a distance of 87.77 feet to a point; thence turn an angle to the left of 39 degrees, 20 minutes, 52 seconds and run in a Southwesterly direction for a distance of 29.65 feet to a point; thence turn an angle to the right of 31 degrees, 45 minutes, 15 seconds and run in a Southwesterly direction for a distance of 68.94 feet to a point; thence turn an angle to the left of 51 degrees, 59 minutes, 06 seconds and run in a Southwesterly direction for a distance of 47.39 feet to a point; thence turn an angle to the right of 22 degrees, 25 minutes, 45 seconds and run in a Southwesterly direction for a distance of 40.51 feet to a point on a curve to the right, having a central angle of 05 degrees, 50 minutes, 16 seconds and a radius of 510.49 feet, said point also being on the North right of way line of said Greystone Way; thence turn an angle to the left to the chord of said curve of 159 degrees, 41 minutes, 43 seconds and run in a Northeasterly direction along the arc of said curve for a distance of 52.01 feet to a point, said point also being on the North right of way line of said Greystone Way; thence turn an angle to the left from the chord of said curve of 65 degrees, 45 minutes, 54 seconds and run in a Northerly direction for a distance of 45.27 feet to a point; thence turn an angle to the right of 90 degrees, 30 minutes, 37 seconds and run in a Northeasterly direction for a distance of 54.84 feet to a point; thence turn an angle to the right of 75 degrees, 19 minutes, 12 seconds and run in a Southeasterly direction for a distance of 26.03 feet to a point on a curve to the right, having a central angle of 24 degrees, 10 minutes, 53 seconds and a radius of 510.49 feet, said point also being on the North right of way line of said Greystone Way; thence turn an angle to the left to the chord of said curve of 77 degrees, 50 minutes, 26 seconds and run along the arc of said curve in a Northeasterly direction for a distance of 215.45 feet to the point of beginning; said parcel of land containing 1.3 acres, more or less.