

2079

AGREEMENT

THIS AGREEMENT is made and entered into as of the 6th day of June, 1991 between DANIEL OAK MOUNTAIN LIMITED PARTNERSHIP, an Alabama limited partnership ("Seller"), and GREYSTONE CLOSE, an Alabama joint venture ("Purchaser").

R E C I T A L S:

Contemporaneously herewith, Seller has sold and conveyed to Purchaser and Purchaser has purchased and accepted from Seller that certain real property situated in Shelby County, Alabama (the "Phase I Property") which is more particularly described in Exhibit A attached hereto and incorporated herein by reference. Purchaser desires to develop the Phase I Property substantially in accordance with the development plan (the "Development Plan") attached hereto as Exhibit B and incorporated herein by reference.

Seller and Purchaser have also entered into a Sales Contract of even date herewith, a copy of which is attached hereto as Exhibit C and incorporated herein by reference (the "Phase II Sales Contract"), pursuant to which Seller has agreed to sell and Purchaser has agreed to purchase the real property described therein as the "Property" (the "Phase II Property"). The legal description of the Phase II Property is set forth in Appendix I to the Phase II Sales Contract. The Phase I Property and the Phase II Property are contiguous.

The purchase price for the Phase II Property is \$335,825.00 (the "Purchase Price"), as more particularly set forth in the Phase II Sales Contract. Purchaser has agreed to pay to Seller certain portions of the proceeds received by Purchaser from the sale of portions of the Phase I Property, which proceeds shall be held as earnest money by Seller and applied to the Purchase Price payable by Seller for the Phase II Property. Upon the payment in full of the Purchase Price on or before the "Termination Date", as hereinafter defined, Seller has agreed to convey the Phase II Property to Purchaser.

NOW, THEREFORE, in consideration of the premises, the mutual covenants, promises and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties hereby agree as follows:

1. Payment of Sales Proceeds.

(a) From and after the date hereof and continuing thereafter until the first to occur of either (i) the "Termination Date" (as defined in Paragraph 3 below) or (ii) the payment by Purchaser of the entire Purchase Price, Purchaser does hereby covenant and agree to pay to Seller the sum of \$22,000.00 per lot (the "Release Fee") from the proceeds received by Purchaser from the sale of each lot (as shown on the Development Plan) comprising the Phase I Property. If, for any reason, the entire Purchase Price has not been paid in full by ~~September 30, 1991~~ *October 6* 1991, then Purchaser agrees to pay to Seller, in addition to the Release Fee, the additional sum of \$1,000.00 per lot (the "Extension Fee") from the proceeds received by Purchaser from the sale of each lot (as shown on the Development Plan) comprising the Phase I Property closed after ~~September 30, 1991~~ *October 6* 1991. *MOF NR by PH*

(b) All amounts payable by Purchaser to Seller as the Release Fee from each lot sale of any of the Phase I Property shall be deemed earnest money under the Phase II Sales Contract and shall be held and applied as provided in Paragraph 2 below. The Release Fee and Extension Fee shall

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be paid by Purchaser to Seller in immediately available funds concurrently with the sale of any portion of the Phase I Property.

(c) To the extent required by any purchaser, lender or title insurance company providing title insurance for any portions of the Phase I Property, Seller agrees to execute and deliver to Purchaser, upon Seller's receipt of the appropriate Release Fee (and Extension Fee, if applicable), a partial release or other instruments reasonably requested by Purchaser to evidence Seller's receipt of the Release Fee and to otherwise release the lot sold by Purchaser from the obligations of this Agreement.

(d) Purchaser and Seller acknowledge and agree that the foregoing agreement of Purchaser to pay to Seller the Release Fee and, if applicable, the Extension Fee, from the proceeds received by Purchaser from the sale of each lot comprising part of the Phase I Property is a material consideration for Seller's agreement to sell the Phase I Property to Purchaser and for Seller to enter into the Phase II Sales Contract. Purchaser and its general partner represent and warrant that they (through their principals, stockholders, officers and directors) are experienced in the acquisition and development of real estate and have entered into this Agreement with full knowledge that the entire amount paid by Purchaser to Seller in Release Fees and Extension Fees shall be subject to forfeiture, as liquidated damages, at the option of Seller or otherwise retained by Seller in any action for damages or specific performance maintained by Seller against Purchaser should the entire Purchase Price for the Phase II Property not be paid in full by the Termination Date (as defined in Paragraph 3 below). Purchaser further represents that the structure for the purchase and sale of the Phase II Property has been suggested by Purchaser, that Purchaser has entered into this Agreement with full knowledge of the facts and consequences which will result should the entire Purchase Price for the Phase II Property not be paid in full by the Termination Date (as defined in Paragraph 3 below) and that Purchaser has had the opportunity to seek and obtain legal advice from its own legal counsel prior to entering into this Agreement.

2. Application to Purchase Price.

(a) All amounts paid by Purchaser to Seller as a Release Fee shall be deemed earnest money under the Phase II Sales Contract and shall be applied one hundred percent (100%) to the Purchase Price. All amounts, if any, paid by Purchaser to Seller as an Extension Fee shall (i) be deemed a fee payable by Purchaser to extend the purchase and sale transaction contemplated by the Phase II Sales Contract from September 30, 1991 to the Termination Date (as described below), (ii) not be deemed earnest money under the Phase II Sales Contract and (iii) not be applied to or reduce the Purchase Price.

(b) Seller does hereby covenant and agree to convey to Purchaser the Phase II Property in accordance with the terms and conditions of the Phase II Sales Contract upon its receipt of funds from Purchaser equal to the entire Purchase Price so long as the entire Purchase Price is paid in full on or before the Termination Date (as defined in Paragraph 3 below). All interest paid or received by Seller on any portion of the Release Fees and, if applicable, Extension Fees, shall belong to and be deemed the exclusive property of Seller.

3. Termination Date.

(a) Seller and Purchaser agree that if, for any reason, the entire Purchase Price has not been paid by Purchaser to Seller by 5:00 p.m. Central Standard Time on December 31, 1991 (the "Termination Date"), then (i)

Purchaser shall be deemed in default in the payment and performance of its obligations under the Phase II Sales Contract and Seller shall be entitled to exercise all rights and remedies set forth herein and (ii) Purchaser shall be deemed to have waived all rights and interest, either equitable or otherwise, in the Phase II Property and the Phase II Sales Contract.

(b) In the event Purchaser fails to carry out and perform all of its obligations set forth in the Phase II Sales Contract (including, specifically, any failure by Purchaser to pay the entire Purchase Price for the Phase II Property on or before the Termination Date), then Seller shall have the right, at Seller's option, to (i) enforce by specific performance the Phase II Sales Contract and Purchaser's obligations to purchase the Phase II Property and pay the Purchase Price, (ii) seek the recovery of all damages incurred by Seller less the value of any benefit accruing to the Seller by virtue of the existence of the development of the Phase I as a result of Purchaser's failure to close the transaction contemplated in the Phase II Sales Contract or (iii) retain, as liquidated damages, the Release Fees paid by Purchaser to Seller as earnest money and all other amounts paid by Purchaser to Seller as Extension Fees and thereupon terminate this Agreement and the Phase II Sales Contract in which event neither party shall have any further obligation to the other hereunder or under the Phase II Sales Contract. In the event Seller elects to terminate this Agreement and the Phase II Sales Contract as provided herein, Seller shall have no obligation to refund, rebate or otherwise pay over to Purchaser any portion of the Purchase Price previously paid by Purchaser to Seller and Purchaser shall, from and after the termination of this Agreement and the Phase II Sales Contract by Seller, be deemed to have waived and released any and all right, title and interest, whether equitable or otherwise, to the Phase II Property. Furthermore, in the event of any default by Purchaser hereunder or in the Phase II Sales Contract, Purchaser agrees to pay all costs and expenses incurred by Seller as a result thereof, including, without limitation, court costs, collection costs and reasonable attorneys' fees.

(c) Seller shall have the right, at any time and from time to time, after the Termination Date, to execute and record any ex parte instruments, certificates, documents or agreements necessary or required to evidence that this Agreement, the Phase II Sales Contract and all rights of Purchaser therein and in the Phase II Property have terminated, which ex parte instruments, certificates, documents or agreements shall be binding upon and inure to the benefit of Seller and Purchaser and their respective successors and assigns. Purchaser does hereby irrevocably appoint Seller as its agent and attorney-in-fact for the purpose of executing, signing, acknowledging, swearing to and recording any and all instruments, certificates, documents and agreements which Seller deems necessary or desirable to reflect that this Agreement, the Phase II Sales Contract and all rights of Purchaser therein and in and to the Phase II Property have terminated and are of no further force or effect for and in the name, place and stead of Purchaser. The power and authority granted herein is hereby declared to be irrevocable and a power coupled with an interest which shall survive the death or dissolution of Purchaser and be binding upon Purchaser, its successors and assigns; provided, however, that nothing herein shall be construed so as to prevent the Purchaser from asserting any claim or right to which it is entitled under this agreement and the laws of the State of Alabama.

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4. Covenants of Purchaser. From and after the date hereof and continuing until the earlier of either (a) the payment in full of the Purchase Price or (b) the Termination Date, Purchaser covenants and agrees that:

(i) Purchaser shall not transfer, convey, sell, exchange or enter into any contract for the sale of any lot within the Phase I Property (as shown on the Development Plan) unless the purchase price for such lot is equal to or greater than the Release Fee described above;

(ii) Purchaser shall not mortgage, encumber, assign, transfer, pledge or otherwise hypothecate any interest of Purchaser in any portion of the Phase I Property, any proceeds payable with respect to the sale of any portion of the Phase I Property or its rights under this Agreement or the Phase II Sales Contract; and

(iii) The Phase I Property shall be developed substantially in accordance with the Development Plan and Purchaser shall not alter or change the manner in which the Phase I Property is to be developed from that set forth in the Development Plan.

To the extent Purchaser desires to undertake any of the foregoing actions, Purchaser shall first obtain the prior written approval of the same from Seller, which approval may be withheld in the sole discretion by Seller.

5. Incorporated by Reference. The Phase II Sales Contract which is attached to this Agreement as Exhibit C is hereby incorporated into this Agreement as if the terms and provisions thereof were fully set out herein.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

SELLER:

DANIEL OAK MOUNTAIN LIMITED PARTNERSHIP, an Alabama limited partnership

By: Daniel Realty Investment Corporation - Oak Mountain, an Alabama corporation, its General Partner

By: W. J. P. Fullen
Its: Gen. J. P.

PURCHASER:

GREYSTONE CLOSE, an Alabama joint venture

BY: NORVILLE-RANDOLPH AT GREYSTONE, LTD., an Alabama limited partnership, A General Partner

By: Norville-Randolph, Inc., an Alabama corporation, Its General Partner

By: T. Peyton Ansell
Its: President

STATE OF ALABAMA)

COUNTY OF SHELBY)

I, the undersigned, a Notary Public in and for said county, in said state, hereby certify that MICHAEL D. FULLER 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 instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instruments, he, as such officer and with full authority, executed the same voluntarily, for and as the act of said corporation, in its capacity as General Partner as aforesaid.

Given under my hand and official seal, this the 6th day of JUNE, 1991.

Sheila D. Ellis
Notary Public

My Commission Expires: 2/26/94

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STATE OF ALABAMA)

COUNTY OF SHELBY)

I, the undersigned, a Notary Public in and for said county, in said state, hereby certify that T. PEYTON NORVILLE, III whose name as PRESIDENT of NORVILLE-RANDOLPH, INC., as General Partner of Norville-Randolph at Greystone, Ltd., an Alabama limited partnership as a general partner of Greystone Closé, an Alabama joint venture, 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 instruments, he, as such officer and with full authority, executed the same voluntarily, for and as the act of said corporation, in its capacity as General Partner as aforesaid.

Given under my hand and official seal, this the 6th day of JUNE, 1991.

Sheila D. Ellis
Notary Public

My Commission Expires: 2/26/94

Exhibit A

Phase I Property

A parcel of land situated in the South one-half of Section 32 and 33, Township 18 South, 1 West, and the Northeast quarter of the Northeast quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

Commence at a 3" capped iron locally accepted to be the southwest corner of said Section 33; thence run east along the south line of said Section 33 for a distance of 745.00 feet to an iron pin set; thence turn an angle to the left of 69° 31' 47" and run in a northeasterly direction for a distance of 619.23 feet to an iron pin set; thence turn an angle to the left of 119° 04' 00" and run in a southwesterly direction for a distance of 126.84 feet to an iron pin set on a curve to the right having a central angle of 17° 43' 34" and a radius of 1,890.00 feet; thence run in a southwesterly to northwesterly direction along the arc of said curve for a distance of 584.73 feet to an iron pin set at the point of beginning of the parcel herein described; said point being on a compound curve to the right having a central angle of 2° 16' 46" and a radius of 1890.00 feet; thence run in a northwesterly direction along the arc of said curve for a distance of 75.19 feet to an iron pin set; thence run tangent to last stated curve in a northwesterly direction for a distance of 250.36 feet to an iron pin set on a curve to the left having a central angle of 3° 49' 33" and a radius of 370.00 feet; thence run in a northwesterly direction along the arc of said curve for a distance of 24.71 feet to an iron pin set; thence turn an interior counterclockwise angle from the chord of last stated curve of 99° 29' 47" and run in a northerly direction for a distance of 60.00 feet to an iron pin set; thence turn an angle to the left of 90° 00' 00" and run in a westerly direction for a distance of 166.64 feet to an iron pin set on a curve which is concave to the west having a central angle of 1° 54' 07" and a radius of 2,226.56 feet; thence turn an angle to the left of 96° 03' 30" to the chord of said curve and run in a southwesterly direction along the arc of said curve for a distance of 73.91 feet to an iron pin set on a curve to the left which is concave to the southeast having a central angle of 9° 44' 39" and a radius of 370.00 feet; thence turn an interior clockwise angle from chord to chord of 253° 53' 20" and run in a southwesterly direction along the arc of said curve for a distance of 62.92 feet to an iron pin set; thence turn an angle to the right of 22° 10' 10" from the chord of last stated curve and run in a westerly direction for a distance of 154.69 feet to an iron pin set; thence turn an angle to the left 93° 50' 53" and run in a southeasterly direction for a distance of 174.89 feet to an iron pin set; thence turn an angle to the right of 3° 50' 53" and run in a southerly direction for a distance of 442.90 feet to an iron pin set; thence turn an angle to the left of 70° 46' 04" and run in a southeasterly direction for a distance of 475.38 feet to an iron pin set on the east line of said Section 5; thence turn an angle to the left of 108° 51' 58" and run in a northerly direction along the east line of said Section 5 for a distance of 63.11 feet to an iron pin set; thence turn an angle to the left of 71° 06' 05" and run in a northwesterly direction for a distance of 27.25 feet to an iron pin set on a curve to the right

having a central angle of $57^{\circ} 21' 51''$ and a radius of 270.00 feet; thence run in a northwesterly direction along the arc of said curve for a distance of 270.32 feet to a point of a compound curve to the right having a central angle of $103^{\circ} 22' 16''$ and a radius of 25.00 feet, said point being an iron pin set; thence run in a northeasterly direction along the arc of said curve for a distance of 45.10 feet to an iron pin set; thence run tangent to last stated curve and also parallel to the south line of said Section 33 for a distance of 429.50 feet to an iron pin set; thence turn an angle to the left of $90^{\circ} 00' 00''$ and run in a northerly direction for a distance of 448.88 feet to the point of beginning. Said parcel containing 9.629 acres, more or less.

Exhibit B



GREYSTONE CLOSE

SCHEMATIC UTILITY LAYOUT

[illegible]

NOTE: GRANTOR'S ACCESS PROPERTY AND
GRANTEE'S ACCESS PROPERTY COLLECTIVELY
FORM THE ACCESS ROADWAY

GRANTOR'S ACCESS PROPERTY

INTERIOR ROADS

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THE UNIVERSITY OF CHICAGO

Adjacent Property:

LOSS EASEMENT
PROPERTY

Exhibit C
Phase II Sales Contract

June

1991

The undersigned Purchaser(s) Greystone Close and the undersigned Seller, DANIEL OAK MOUNTAIN LIMITED PARTNERSHIP, an Alabama limited partnership, hereby agrees to purchase to sell the following described real property situated in City of Hoover, County of Shelby, State of Alabama (the "Property"), on the terms stated below:

Address 8.96 acres of medium density property situated within the Greystone Planned Unit and legally described as Development, as more particularly described in Appendix I attached hereto and incorporated herein by reference

Recorded in the Probate Office of Shelby County, Alabama

Map Book

Page

The Property shall be conveyed to Purchaser subject to all easements, restrictions, rights-of-way, reservations, building setback lines and other matters of record, including, specifically, the Greystone Residential Declaration of Covenants, Conditions and Restrictions dated 1991, recorded in Page in the Probate Office of Shelby County, Alabama and all amendments thereto (which, together with all amendments thereto, is hereinafter referred to as the "Declaration"), and the Reciprocal Easement Agreement, as described in the Declaration.

1. THE PURCHASE PRICE: The purchase price for the Property shall be \$ 335,825.00, payable as follows:

Earnest Money, receipt of which is hereby acknowledged by Agent

\$

*

Cash at closing this sale (payable by cashier's check)

\$

*

Total Purchase Price \$ 335,825.00

"Earnest money equal to the "Release Fee" (as defined in the attached "Agreement") shall be paid by Purchaser to Seller from the sales proceeds received from the sale of each lot within the "Phase I Property" (as described in the attached "Agreement"). Cash due at closing shall be the difference between the Purchase Price set forth above and the total amount paid by Purchaser to Seller in "Release Fees" through the date of closing.

THIS SALES CONTRACT FORMS A PART OF THE AGREEMENT DATED JUNE 1991 (the "Agreement") BETWEEN SELLER AND PURCHASER, THE TERMS OF WHICH ARE INCORPORATED HEREIN BY REFERENCE.

Purchaser agrees that the Property shall be developed in substantial accordance with the "Development Plan", as described in and attached to the Agreement.

Purchaser is acting as a principal only in this transaction and waives any right to any real estate sales commission or brokerage fee in connection herewith.

2. AGENCY DISCLOSURE: The listing Agency DANIEL REALTY CORPORATION represents the Seller (unless otherwise stated), and the selling Agency N/A represents

N/A Seller N/A Purchaser.

Seller's Initials Purchaser's Initials

3. TITLE INSURANCE: Seller agrees to furnish Purchaser a standard form owner's title insurance policy, issued by a company selected by Seller and qualified to insure titles in Alabama, in the amount of the purchase price, insuring Purchaser against loss on account of any defect or encumbrance in the title, unless herein excepted; otherwise, the earnest money shall be refunded. The Property is sold and is to be conveyed subject to any mineral and mining rights not owned by Seller and subject to present PUD zoning classification, PR-1, and is not located in a flood plain.

4. PRORATIONS: Ad valorem property taxes, as determined on the date of closing, are to be prorated between Seller and Purchaser as of the date of delivery of the deed. Prepaid fire and library district assessments shall not be prorated. Purchaser shall be responsible for the payment of all future fire and library district assessments and any "roll-back" taxes assessed after the date of closing pursuant to Section 40-7-25.3 of the Code of Alabama (1975). As Closing, Purchaser shall pay by separate payment Purchaser's share of the Assessments, as defined in the Declaration, due to Greystone Residential Association, Inc. for the balance owed for the remainder of the calendar year. Regular Assessments for the current calendar year are estimated to be \$ for the entire year.

5. CLOSING AND POSSESSION DATES: The sale shall be closed and the deed delivered on or before **, except Seller shall have a reasonable length of time within which to perfect title or cure defects in the title to the Property. Possession is to be given on delivery of the deed.

**5:00 p.m., Central Standard Time on December 31, 1991

6. CONVEYANCE: Seller agrees to convey the Property to Purchaser by statutory warranty deed free of all encumbrances, except as herein set forth and current and future ad valorem taxes, library district dues and fire district assessments and Seller and Purchaser agree that any encumbrance not herein excepted or assumed may be cleared at the time of closing.

7. CLOSING COSTS AND DOCUMENTS: Seller shall pay for the preparation of the deed. Each party shall bear their own attorneys' fees. Except for the title insurance to be provided and paid for pursuant to Paragraph 3 above, Purchaser shall pay all other closing costs. At closing, Purchaser shall execute a consent form acknowledging any title exceptions to the Property, that Purchaser has physically inspected the Property and that the Property is subject to the restrictive covenants described in the Declaration. Seller's standard form statutory warranty deed shall be utilized. Seller and Purchaser agree to execute such other documents as may be reasonably required to consummate the closing contemplated by this Agreement.

8. CONDITION OF PROPERTY: PURCHASER ACKNOWLEDGES THAT PURCHASER HAS PHYSICALLY AND PERSONALLY INSPECTED THE PROPERTY PRIOR TO EXECUTING THIS AGREEMENT AND THAT SELLER HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO THE PHYSICAL CONDITION OF THE PROPERTY, THE SUITABILITY OF THE PROPERTY FOR ANY INTENDED USE AND/OR WHETHER THERE EXISTS ANY TOXIC OR HAZARDOUS WASTE OR OTHER SUBSTANCE OF ANY KIND ON THE PROPERTY. FURTHERMORE, PURCHASER ACKNOWLEDGES AND AGREES THAT PURCHASER HAS ASSUMED FULL RESPONSIBILITY FOR THE INVESTIGATION AND DETERMINATION OF THE SUITABILITY OF THE SURFACE AND SUBSURFACE CONDITIONS OF THE PROPERTY AND HEREBY WAIVES AND RELEASES SELLER, ITS AGENTS, EMPLOYEES, OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS, MORTGAGEES AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS FROM ANY LIABILITY OF ANY NATURE ON ACCOUNT OF LOSS, DAMAGE OR INJURY TO BUILDINGS, IMPROVEMENTS, PERSONAL PROPERTY OR TO PURCHASER OR ANY OWNER, OCCUPANTS OR OTHER PERSON WHO ENTERS UPON ANY PORTION OF THE PROPERTY AS A RESULT OF ANY PAST, PRESENT OR FUTURE SOIL, SURFACE AND/OR SUBSURFACE CONDITIONS, KNOWN OR UNKNOWN (INCLUDING, WITHOUT LIMITATION, SINKHOLES, UNDERGROUND MINES, TUNNELS AND LIMESTONE FORMATIONS AND DEPOSITS) UNDER OR UPON THE PROPERTY OR ANY PROPERTY SURROUNDING, ADJACENT TO OR IN CLOSE PROXIMITY WITH THE PROPERTY WHICH MAY BE OWNED BY SELLER. THE AGENT MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND AS TO THE CONDITION OF THE PROPERTY. THE FOREGOING PROVISIONS SHALL BE INCLUDED ON THE DEED.

GREYSTONE

Close Development

SALES CONTRACT

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9. **PROTECTIVE COVENANTS:** Purchaser acknowledges that the Property is subject to and shall be conveyed subject to the protective covenants set forth in the Declaration, which include without limitation, building setback requirements, use restrictions limiting the use of the Property to single-family residential purposes only, requirements that all plans and specifications for all improvements be approved by the Greystone architectural review committee and that each property owner pay assessments. Purchaser acknowledges receipt of the Declaration and all other documents and instruments referenced therein, including, without limitation, a copy of the Master Land Use Plan for Greystone, and Purchaser agrees to be bound by all of the terms and provisions set forth therein. Purchaser's Initials _____

10. **MINIMUM FLOOR SPACE/SETBACKS:** Purchaser hereby acknowledges and agrees that the finished floor space in the house to be built on the Property ~~which is the subject of this Contract shall not be less than _____ square feet for a single-story home or _____ square feet for a multi-story home. The Property shall also be subject to the following minimum setbacks: Front Property Line _____ feet, Side Property Line _____ feet, Rear Property Line _____ feet, and that all such restrictions mentioned above shall be contained in the deed.~~ *and minimum setbacks are set forth in the Declaration.

11. **PRIVATE ROADWAYS:** Purchaser acknowledges that the Property will be accessed by means of private roadways which will be paved and built to minimum applicable governmental standards. The private roadways within the Development, as defined as part of the Common Areas in the Declaration, shall be maintained by the homeowners' association for the Development as provided in the Declaration. ~~A good faith estimate of the cost of maintaining all private roadways within the Development for the first ten (10) years of operation is \$11,086.00 per mile, per year, with a total of approximately 14.2 miles of private roadways planned over a period of approximately 15 years for the entire Development, provided, however, that the actual maintenance costs may be greater than or less than the foregoing good faith estimate.~~

12. **GOLF COURSE:** Notwithstanding anything provided herein or in any other agreement to the contrary, the purchase and ownership of the Property shall not entitle Purchaser or its heirs, successors and assigns, to any rights to use or otherwise enter onto the golf course, clubhouse and other related facilities and amenities to be constructed on the Golf Club Property, as defined in the Declaration. Purchaser acknowledges and agrees that the golf club which owns the golf course, clubhouse and related facilities and amenities to be constructed on the Golf Club Property is a distinct private club and ownership of the Property does not entitle Purchaser or its heirs, executors or assigns to any right, title, or interest therein.

See Paragraph 3 of Agreement

13. **EARNEST MONEY AND DEFAULT:** ~~DANIEL REALTY CORPORATION shall hold the earnest money in trust for Seller pending the fulfillment of this contract. In the event Purchaser fails to carry out and perform the terms of this Agreement, the earnest money shall be forfeited to Seller as liquidated damages; this Agreement shall be cancelled and neither party shall have any further obligations hereunder. In the event Seller fails to carry out and perform the terms of this Agreement, then Purchaser may seek specific performance of this Agreement or terminate this Agreement and obtain a refund of the earnest money in which event neither party shall have any further obligation hereunder. Purchaser hereby waives any right to seek or obtain any monetary judgment or damages from Seller as a result of any default hereunder by Seller.~~

14. **PURCHASER'S WARRANTIES:** Purchaser represents and warrants to Seller that Purchaser is purchasing the Property for the purpose of engaging in the business of constructing a residential dwelling thereon for resale in the ordinary course of business or is otherwise acquiring the Property solely for residential purposes.

15. **MISCELLANEOUS:** Purchaser may not assign, transfer, convey or encumber this Agreement or any interest herein, without Seller's prior written consent. This Agreement shall be binding upon and shall inure to the benefit of Seller and Purchaser and their respective heirs, successors and assigns. This Agreement and any addendum attached hereto constitutes the sole and entire agreement between the parties hereto, and this Agreement may not be modified or amended except in a writing signed by both parties hereto. No representations, promises, warranties, understandings or inducements (including, without limitation, that any proposed dwelling or other improvements to be constructed on the Property will be approved) with respect to this Agreement or any of the matters contemplated herein which are not set forth in this Agreement shall be binding upon the parties hereto. The paragraph headings are used for convenience of reference only and in no way define, limit or describe the scope or intent of this Agreement. Time is of the essence of this Agreement. This Agreement has been executed in the State of Alabama and the laws of the State of Alabama shall govern this Agreement. If a provision of this Agreement should be invalid or unenforceable, then such provision only shall be held unenforceable and the validity and enforceability of the remaining provisions hereof shall not be affected thereby. The terms and conditions of this Agreement shall survive the closing and the conveyance of the Property by Seller to Purchaser.

16. **COMMISSIONS:** THE COMMISSIONS PAYABLE FOR THE SALE OF THE PROPERTY ARE NOT SET BY THE BIRMINGHAM BOARD OF REALTORS, BUT IN ALL CASES ARE NEGOTIABLE BETWEEN THE AGENT AND SELLER. In this Agreement the undersigned Seller agrees to pay DANIEL REALTY CORPORATION as agent, a commission pursuant to separate written agreement.

17. **ADDENDUM:** Check if attached:
☐ Additional terms are set forth on Addendum(s) attached hereto and made a part of this Agreement.

Purchaser's Initials _____

GREYSTONE CLOSE, an Alabama joint venture
 By: NORVILLE-RANDOLPH AT GREYSTONE, LTD.,
 an Alabama limited partnership

By: Norville-Randolph, Inc., an
 Alabama corporation, its General Partner
 PURCHASER (SEAL)

WITNESS TO PURCHASER'S SIGNATURE(S) _____

By: _____
 PURCHASER (SEAL)

WITNESS TO PURCHASER'S SIGNATURE(S) _____

PURCHASER'S ADDRESS:

TELEPHONE: (_____) _____

DANIEL OAK MOUNTAIN LIMITED PARTNERSHIP,
 an Alabama limited partnership

BY: DANIEL REALTY INVESTMENT
 CORPORATION—OAK MOUNTAIN,
 an Alabama corporation, its General Partner

BY: _____

Its: _____

WITNESS TO SELLER'S SIGNATURE _____

Receipt is hereby acknowledged of the earnest money as hereinabove set forth in the amount of \$ _____

FIRM: DANIEL REALTY CORPORATION

BY: _____

Appendix I

Phase II Property

A parcel of land situated in the South one-half of Section 32 and 33, Township 18 South, 1 West, and the Northeast quarter of the Northeast quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

Begin at a 3" capped iron locally accepted to be the southwest corner of said Section 33; thence run east along the south line of said Section 33 for a distance of 745.00 feet to an iron pin set; thence turn an angle to the left of 69° 31' 47" and run in a northeasterly direction for a distance of 619.23 feet to an iron pin set; thence turn an angle to the left of 119° 04' 00" and run in a southwesterly direction for a distance of 126.84 feet to an iron pin set on a curve to the right having a central angle of 17° 43' 34" and a radius of 1,890.00 feet; thence run in a southwesterly to northwesterly direction along the arc of said curve for a distance of 584.73 feet to an iron pin set; thence turn an angle to the left of 90° 16' 00" from the chord of last stated curve and run in a southerly direction for a distance of 448.88 feet to an iron pin set; thence turn an angle to the right of 90° 00' 00" and run in a westerly direction for a distance of 429.50 feet to an iron pin set on a curve to the left having a radius of 25.00 feet and a central angle of 103° 22' 16"; thence run in a southwesterly direction along the arc of said curve for a distance of 45.10 feet to an iron pin set on a compound curve to the left having a radius of 270.00 feet and a central angle of 57° 21' 51"; thence run in a southeasterly direction along the arc of said curve for a distance of 270.32 feet to an iron pin set; thence run tangent to last stated curve for a distance of 27.25 feet to an iron pin set on the east line of said Section 5; thence turn an angle to the left of 108° 53' 55" and run in a northerly direction along the east line of said Section 5 for a distance of 117.21 feet to the point of beginning. Said parcel containing 8.96 acres, more or less.

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STATE OF ALA. SHIELD
I CERTIFY THIS
INSTRUMENT WAS FILED

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JUDGE OF PROBATE

1	North	745.00
2	East	619.23
3	South	126.84
4	West	584.73
5	North	448.88
6	East	429.50
7	South	45.10
8	West	270.32
9	North	27.25
10	East	117.21
Total		3,180.00

