

STATE OF ALABAMA)
 :
COUNTY OF SHELBY)

**FOURTH AMENDMENT TO
THE CREST AT GREYSTONE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

Inst # 2001-38397

09/06/2001-38397
09:19 AM CERTIFIED
SHELBY COUNTY JUDGE DE PROBATE
006 MSB

THIS FOURTH AMENDMENT TO THE CREST AT GREYSTONE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "Amendment") is made and entered into as of the 22nd day of August, 2001 by and among DANIEL OAK MOUNTAIN LIMITED PARTNERSHIP, an Alabama limited partnership ("Developer"), GREYSTONE RESIDENTIAL ASSOCIATION, INC., an Alabama nonprofit corporation ("GRA"), and THE CREST AT GREYSTONE ASSOCIATION, INC., an Alabama nonprofit corporation (the "Association").

RECITALS:

Developer has heretofore executed The Crest at Greystone Declaration of Covenants, Conditions and Restrictions dated October 2, 1992 which has been recorded as Instrument #1992-22103 in the Office of the Judge of Probate of Shelby County, Alabama, which has been amended by First Amendment thereto dated February 3, 1994 and recorded as Instrument #1994-03752 in the aforesaid Probate Office, Second Amendment thereto dated January 10, 1995 and recorded as Instrument #1995-00941 in the aforesaid Probate Office and Third Amendment thereto dated October 25, 1995 and recorded as Instrument #1995-32703 in the aforesaid Probate Office (collectively, the "Declaration"). *Capitalized terms not otherwise expressly defined herein shall have the same meanings given to them in the Declaration.*

The Association is the owners' association established and referred to the "Association" in the Declaration.

Developer has heretofore assigned to GRA all of its rights and duties under Section 8.04 of the Declaration to collect, receive and utilize the Annual Hugh Daniel Drive Assessments payable by the Owner of each Lot or Dwelling within the Development.

At the time the original Declaration was executed, Hugh Daniel Drive was a private roadway and GRA provided various maintenance and repair services with respect thereto utilizing, in part, the Annual Hugh Daniel Drive Assessments paid by the Owners to GRA under the Declaration in order to defer such costs and expenses.

Hugh Daniel Drive has now become a public road and, accordingly, GRA desires to reduce the annual amounts payable by the residential areas and residential developments which utilize Hugh Daniel Drive for access purposes. Notwithstanding Hugh Daniel Drive becoming a public roadway, certain maintenance and upkeep costs and expenses with respect thereto continue to be provided by GRA which are beneficial to all Owners within the Development.

Since January 1, 1998, the amount of Annual Hugh Daniel Drive Assessments payable by Owners of Lots or Dwellings within the Development has been reduced by written agreement between GRA and the Association. The parties hereto desire to amend Section 8.04 of the Declaration in order to reduce and restate the amount of the Annual Hugh Daniel Drive Assessments payable by each Lot or Dwelling in the Development as well as the manner of collecting the same.

Developer continues to own one or more Lots within the Development and, pursuant to Section 10.02 of the Declaration, Developer, without the consent or approval of any Owners, has the right to amend this Declaration. GRA and the Association have joined in the execution of this Amendment in order to consent to the terms and provisions hereof.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties do hereby agree as follows:

1. **Hugh Daniel Drive Assessments.** Effective as of January 1, 2002, Section 8.04 of the Declaration is deleted in its entirety and the following is substituted in lieu thereof:

“8.04 Annual Hugh Daniel Drive Assessments.

(a) Subject to the terms and provisions of Section 8.04(d) below, the Owner of each Lot or Dwelling within the Development shall pay to the Greystone Residential Association, Inc., an Alabama nonprofit corporation (“GRA”), the following sums as the agreed upon prorata share of maintenance costs payable by the Owner of each Lot or Dwelling for the maintenance, repair, landscaping, lighting, trash and litter collection and administrative and overhead costs incurred by GRA with respect to Hugh Daniel Drive:

(i) Commencing January 1, 2002 and on the first day of January of each year thereafter, the Owner of each Lot or Dwelling within the Development shall pay to GRA the sum of \$35.75 per Lot or Dwelling owned (the “Annual Hugh Daniel Drive Assessments”), which amount shall be paid in advance on the first day of January of each year and shall be subject to increases as provided below; and

(ii) The Annual Hugh Daniel Drive Assessments for each Lot or Dwelling shall be subject to annual increase on the first day of January of each year (commencing January, 2003) by an amount equal to the greater of (1) ten percent (10%) of the amount of the Annual Hugh Daniel Drive Assessments for such Lot or Dwelling for the immediately preceding year or (2) a fraction, the numerator of which shall be the “CPI”, as hereinafter defined, for October of the immediately preceding year and the denominator of which shall be the “CPI”, as hereinafter defined, for October, 2000. As used herein the term “CPI” shall mean the U.S. Consumer Price Index (All Urban

Consumers, United States City Average, All Items 1982-84 = 100). In the event the CPI ceases to be published or no longer exists in the form specified herein, GRA shall determine a reasonable substitute equivalent official index or use appropriate conversion factors to accomplish such substitution. In no event shall the Annual Hugh Daniel Drive Assessments for any Lot or Dwelling at any time on or after January 1, 2002 be less than \$35.75 per year.

(b) All Annual Hugh Daniel Drive Assessments shall be utilized by GRA to pay the costs and expenses relating to the continued maintenance and upkeep of Hugh Daniel Drive, which costs and expenses may include, without limitation, cutting grass and maintaining lighting, landscaping and irrigation systems which may be located in, upon or directly adjacent to portions of Hugh Daniel Drive, the planting of annual flowers within certain portions of Hugh Daniel Drive and other areas which may be adjacent to Hugh Daniel Drive, the pick up and removal of trash, litter and other debris from Hugh Daniel Drive, the payment of utility costs for water and electricity utilized for portions of Hugh Daniel Drive as and certain administrative and overhead costs and expenses incurred by GRA with respect to the maintenance and upkeep of Hugh Daniel Drive. Notwithstanding anything provided herein to the contrary, GRA shall not be obligated to separately account for the costs and expenses of maintaining any portion of Hugh Daniel Drive or segregate the Annual Hugh Daniel Drive Assessments from other funds of GRA.

(c) Each Owner, by acceptance of any deed to any Lot or Dwelling within the Development, agrees that in the event any Owner fails to timely pay the Annual Hugh Daniel Drive Assessments as required by Section 8.04 above, then (i) the rights and remedies set forth in Section 8.09 below may be exercised by the Association against such Owner and (ii) GRA shall also have the right to exercise all of the rights and remedies of the Association set forth in Section 8.09 below.

(d) Although the obligation to pay Annual Hugh Daniel Drive Assessments is the primary obligation of the Owner of each Lot or Dwelling within the Development, the Association does hereby covenant and agree with GRA that the Association will collect from each of the Owners of any Lots or Dwellings within the Development such Owner's share of the Annual Hugh Daniel Drive Assessments payable to GRA pursuant to the terms and provisions of Section 8.04(a) above and shall remit to GRA, no later than February 28 of each year, commencing February 28, 2002, the entire amount of all Annual Hugh Daniel Drive Assessments payable by all Lots or Dwellings within the Development for the then applicable year. In the event the Association fails to pay the entire amount due and owing to GRA as Hugh Daniel Drive Assessments by February 28 of any calendar year, then (i) the unpaid portion thereof shall accrue simple interest at the lesser of eighteen percent (18%) per annum or the highest rate which may be charged to the Association by law until such time as the entire amount due and payable to GRA has been paid in full for that specific year and (ii) in the event GRA employs an attorney or otherwise takes any legal action in attempting to collect any amounts due from the Association pursuant to this Section 8.04(d), then the Association agrees to pay all reasonable attorneys'

fees, court costs and other expenses paid or incurred by GRA in connection therewith. The foregoing remedies shall not be exclusive of any other rights or remedies of GRA, including, specifically, the remedies set forth in Section 8.04(c) above.”

2. **Full Force and Effect.** Except as expressly modified and amended herein, all of the terms and provisions of the Declaration, as previously amended, shall remain in full force and effect.

IN WITNESS WHEREOF the parties hereto have executed this Amendment as of the day and year first above written.

DANIEL OAK MOUNTAIN LIMITED PARTNERSHIP, an Alabama limited partnership

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

By: Chris L. Brown
Its: GP

THE CREST AT GREYSTONE ASSOCIATION, INC., an Alabama nonprofit corporation

By: William L. Swathum
Its: President

GREYSTONE RESIDENTIAL ASSOCIATION, INC., an Alabama nonprofit corporation

By: William L. Swathum
Its: President

STATE OF ALABAMA)
 :
SHELBY COUNTY)

I, the undersigned, a Notary Public in and for said county, in said state, hereby certify that Chris A. Brown, whose name as Sr. 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 instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of such corporation in its capacity as general partner as aforesaid.

Given under my hand and official seal this the 22nd day of August, 2001.

Nancy R. Echols
Notary Public
My Commission Expires: 3-27-05

STATE OF ALABAMA)
 :
SHELBY COUNTY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that M. Lewis Gwaltney, Jr., whose name as President of THE CREST AT GREYSTONE ASSOCIATION, INC., an Alabama nonprofit 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 22nd day of August, 2001.

Nancy R. Echols
Notary Public
My commission expires: 3-27-05

[NOTARIAL SEAL]

STATE OF ALABAMA)
:)
SHELBY COUNTY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that M. Lewis Gwaltney, Jr., whose name as President of GREYSTONE RESIDENTIAL ASSOCIATION, INC., an Alabama nonprofit 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 22nd day of August, 2001.

Nancy R. Echols
Notary Public
My commission expires: 3-27-05

[NOTARIAL SEAL]

THIS INSTRUMENT PREPARED BY
AND UPON RECORDING SHOULD BE
RETURNED TO:
Stephen R. Monk, Esq.
Bradley Arant, Rose & White LLP
2001 Park Place, Suite 1400
Birmingham, Alabama 35203
(205) 521-8429

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