


STATE OF ALABAMA       )  
                                  :  
COUNTY OF SHELBY       )

  
20030909000604420 Pg 1/8 35.50  
Shelby Cnty Judge of Probate, AL  
09/09/2003 13:34:00 FILED/CERTIFIED

## **ACCESS EASEMENT AGREEMENT**

THIS ACCESS EASEMENT AGREEMENT (this "Agreement") is made and entered into as of the 8<sup>th</sup> day of September, 2003 by and between GREYSTONE DEVELOPMENT COMPANY, LLC, an Alabama limited liability company ("Grantor"), and GREYSTONE GOLF, LLC, an Alabama limited liability company ("Grantee").

### **RECITALS:**

Grantor desires to grant to Grantee a permanent, perpetual and non-exclusive access easement over, across, through and upon that certain real property (the "Easement Property") owned by Grantor which is more particularly described in Exhibit A attached hereto and incorporated herein by reference, subject to and upon the terms and conditions set forth in this Agreement.

Grantee owns the real property situated adjacent to the Easement Property upon which the private golf course commonly known as the Greystone Legacy Golf Course has been constructed (the "Golf Course Property").

Grantee desires to accept the easement to be granted by Grantor to Grantee to use the Easement Property for access purposes to and from the Golf Course Property, subject to and upon the terms and conditions hereinafter set forth.

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

#### **1.       GRANT OF ACCESS EASEMENT.**

(a)       Subject to the provisions of this Paragraph 1(a) and Paragraph 1(b) below, Grantor does hereby grant to Grantee, its lessees, successors and assigns and their respective duly authorized employees, agents, contractors and invitees, a permanent, perpetual and non-exclusive easement over, across, through, under and upon the Easement Property for the purposes of (i) providing vehicular and pedestrian ingress and egress to and from the Golf Course Property and that certain private roadway known as "Greystone Legacy Drive" which abuts and is directly adjacent to the Easement Property, and (ii) constructing, installing, operating, maintaining, repairing and replacing from time to time thereon any Improvements, as herein defined. As used herein, the term "Improvements" shall mean and refer to asphalt or concrete paving, sidewalks, drives and paths; stone, brick or other similar substances; trees, landscaping, shrubbery and other forms of plant life; and any other improvements which are similar to any of the foregoing; provided, however, that in no event shall any buildings, structures, fences, walls (other than retaining walls which are less than three feet in height) or other above ground structures be constructed on any portion of the Easement Property.

(b) Grantee acknowledges and agrees that Grantor will construct, install, operate, maintain, repair and replace from time to time within the Easement Property storm sewer drains, pipes, lines and other appurtenances and that the exercise of the easements granted by Grantor to Grantee pursuant to Paragraph 1(a) above shall (i) be exercised subject to the use of the Easement Property by Grantor, its successors and assigns, for the construction, operation, maintenance, installation, repair and replacement of storm sewer drains, pipes, lines and other appurtenances, and (ii) not unreasonably interfere with or otherwise damage any such storm sewer drains, pipes, lines and appurtenances which may be located on or within any portion of the Easement Property.

2. **NATURE OF EASEMENTS.** The easement granted in Paragraph 1 above shall be and is appurtenant to and shall benefit all of the Golf Course Property and shall be binding upon and inure to the benefit of Grantor and Grantee and their respective successors and assigns.

3. **MISCELLANEOUS.** This Agreement may not be modified or amended except by a written instrument executed by Grantor or the then owner of the Easement Property and the then owner of the Golf Course Property. Time is of the essence in the performance by each party hereto of its respective obligations hereunder. This Agreement embodies the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior written or oral agreements and undertakings of the parties relating to the subject matter of this Agreement. The paragraph headings and captions used herein are for convenience of reference only and shall in no way define, limit, describe or restrict the scope or intent of this Agreement or in any way affect the terms or provisions hereof. Whenever the context requires or permits, the use of the masculine gender shall be deemed to include the feminine, the singular shall include the plural and vice versa. If any provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama. In the event of any violation or threatened violation of any of the terms and provisions of this Agreement by any party hereto or any of their respective heirs, executors, personal representatives, administrators, successors and assigns, then the non-defaulting party shall have the right to exercise all rights and remedies available to such party at law or in equity including, without limitation, seeking injunctive relief to enjoin such violation or threatened violation, and any and all costs and expenses incurred by such non-defaulting party, including, without limitation, attorneys' fees and expenses, consultants' fees and expenses, court costs and all other expenses paid or incurred by the non-defaulting party, shall be paid by the defaulting party.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement as of the day and year first above written.

**GREYSTONE DEVELOPMENT COMPANY, LLC**, an Alabama limited liability company

By: DANIEL REALTY CORPORATION, an Alabama corporation, Its Manager

By: Christopher A. Brown  
Its: Sr Vice President

**GREYSTONE GOLF, LLC**, an Alabama limited liability company

By: DANIEL REALTY CORPORATION, an Alabama corporation, Its Manager

By: Christopher A. Brown  
Its: Sr Vice President

STATE OF ALABAMA     )  
                                      :  
COUNTY OF SHELBY    )

I, the undersigned, a notary public in and for said county in said state, hereby certify that Christopher A Brown, whose name as Sr VP of DANIEL REALTY CORPORATION, an Alabama corporation, as Manager of GREYSTONE DEVELOPMENT COMPANY, LLC, 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 for and as the act of said corporation, acting in its capacity as Manager of said limited liability company.

Given under my hand and official seal this 8th day of September, 2003.

Dwight A. McCay  
Notary Public

[NOTARIAL SEAL]

My commission expires: MY COMMISSION EXPIRES AUGUST 2, 2004



STATE OF ALABAMA     )  
                                     :  
COUNTY OF SHELBY     )

I, the undersigned, a notary public in and for said county in said state, hereby  
certify that Christopher A Brown, whose name as  
sr VP of DANIEL REALTY CORPORATION, an Alabama  
corporation, as Manager of GREYSTONE GOLF, LLC, 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 for and as the act of said corporation, acting in its  
capacity as Manager of said limited liability company.

Given under my hand and official seal this 8th day of September, 2003.

Ginger A. M. Cox  
Notary Public

[NOTARIAL SEAL]

My commission expires: MY COMMISSION EXPIRES AUGUST 2, 2004

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

Stephen R. Monk, Esq.  
Bradley Arant Rose & White LLP  
One Federal Place  
1819 Fifth Avenue North  
Birmingham, Alabama 35203  
(205) 521-8429

## **EXHIBIT A**

### **LEGAL DESCRIPTION OF EASEMENT PROPERTY**

An ingress and egress easement for Greystone Legacy Golf Course situated in the South half of Section 14, Township 18 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Northwest corner of the Southwest quarter of said Section 14 and turn an interior angle to the right off the North line of said quarter Section of 73 degrees, 37 minutes, 56 seconds and run in a Southeasterly direction for a distance of 102.56 feet to a point on a curve to the right, having a central angle of 06 degrees, 50 minutes, 18 seconds and a radius of 401.10 feet, said point being on the South right of way line of proposed Legacy Drive; thence turn an angle to the left of 86 degrees, 34 minutes, 51 seconds to the chord of said curve and run along the arc of said curve for a distance of 47.87 feet to a point, said point also being on the South right of way line of proposed Legacy Drive; thence run tangent to last stated curve in a Northeasterly direction along the South right of way line of said Legacy Drive for a distance of 176.46 feet to a point on a curve to the right, having a central angle of 23 degrees, 15 minutes, 13 seconds and a radius of 655.33 feet; thence run along the arc of said curve in a Northeasterly to Southeasterly direction for a distance of 265.97 feet to a point on a compound curve to the right, having a central angle of 16 degrees, 39 minutes, 26 seconds and a radius of 756.02 feet; thence run along the arc of said curve in a Southeasterly direction for a distance of 219.80 feet to a point, said point also being on the South right of way line of said Legacy Drive; thence run tangent to last stated curve in a Southeasterly direction for a distance of 111.92 feet to a point on the Northwest corner of proposed Lot 817, Greystone Legacy 8<sup>th</sup> Sector, said point being on the South right of way line of said Legacy Drive; thence turn an angle to the right of 90 degrees, 00 minutes, 00 seconds and run in a Southwesterly direction along the Northwest line of said Lot 817 for a distance of 200.00 feet to a point, said point also being the Southwest corner of said Lot 817; thence turn an angle to the left of 90 degrees, 00 minutes, 00 seconds and run in a Southeasterly direction along Lots 817 through 815, of said Greystone Legacy 8<sup>th</sup> Sector for a distance of 350.84 feet to a point, said point also being a bend point on the Southwest line of said Lot 815; thence turn an angle to the right of 18 degrees, 14 minutes, 08 seconds and run in a Southeasterly direction along Lots 815 through 810, in said Greystone Legacy 8<sup>th</sup> Sector in a Southeasterly direction for a distance of 726.98 feet to a point, said point also being a bend point on the Southwest line of said Lot 810; thence turn an angle to the left of 06 degrees, 09 minutes, 19 seconds and run in a Southeasterly direction along the Southwest line of Lots 810 through 807 in said Greystone Legacy 8<sup>th</sup> Sector for a distance of 536.95 feet to the point of beginning, said point of beginning also being a bend point on the Southwest line of said Lot 807; thence turn an angle to the left of 86 degrees, 51 minutes, 31 seconds and run in a Northeasterly direction for a distance of 51.10 feet to a point; thence turn an angle to the right of 75 degrees, 57 minutes, 35 seconds and run in a Southeasterly direction for a distance of 103.60 feet to a point; thence turn an angle to the left of 05 degrees, 01 minutes, 20 seconds and run in a Southeasterly direction for a distance of 110.40 feet to a point on a curve to the right, having a central angle of 05 degrees, 24 minutes, 35 seconds and a radius of 445.00 feet, said point also being on the Southwest right of way line of said Legacy Drive; thence turn an angle to the right, to the chord of said curve of 57 degrees, 36 minutes, 43 seconds and run in a Southerly direction along the arc of said curve for a distance of 42.02 feet to a point, said point also being on the Southwest right of way line of said Legacy Drive; thence turn an angle to the right of 161 degrees, 01 minutes, 32 seconds from

the chord of last stated curve and run in a Northwesterly direction for a distance of 16.76 feet to a point; thence turn an angle to the left of 38 degrees, 38 minutes, 16 seconds and run in a Northwesterly direction for a distance of 144.60 feet to a point, said point also being on the South line of said Lot 807 and the North line of Lot 805 in said Greystone Legacy 8<sup>th</sup> Sector; thence turn an angle to the left of 45 degrees, 14 minutes, 19 seconds and run in a Southwesterly direction along the South line of said Lot 807 and the North line of Lot 805 for a distance of 124.43 feet to a point, said point also being the Southwest corner of said Lot 807 and the Northwest corner of said Lot 805; thence turn an angle to the right of 129 degrees, 28 minutes, 34 seconds and run in a Northeasterly direction along the Southwest line of said Lot 807 for a distance of 74.50 feet to the point of beginning; said ingress and egress easement containing 10,474 square feet, more or less.



## CONSENT OF MORTGAGEE

THIS CONSENT OF MORTGAGEE is made and entered into as of the 8<sup>th</sup> day of September, 2003 by SOUTHTRUST BANK, an Alabama banking corporation ("Mortgagee").

### R E C I T A L S:

Mortgagee is the holder of that certain Mortgage and Security Agreement dated as of March 4, 1999 recorded as Instrument # 1999-12259 in the Office of the Judge of Probate of Shelby County, Alabama and that certain Cross-Collateralization and Cross-Default Agreement dated as of December 30, 2002 recorded as Instrument # 20030304000128480 in said Probate Office (collectively, the "Mortgage"). The Mortgage encumbers various real property situated in Shelby County, Alabama, including the Easement Property, as defined and described in the Easement Agreement (the "Easement Agreement") between Greystone Development Company, LLC ("Grantor") and Greystone Golf, LLC, an Alabama limited liability company ("Grantee"), to which this Consent of Mortgagee has been attached. *Capitalized terms not otherwise expressly defined herein shall have the same meanings given to them in the Easement Agreement.*

Mortgagee desires to consent to the execution and delivery of the Easement Agreement by Grantor and Grantee and to also agree that, following the foreclosure of the Mortgage, the rights and interests of all of the parties thereto shall not be affected thereby.

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

1. Mortgagee does hereby consent to the execution of the Easement Agreement by Grantor.

2. Mortgagee does hereby agree that the Mortgage and Mortgagee's rights and interests thereunder are subordinated to the rights and interests of the Grantee created by the Easement Agreement and, upon and after a foreclosure of the Mortgage, the granting of any deed in lieu of foreclosure or the taking of any other action by Mortgagee under the Mortgage which results in Mortgagee (or any purchaser at foreclosure) acquiring title to or any interest in any of the real property encumbered by the Mortgage, including the Easement Property and Greystone Legacy Drive (collectively, a "Foreclosure Action"), then (a) the Easement Agreement and all of the rights and privileges created by the Easement Agreement shall not be affected or disturbed by virtue of such Foreclosure Action, but shall continue in full force and effect, (b) Grantee and their respective heirs, executors, administrators, personal representatives, successors and assigns, shall continue to have the right to enjoy all of the rights and privileges set forth in the Easement Agreement without any interference by any person claiming by, through or under Mortgagee and (c) Mortgagee or any purchaser at foreclosure, as applicable, shall succeed to the interests of Grantor under the Easement Agreement and Mortgagee shall be bound by all of the terms and provisions of the Easement Agreement; provided, however, that in no event shall Mortgagee (or any purchaser at foreclosure) be bound by any amendments or modifications to the Easement Agreement not consented to in writing by Mortgagee.

IN WITNESS WHEREOF, Mortgagee has executed this Consent of Mortgagee  
as of the day and year first above written.

**SOUTHTRUST BANK**, an Alabama banking  
corporation

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

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

STATE OF ALABAMA )

COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said County, in said State, hereby  
certify that Stephen T. Hodges, whose name as Group Vice President of SOUTHTRUST  
BANK, an Alabama banking 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 banking corporation.

Given under my hand and official seal this the 8<sup>th</sup> day of September,  
2003.

Shirley A. Ellis  
Notary Public  
My Commission Expires: 3/30/2006

[NOTARIAL SEAL]