


THIS INSTRUMENT PREPARED BY:
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Shelby Cnty Judge of Probate, AL
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STATE OF ALABAMA)
COUNTY OF SHELBY)

AMENDMENT TO MORTGAGE AND SECURITY AGREEMENT

THIS AMENDMENT TO MORTGAGE AND SECURITY AGREEMENT (this "Agreement"), made as of the 8th day of September, 2003, is between **GREYSTONE DEVELOPMENT COMPANY, LLC**, an Alabama limited liability company, 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 "Borrower"), 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 dated March 4, 1999 from Borrower and Greystone Golf Club, Inc. ("Golf") in favor of Lender, recorded as Instrument Number 1999-12259 in the Probate Office of Shelby County, Alabama (the "Probate Office"), and also recorded as Instrument No. 9904/6681 in the Probate Office of Jefferson County, Alabama, as amended by Partial Release of Co-Mortgagor dated December 21, 200 and recorded as Instrument No. 2001-021 in the Probate Office, and as further amended by that certain Second Amendment and Ratification Agreement dated November 14, 2002 among Borrower, Daniel Oak Mountain Limited Partnership, an Alabama limited partnership ("Daniel Oak Mountain"), Daniel Realty Company, an Alabama general partnership ("Guarantor"), and Lender (as amended, the "Mortgage/Phase II"). The Mortgage/Phase II secures a loan (the "Development Loan") made by the Lender to Borrower in the original principal amount of \$11,000,000.00, which Development Loan has been restated by an Amended and Restated Promissory Note dated December 21, 2000, in the principal amount of \$9,195,858.08, executed by Borrower in favor of Lender, which has been further 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. Borrower has requested that Lender re-advance up to Two Million Two Hundred Thousand Dollars (\$2,200,000) of the Development Loan proceeds which have been repaid by Borrower (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. Borrower and Lender desire to amend the Mortgage/Phase II to include the Loan Increase, and to secure the Loan Increase by the lien of said Mortgage/Phase II.

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 meanings set forth in the Mortgage/Phase II.
2. The Mortgage/Phase II is hereby modified and amended to provide that it shall henceforth secure the Loan Increase as well as the original Development Loan. Accordingly, all references in such documents to the "Development 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 II to the "Note" shall henceforth refer to that certain Third Amended and Restated Promissory Note of even date herewith payable by Borrower to the order of the Lender, and all references in the Mortgage/Phase II to the "Loan Agreement" shall henceforth refer to that certain Third Amended and Restated Loan Agreement of even date herewith between Borrower and Lender. It is the express intent of the parties that the Loan Increase shall be secured by the Mortgage/Phase II to the same extent as if such Loan Increase had been made on the date of the execution of said Mortgage/Phase II. Borrower, Daniel Oak Mountain, Guarantor, 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 II. All references in the Mortgage/Phase II to the "Assignment and Pledge/Development Funds Escrow," "Assignment and Pledge/Lot Deposits," "Environmental Indemnity/Phase I" "Environmental Indemnity/Phase II," and the "Guaranty" shall henceforth be deemed to refer to such documents, as so amended. The Mortgage/Phase II is hereby further modified and amended by adding to the description of the Mortgaged Property encumbered by the Mortgage/Phase II, that certain tract of land which is more particularly described on Exhibit "A-1" attached hereto.
3. Upon recording of this Agreement, mortgage tax on the Loan Increase in the amount of \$3,300.00 shall be due and payable, together with filing or indexing fees.
4. Borrower represents and warrants that all representations and warranties set forth in the Mortgage/Phase II are true and correct in all material respects on the date hereof. Borrower further represents and warrants that, to the best of its knowledge, no Default or Event of Default has occurred or exists under the Loan Documents.
5. No right of Lender with respect to the Mortgage/Phase II or other Loan Documents is or will be in any manner released, destroyed, diminished, or otherwise adversely affected by this Agreement.
6. All references in the Loan Documents to the Mortgage/Phase II shall be deemed to refer, from and after the date hereof, to the Mortgage/Phase II, as amended hereby, and as the same may be hereafter amended.

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

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

9. This Agreement 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 II, 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 II, 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 HEREFTER 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.

BORROWER:

GREYSTONE DEVELOPMENT COMPANY, LLC
an Alabama limited liability company

BY: DANIEL REALTY CORPORATION
an Alabama corporation

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 Corporation, an Alabama corporation, as Manager of Greystone Development Company, LLC, an Alabama limited liability company, is signed to the foregoing Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, 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 aforesaid.

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


Notary Public

[NOTARIAL SEAL]

MY COMMISSION EXPIRES AUGUST 2, 2004

My commission expires: _____

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 27th day of August, 2003.


Notary Public

[NOTARIAL SEAL]

My commission expires: 5/08/07



EXHIBIT A-1

Real Property Added to Mortgaged Property

A parcel of land situated in the Southwest quarter of Section 14, Township 18 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Northwest corner of said Southwest quarter 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 also being on the South right of way line of proposed Legacy Drive; thence turn an angle to the left to the chord of said curve of 86 degrees, 32 minutes, 26 seconds and run in a Northeasterly direction along the arc of said curve and also along the South right of way line of said proposed Legacy Drive for a distance of 47.87 feet to a point; thence run tangent to last stated curve in a Northeasterly direction along the South line of said proposed Legacy Drive for a distance of 176.46 feet to a point on a curve to the right, having a central angle of 14 degrees, 16 minutes, 17 seconds and a radius of 655.33 feet; thence run along the arc of said curve in a Northeasterly direction and also along the South right of way line of said proposed Legacy Drive for a distance of 163.23 feet to the point of beginning; thence turn an angle to the right from the chord of said curve of 100 degrees, 33 minutes, 31 seconds and run in a Southwesterly direction along the West line of Lot 819 in proposed Greystone Legacy 8th Sector for a distance of 189.91 feet to a point; thence turn an angle to the left of 37 degrees, 50 minutes, 11 seconds and run in a Southeasterly direction along the Southwest line of said proposed Lot 819 for a distance of 131.38 feet to a point; thence turn an angle to the left of 102 degrees, 49 minutes, 45 seconds and run in a Northeasterly direction along the Southeast line of said Lot 819 for a distance of 70.45 feet to a point; thence turn an angle to the right of 57 degrees, 56 minutes, 44 seconds and run in a Southeasterly direction along the South line of said Lot 819 for a distance of 72.06 feet to a point; thence turn an angle to the right of 05 degrees, 39 minutes, 02 seconds and run in a Southeasterly direction along the South line of Lot 818 in said proposed Greystone Legacy 8th Sector for a distance of 150.31 feet to a point at the Southeast corner of said Lot 818; thence turn an angle to the left of 170 degrees, 42 minutes, 52 seconds and run in a Northwesterly direction for a distance of 278.28 feet to a point; thence turn an angle to the right of 73 degrees, 20 minutes, 34 seconds and run in a Northeasterly direction for a distance of 175.65 feet to a point on a curve to the left, said point also being on the South right of way line of said Legacy Drive, having a central angle of 08 degrees, 58 minutes, 56 seconds and a radius of 655.33 feet; thence run in a Northwesterly to Southwesterly direction along the South right of way line of said Legacy Drive for a distance of 102.74 feet to the point of beginning; said parcel of land containing 32,277 square feet, more or less.