


STATE OF ALABAMA     )  
                                     :  
COUNTY OF SHELBY     )

  
20040102000001540 Pg 1/7 32.00  
Shelby Cnty Judge of Probate, AL  
01/02/2004 11:16:00 FILED/CERTIFIED

**EASEMENT AGREEMENT**

THIS EASEMENT AGREEMENT (this "Agreement") is made and entered into as of the 8<sup>th</sup> day of September, 2003 by GREYSTONE GOLF, LLC, an Alabama limited liability company ("Golf LLC"), and GREYSTONE GOLF CLUB, INC., an Alabama nonprofit corporation (the "Club"), in favor of SHELBY COUNTY, ALABAMA, a political subdivision of the State of Alabama (the "County").

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

Golf LLC is the fee owner and Club is the leasehold owner of that certain real property (the "Easement Property") situated in Shelby County, Alabama which is more particularly described in Exhibit A attached hereto and incorporated herein by reference.

GDC and Golf LLC (collectively, the "Grantors") desire to grant to the County a permanent, non-exclusive easement over and upon the Easement Property for the purposes 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, the parties hereto agree as follows:

1.     **Grant of Easements by Grantors**

(a)     Subject to the terms and provisions of Paragraph 1(b) below, Grantors do hereby grant to the County, its 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 purpose of constructing, installing, inspecting, operating, repairing, maintaining and replacing water and sanitary sewer lines, pipes, conduit and other appurtenances (collectively, the "Water and Sewer Lines").

(b)     Notwithstanding anything provided herein to the contrary, the easements granted to the County pursuant to Paragraph 1(a) above are subject to and limited as follows:

(i)     Any and all Water and Sewer Lines to be constructed, installed, operated, repaired or replaced by the County on or upon the Easement Property shall be constructed and maintained below ground;

Cahaba Title, Inc.

(ii) The County covenants and agrees to repair and replace with substantially equivalent material any and all landscaping, plant life and other improvements of any nature which may be damaged or destroyed by the County in the exercise of the utility rights granted pursuant to Paragraph 1(a) above; provided, however, that the County shall not be required to repair or replace any exotic, elaborate or unduly expensive landscaping materials or plants;

(iii) The County shall not, unless an emergency situation exists, exercise the easement rights granted pursuant to Paragraph 1(a) above without the prior written consent of both Grantors, which consent shall not be unreasonably withheld or delayed;

(iv) The easements granted pursuant to Paragraph 1(a) above shall at all times be exercised by the County in common with all other persons or entities who have any rights and interests in the Easement Property; and

(v) Anything to the contrary notwithstanding, nothing construed herein shall be construed to be an acceptance by the County of, or the acceptance of any maintenance responsibility by the County for, any existing sanitary sewer lines, if any, which are located within the Easement Property as of the date of this Agreement.

2. **Amendments.** This Agreement may be amended and modified only by a written instrument duly executed by Grantors and the County.

3. **Miscellaneous.** The terms and provisions of this Agreement shall be binding upon and inure to the benefit of Grantors and the County and their respective successors and assigns, forever. 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 and provisions hereof. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders. The use of the singular tense shall include the plural and the use of the plural shall include the singular. If any provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, 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 shall be valid and enforceable to the fullest extent permitted by law.

4. **Notices.** Any and all notices required or permitted to be given hereunder shall be in writing and shall be served on the parties at the following addresses:

If to Golf LLC:

c/o Daniel Realty Company  
3595 Grandview Parkway, Suite 400  
Birmingham, Alabama 35243



If to Club:

Greystone Golf Club, Inc.  
4100 Greystone Drive  
Birmingham, Alabama 35242  
Attention: President

If to County:

Shelby County Water and Sewer  
Services  
P. O. Box 10  
Columbiana, Alabama 35051  
Attention: Utilities Manager

Any such notices shall be deemed to be sufficiently given or served upon any party hereto when either (i) sent by personal delivery to the address set forth above, (ii) deposited in the United States Mail by registered or certified mail, return receipt requested, postage prepaid and addressed as provided above or (iii) deposited with a nationally recognized overnight delivery courier service for next business day delivery and addressed as set forth above. The above addresses may be changed by written notice to the other parties given in the manner set forth above.

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

**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

**GREYSTONE GOLF CLUB, INC.**, an Alabama nonprofit corporation

By: Christopher A. Brown  
Its: Vice President

STATE OF ALABAMA     )  
                                     :  
SHELBY COUNTY         )

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 such corporation in its capacity as manager of said limited liability company.

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

Ginger A. M. Coyle  
Notary Public  
My Commission Expires: MY COMMISSION EXPIRES AUGUST 2, 2004

[NOTARIAL SEAL]

STATE OF ALABAMA     )  
                                     :  
SHELBY COUNTY         )

I, the undersigned, a notary public in and for said county in said state, hereby certify that Christopher A Brown, whose name as VP of GREYSTONE GOLF CLUB, 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 8<sup>th</sup> day of September, 2003.

Ginger A. M. Coyle  
Notary Public  
My commission expires: MY COMMISSION EXPIRES AUGUST 2, 2004

[NOTARIAL SEAL]

This instrument prepared by and upon recording should be returned to:  
Stephen R. Monk, Esq.  
Bradley Arant Rose & White LLP  
One Federal Place  
1918 Fifth Avenue North  
Birmingham, Alabama 35203  
(205) 521-8429



## CONSENT OF MORTGAGEE

**THIS CONSENT OF MORTGAGEE** is made and entered into as of the 8<sup>th</sup> day of September, 2002 by **SOUTHTRUST BANK**, an Alabama banking corporation ("Mortgagee").

### RECITALS:

Mortgagee is the holder of that certain Mortgage and Security Agreement dated as of December 30, 2002 (the "Mortgage") executed by Greystone Golf, LLC, an Alabama limited liability company ("Golf LLC"), and Greystone Golf Club, Inc., an Alabama nonprofit corporation (the "Club"), recorded as Instrument # 20030304000128450 in the Office of the Judge of Probate of Shelby County, Alabama, which is also subject to the terms and conditions of that certain Cross-Collateralization and Cross-Default Agreement dated December 30, 2002 and recorded as Instrument 20030304000128480 in said Probate Office (collectively, the "Mortgage"). The Mortgage encumbers the Easement Property, as defined and described in the Easement Agreement (as defined below).

Mortgagee desires to consent to the execution and delivery of the Easement Agreement (the "Easement Agreement") by Golf, LLC and the Club in favor of Shelby County, Alabama, a political subdivision of the State of Alabama (the "County"), and to also agree that, following the foreclosure of the Mortgage, the rights and interests of County shall not be affected thereby. *Capitalized terms not otherwise expressly defined herein shall have the same meanings given to them in the Easement Agreement.*

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 Golf LLC and the Club.

2. Mortgagee does hereby agree that the Mortgage and Mortgagee's rights and interests thereunder are subordinated to the rights and interests 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 acquiring title to or any interest in the Property (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) the County 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 Golf LLC (and the Club, if applicable) 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: [Signature]  
Its: Gray, Vice President

STATE OF Alabama )  
COUNTY OF Jefferson )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Stephen Hodges, whose name as Group VP 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 4<sup>th</sup> day of September 2003.



[Signature]  
NOTARY PUBLIC  
My Commission Expires: 5/8/07



## **EXHIBIT A**

### **Legal Description of Easement Property**

A utility easement situated in the Southeast quarter of the Northeast quarter of Section 22, Township 18 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

Begin at a 3/8 inch rebar found locally accepted to be the Southwest corner of said quarter-quarter section and run in a Northerly direction along the West line of said quarter-quarter section for a distance of 102.78 feet to a point; thence turn an angle to the right of 92 degrees, 04 minutes, 15 seconds and run in a Southeasterly direction for a distance of 79.31 feet to a point; thence turn an angle to the left of 07 degrees, 32 minutes, 41 seconds and run in a Northeasterly direction for a distance of 52.85 feet to a point; thence turn an angle of 8 degrees, 11 minutes, 23 seconds and run in a Northeasterly direction for a distance of 22.17 feet to a point; thence turn an angle to the left of 08 degrees, 51 minutes, 04 seconds and run in a Northeasterly direction for a distance of 39.46 feet to a point; thence turn an angle to the left of 05 degrees, 27 minutes, 38 seconds and run in a Northeasterly direction for a distance of 48.95 feet to a point; thence turn an angle to the right of 14 degrees, 56 minutes, 20 seconds and run in a Southeasterly direction for a distance of 38.68 feet to a point; thence turn an angle to the right of 01 degree, 10 minutes, 29 seconds and run in a Southeasterly direction for a distance of 77.72 feet to a point; thence turn an angle to the left of 13 degrees, 17 minutes, 14 seconds and run in a Northeasterly direction for a distance of 71.61 feet to a point; thence turn an angle to the right of 22 degrees, 18 minutes, 13 seconds and run in a Southeasterly direction for a distance of 87.78 feet to a point; thence turn an angle to the left of 14 degrees, 05 minutes, 11 seconds and run in a Southeasterly direction for a distance of 168.70 feet to a point; thence turn an angle to the right of 11 degrees, 08 minutes, 31 seconds and run in a Southeasterly direction for a distance of 84.30 feet to a point; thence turn an angle to the right of 03 degrees, 42 minutes, 40 seconds and run in a Southeasterly direction for distance of 99.75 feet to a point; thence turn an angle to the left of 02 degrees, 32 minutes, 47 seconds and run in a Southeasterly direction for a distance of 49.91 feet to a point; thence turn an angle to the left of 00 degrees, 24 minutes, 53 seconds and run in a Southeasterly direction for a distance of 22.48 feet to a point, thence turn an angle to the left of 02 degrees, 37 minutes, 46 seconds and run in a Southeasterly direction for a distance of 65.97 feet to a point; thence turn an angle to the left of 08 degrees, 23 minutes, 36 seconds and run in a Northeasterly direction for a distance of 50.28 feet to a point; thence turn an angle to the left of 01 degree, 46 minutes, 58 seconds and run in Northeasterly direction for a distance of 22.21 feet to a point; thence turn an angle to the left of 03 degrees, 43 minutes, 34 seconds and run in a Northeasterly direction for a distance of 38.56 feet to a point; thence turn an angle to the right of 02 degrees, 00 minutes, 14 seconds and run in a Northeasterly direction for a distance of 115.86 feet to a point; thence turn an angle to the right of 02 degrees, 49 minutes, 18 seconds and run in a Northeasterly direction for a distance of 101.63 feet to a point on the West line of proposed Lot 721 Greystone Legacy 7th Sector; thence turn an angle to the right of 92 degrees, 40 minutes, 09 seconds and run in a Southwesterly direction along the West line of said Lot 721 for a distance of 34.99 feet to an iron pin found (KBW) locally accepted to be the Southeast corner of said quarter-quarter section; thence turn an angle to the right of 87 degrees, 08 minutes, 39 seconds and run in Westerly direction along the South line of said quarter-quarter section for a distance of 1,324.55 feet to the point of beginning; said easement containing 2.3 acres, more or less.