


STATE OF ALABAMA)
 :
COUNTY OF SHELBY)


20040102000001560 Pg 1/13 50.00
Shelby Cnty Judge of Probate, AL
01/02/2004 11:19:00 FILED/CERTIFIED

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this "Agreement") is made and entered into as of the 8th day of September, 2003 by GREYSTONE DEVELOPMENT COMPANY, LLC, an Alabama limited liability company ("Developer"), GREYSTONE LEGACY HOMEOWNERS' ASSOCIATION, INC., an Alabama nonprofit corporation (the "Association"), 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").

RECITALS:

Developer is the "Developer", as defined in the Greystone Legacy Declaration of Covenants, Conditions and Restrictions dated December 1, 1999 which has been recorded as Instrument #1999-50995 in the Office of the Judge of Probate of Shelby County, Alabama (the "Probate Office"), which has been amended by (i) First Amendment thereto dated February 9, 2000 and recorded as Instrument #2000-04911 in the Probate Office, (ii) Second Amendment thereto dated September 28, 2000 and recorded as Instrument #2000-34390 in the Probate Office, (iii) Third Amendment thereto dated November 20, 2000 and recorded as Instrument #2000-40197 in the Probate Office, (iv) Fourth Amendment thereto dated April 26, 2001 and recorded as Instrument #2001-16407 in the Probate Office, (v) Fifth Amendment thereto dated November 7, 2001 and recorded as Instrument #2001-48193 in the Probate Office, (vi) Sixth Amendment thereto dated August 22, 2002 and recorded as Instrument #20020823000401390 in the Probate Office, (vii) Seventh Amendment thereto dated September 30, 2002 and recorded as Instrument #20021003000479580 in the Probate Office, (viii) Eighth Amendment thereto dated February 20, 2003 and recorded as Instrument #20030220000107790 in the Probate Office, (ix) Ninth Amendment thereto dated April 24, 2003 and recorded as Instrument #20030424000253400 in the Probate Office, and (x) Tenth Amendment thereto dated May 7, 2003 and recorded as Instrument #20030507000283000 in the 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 "Association", as defined in the Declaration.

Golf LLC is the fee owner and Club is the leasehold owner of the Golf Club Property, as defined in the Declaration, and collectively are the "Club Owner", as defined in the Declaration.

The Property, as defined in the Declaration, has been developed for single-family residential purposes utilizing roadways which have been constructed, operated and maintained as private roadways with guard gates and guard houses to limit and otherwise restrict entry by the general public into the Property. Exhibit A attached hereto and incorporated herein by reference

sets forth the names of the subdivisions and subdivision plats (collectively, "Subdivision Plats") into which Lots within the Property have been divided, subdivided and re-subdivided and also sets forth the names of those streets and roadways (collectively, the "Private Streets") within the Property which have at all times been constructed, operated and maintained as private streets and roadways and heretofore designated and treated as Common Areas.

The County provides public water and sanitary sewer services to the Property and to the Golf Club Property.

Developer and Association, jointly and severally, desire to grant to the County the non-exclusive right and consent, in common with all Owners and other persons who have been granted any rights to utilize the Private Streets, to use the Private Streets and other areas within the Property in connection with the performance by the County of inspections, and the operation, maintenance and repair of any sanitary sewer lines and public water lines within the Property.

Golf LLC and Club, jointly and severally, desire to grant to the County the non-exclusive right and easement to enter upon the Golf Club Property in order to inspect, operate, maintain and repair any sanitary sewer lines and public water lines which have been constructed on or upon the Golf Club Property.

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 Developer and the Association.**

(a) Subject to the provisions of Paragraphs 1(c) below, Developer and Association do hereby jointly and severally 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 (i) all of the Private Streets and other Common Areas within the Property, (ii) any and all areas within the Property which are designated as sewer lift (pump) stations on any of the Subdivision Plats and (iii) any and all areas within the Property which are designated as easements for public utilities or for sanitary sewers on any of the Subdivision Plats. The easements granted pursuant to this Paragraph 1(a) are granted for the purpose of providing access to the Property and the right to inspect, install, operate, repair, maintain and replace any and all water and sanitary sewer lines, pipes, conduit and other appurtenances, including, without limitation, lift (pump) stations, which may be currently situated within any portions of the Property or which in the future may be installed by the County within any portion of the Property.

(b) Subject to the provisions of Paragraph 1(c) below, Developer and Association do hereby jointly and severally grant to the County, its duly authorized employees, agents, contractors and invitees, a permanent, perpetual and non-exclusive right and easement, in common with Developer, Association and all others having any rights or interests therein, to exercise any and all of the easement rights reserved by Developer pursuant to Section 3.06 of the Declaration. Pursuant to the terms and provisions of Section 10.04 of the Declaration, the terms and provisions of Section 3.06 of the Declaration may not be amended without the prior written

consent and approval of Developer. Accordingly, Developer does hereby acknowledge and agree that it will not consent to or otherwise approve of any amendment to Section 3.06 of the Declaration unless the same has been consented to and approved in writing by the County. Association, by execution hereof, does hereby acknowledge and consent to the foregoing agreement of Developer not to consent to or approve of any amendment to Section 3.06 of the Declaration without the County's written approval.

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

(i) Except for lift (pump) stations situated within any portion of the Property, any and all water and sanitary sewer lines, pipes, conduit and other appurtenances to be installed, constructed, operated or replaced by the County within the Property shall be constructed and maintained below ground;

(ii) The County covenants and agrees (1) that any road cuts made to any of the Private Streets shall be repaired in accordance with the then applicable regulations, requirements and standards of the City of Hoover, Alabama and (2) to repair and replace with substantially equivalent material any and all landscaping, plant life or other improvements of any nature which may be damaged or destroyed by the County in the exercise of the easement rights granted pursuant to this Paragraph 1; provided, however, that the County shall not be required to repair or replace any exotic, elaborate or unduly expensive landscaping materials or plants;

(iii) With respect to any water and sanitary sewer lines, pipes, conduit or other apparatus located within the rights-of-way of any Private Streets of the Property and which are not shown on any of the Subdivision Plats, the easements granted pursuant to this Paragraph 1 shall follow (and be as wide and long as) the width and alignment of the rights-of-way of such Private Streets;

(iv) With respect to any water and sanitary sewer lines, pipes, conduit or other apparatus located outside of any Private Streets of the Property but solely within any of the other Common Areas of the Property, the easements granted pursuant to this Paragraph 1 shall (1) follow the alignment of the water or sanitary sewer lines, pipes, conduit or other apparatus as currently situated within such Common Areas of the Property and (2) be limited to a width of 15 feet on either side of such water or sanitary sewer lines, pipes, conduit or other apparatus (for a total easement width of 30 feet);

(v) With respect to any water and sanitary sewer lines, pipes, conduit or other apparatus located outside of any Private Streets or other Common Areas of the Property and which are not shown on any of the Subdivision Plats, the easements granted pursuant to this Paragraph 1 shall (1) follow the alignment of the water or sanitary sewer lines, pipes, conduit or other apparatus as currently situated within the Property and (2) be limited to a width of

15 feet on either side of such water or sanitary sewer lines, pipes, conduit or other apparatus (for a total easement width of 30 feet);

(vi) The easements granted pursuant to this Paragraph 1 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 areas described in this Paragraph 1; and

(vii) Nothing contained herein shall place or be construed to place any burden, obligation or responsibility on the County for the maintenance of any individual customer water or sanitary sewer service lines connecting to the County's main (or trunk) water or sanitary sewer lines.

2. Grant of Easements by Golf LLC and Club.

(a) Subject to the terms and provisions of Paragraph 2 below, Golf LLC and Club do hereby jointly and severally 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 all portions of the Golf Club Property for the purpose of providing access to the Golf Club Property and the right to inspect, install, construct, operate, repair, maintain and replace any and all water and sanitary sewer lines, pipes, conduit and other appurtenances, including, without limitation, lift (pump) stations, which may be currently situated within any portions of the Golf Club Property.

(b) Notwithstanding anything provided herein to the contrary, the easements granted to the County pursuant to this Paragraph 2 above are subject to and limited as follows:

(i) Except for lift (pump) stations situated within the Golf Club Property, any and all water and sanitary sewer lines, pipes, conduit and other appurtenances to be constructed, operated or replaced by the County within the Golf Club Property shall be constructed and maintained below ground;

(ii) The County covenants and agrees to repair and replace with substantially equivalent material any and all landscaping, plant life or 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 2 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 easements granted pursuant to this Paragraph 2 shall (1) be limited and restricted only those areas on the Golf Club Property on which underground water or sanitary sewer lines, pipes, conduit or other appurtenances are currently located, (2) follow the alignment of the water or sanitary sewer lines, pipes, conduit or other apparatus as currently situated on the Golf Club Property and (3) be limited to a width of 15 feet on either side of such

water or sanitary sewer lines, pipes, conduit or other apparatus (for a total easement width of 30 feet);

(iv) The County shall not, unless an emergency situation exists, exercise the easement rights granted pursuant to Paragraph 2 above without the prior written consent of Club Owner, which consent shall not be unreasonably withheld or delayed;

(v) The easements granted pursuant to this Paragraph 2 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 areas described in this Paragraph 2; and

(vi) Nothing contained herein shall place or be constructed to place any burden, obligation or responsibility on the County for the maintenance of any individual customer water or sanitary sewer service lines connecting to the County's main (or trunk) water or sanitary sewer lines.

3. **Amendments.** This Agreement may be amended and modified only by written instrument duly executed by (a) Developer, Association and the County, with respect to any modifications to Paragraph 1 above or (b) Club Owner and the County, with respect to any amendments to Paragraph 2 above.

4. **Miscellaneous.** The terms and provisions of this Agreement shall be binding upon and inure to the benefit of Developer, Association 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. Each party hereto covenants and agrees to execute, sign and deliver, or cause to be executed, signed and delivered and to otherwise do or make, or cause to be done and made, any and all agreements, instruments, papers, deeds, acts or things, supplemental, conformitory or otherwise, which may be reasonably requested by any other party hereto for the purpose of or in connection with clarifying, amending or otherwise consummating any of the transactions and matters described herein, including, without limitation, executing additional easement agreements substantially in the form of this Agreement in favor of the County to the extent reasonably required by the County.

5. **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 Developer,
the Association or
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 DEVELOPMENT COMPANY,
LLC**, an Alabama limited liability company

By: DANIEL REALTY CORPORATION
an Alabama corporation, Its Manager

By: Christopher A. [Signature]
Its: Sr Vice President

**GREYSTONE LEGACY HOMEOWNERS'
ASSOCIATION, INC.**, an Alabama nonprofit
corporation

By: Shirley D. Ellis
Its: Secretary

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. 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 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 as aforesaid.

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

Ginger M. Coyle
Notary Public
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
Vice President of GREYSTONE LEGACY HOMEOWNERS' 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
nonprofit corporation.

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

Ginger A. McCoy
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
Gr. Vice President 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 the 8th day of September, 2003.

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

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 8th day of September, 2003.

Ginger A. McCoy
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

CONSENT OF MORTGAGEE

THIS CONSENT OF MORTGAGEE is made and entered into as of the 8th 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 the following (collectively, the "Mortgages"):

(a) That certain Mortgage and Security Agreement dated as of March 4, 1999 executed by Greystone Development Company, LLC, an Alabama limited liability company ("Developer"), and Greystone Golf Club, Inc., an Alabama nonprofit corporation (the "Club") and recorded as Instrument #1999-12259 in the Office of the Judge of Probate of Shelby County, Alabama (the "Probate Office"), as amended from time to time;

(b) That certain Mortgage and Security Agreement dated as of December 30, 2002 executed by Greystone Golf, LLC, an Alabama limited liability company ("Golf LLC"), and the Club, recorded as Instrument #20030304000128450 in the Probate Office; and

(c) That certain Cross-Collateralization and Cross-Default Agreement dated December 30, 2002 and recorded as Instrument #20030304000128480 in the Probate Office.

The Mortgages encumber portions of the Property and the Golf Club 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") among Developer, the Greystone Legacy Homeowners' Association, Inc., Golf LLC and the Club in favor of Shelby County, Alabama, a political subdivision of the State of Alabama, 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. *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.

2. Mortgagee does hereby agree that the Mortgages 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 either of the Mortgages, the granting of any deed in lieu of foreclosure or the taking of any other action by Mortgagee under either of the Mortgages which results in Mortgagee acquiring title to or any interest in any of the real property

encumbered by either of the Mortgages (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) all of the parties to the Easement Agreement and their respective 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 Developer, Golf LLC or the Club, as applicable, under the Easement Agreement and 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: Group 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 Vice Pres 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 14th day of September, 2003.



[Signature]
Notary Public
My Commission Expires: 5/08/07

EXHIBIT A

Schedule of Subdivision Plats and Private Streets

Greystone Legacy, 1st Sector

Legacy Drive, Langston Place, Legacy Court, North Highfield Court and North Highfield Drive, according to the Survey of Greystone Legacy, 1st Sector as recorded in Map Book 26, Pages 79 A, B and C in the Office of the Judge of Probate of Shelby County, Alabama.

Greystone Legacy, 2nd Sector

Legacy Drive, according to the Survey of Greystone Legacy, 2nd Sector as recorded in Map Book 27, Page 66 in the Office of the Judge of Probate of Shelby County, Alabama.

Greystone Legacy, 3rd Sector

Ramsay Road and McCormack Way, according to the Survey of Greystone Legacy, 3rd Sector as recorded in Map Book 27, Page 109 in the Office of the Judge of Probate of Shelby County, Alabama.

Greystone Legacy, 4th Sector

Legacy Drive and Steward's Glen, according to the Survey of Greystone Legacy, 4th Sector as recorded in Map Book 28, Page 41 in the Office of the Judge of Probate of Shelby County, Alabama.

Greystone Legacy, 5th Sector, Phase I

Legacy Drive, according to the Survey of Greystone Legacy, 5th Sector, Phase I as recorded in Map Book 29, Page 20 in the Office of the Judge of Probate of Shelby County, Alabama.

Greystone Legacy, 6th Sector

Legacy Drive, Crown Circle and Trinity Court, according to the Survey of Greystone Legacy, 6th Sector as recorded in Map Book 29, Page 21 in the Office of the Judge of Probate of Shelby County, Alabama.

Greystone Legacy, 7th Sector

Royal Mile, according to the Survey of Greystone Legacy, 7th Sector as recorded in Map Book 30, Pages 43 A, B and C in the Office of the Judge of Probate of Shelby County, Alabama.

Greystone Legacy, 8th Sector, Phase I

Legacy Drive, according to the Survey of Greystone Legacy, 8th Sector, Phase I as recorded in Map Book 31, Pages 14 A, B and C in the Office of the Judge of Probate of Shelby County, Alabama.

Greystone Legacy, 8th Sector, Phase II

Sutherland Place, Deerhurst Court, Perthshire Court and Hillside Crescent, according to the Survey of Greystone Legacy, 8th Sector, Phase II as recorded in Map Book 31, Pages 54 A, B and C in the Office of the Judge of Probate of Shelby County, Alabama.

Greystone Legacy, 8th Sector, Phase III

Legacy Drive, according to the Survey of Greystone Legacy, 8th Sector, Phase III as recorded in Map Book 31, Page 33 in the Office of the Judge of Probate of Shelby County, Alabama.

The Haven at Greystone, 1st Sector

Legacy Drive, Haven Road and Braemer Court, according to the Survey of The Haven at Greystone, 1st Sector, as recorded in Map Book 31, Page 47 in the Office of the Judge of Probate of Shelby County, Alabama.

Legacy Place of Greystone

Woodward Court, according to the Survey of Legacy Place of Greystone as recorded in Map Book 27, Page 36 in the Office of the Judge of Probate of Shelby County, Alabama.

The terms "Subdivision Plats" and "Private Streets" shall also include any further subdivision plats and any future private streets shown thereon which are hereafter filed for record in the Probate Office and which subject the real property shown thereon to the terms and provisions of the Declaration.