


STATE OF ALABAMA)
 :
COUNTY OF SHELBY)


20040123000039500 Pg 1/7 32.00
Shelby Cnty Judge of Probate, AL
01/23/2004 11:17:00 FILED/CERTIFIED

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

THIS SIXTH AMENDMENT TO THE CREST AT GREYSTONE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "Amendment") is made and entered into as of the 20th day of January, 2004, 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 (the "Probate Office"), which has been amended by (i) First Amendment thereto dated February 3, 1994 and recorded as Instrument #1994-03752 in the Probate Office, (ii) Second Amendment thereto dated January 10, 1995 and recorded as Instrument #1995-00941 in the Probate Office, (iii) Third Amendment thereto dated October 25, 1995 and recorded as Instrument #1995-32703 in the Probate Office, (iv) Fourth Amendment thereto dated as of August 22, 2001 and recorded as Instrument #2001-38397 in the Probate Office and (v) Fifth Amendment thereto dated as of September 3, 2003 and recorded as Instrument No. 20030910000608050 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 owners' association established and referred to as the "Association" in the Declaration.

The parties desire to amend Section 8.04 of the Declaration in order to restate the manner in which Annual Hugh Daniel Drive Assessments are assessed to the Owners.

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, 2004, 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(c) below, the Owner of each Lot or Dwelling within the Development shall pay to GRA and its successors and assigns the following sums as the agreed upon prorata share of maintenance and upkeep costs payable by the Owner of each Lot or Dwelling with respect to the maintenance and upkeep of Hugh Daniel Drive:

(i) Commencing January 1, 2004 and on the first day of January of each year thereafter, the Owner of each Lot or Dwelling in the Development shall pay to GRA the Owner's Prorata Share, as hereinafter defined, of the Annual Hugh Daniel Drive Assessments, as hereinafter defined.

(ii) As used herein, the following terms will have the respective meanings set forth below:

(1) "Annual Hugh Daniel Drive Assessments" shall mean and refer to the product obtained by multiplying the Annual Hugh Daniel Drive Maintenance Costs for the then applicable calendar year by the percentage allocated to the Development as set forth in **Schedule 1** attached hereto and incorporated herein by reference. The amount of the Annual Hugh Daniel Drive Assessments is subject to annual increase or decrease as provided in Section 8.04(a)(iii) below;

(2) "Annual Hugh Daniel Drive Maintenance Costs" shall mean and refer to all costs and expenses set forth in the annual budget adopted each calendar year by the Board of Directors of GRA for the maintenance and upkeep of that portion of Hugh Daniel Drive from U.S. Highway 280 to the entrance of the Development and certain other improvements thereto, which costs and expenses shall include, without limitation: mowing and trimming grass located within the median and right-of-way of the aforesaid areas of Hugh Daniel Drive; picking up trash, rubbish and other debris within the right-of-way of the aforesaid areas of Hugh Daniel Drive; planting and maintenance of landscaping materials, including annual flowers, within the right-of-way of the aforesaid areas of Hugh Daniel Drive; lighting, irrigation and utility costs and expenses for any landscaping and signage located within the median and right-of-way of the aforesaid areas of Hugh Daniel Drive; street lighting along the aforesaid areas of Hugh Daniel Drive; the maintenance, repair and replacement of signage, lighting,

landscaping and irrigation for any entrance signage constructed at or near the intersection of Hugh Daniel Drive and U.S. Highway 280, including any utility costs relating to the same; and the establishment of annual reserves/contingencies; and

(3) "Owner's Prorata Share" shall mean the amount of Annual Hugh Daniel Drive Assessments for the immediately succeeding calendar year multiplied by a fraction, the numerator of which is the number of Lots or Dwellings owned by the applicable Owner and the denominator of which is the total number of Lots or Dwellings within the Development.

(iii) Commencing January 1, 2005, the Annual Hugh Daniel Drive Assessments shall be subject to annual increase and decrease each year based on the amount of Annual Hugh Daniel Drive Maintenance Costs set forth in the then applicable annual budget adopted by the GRA board of directors; provided, however, that in no event shall the Annual Hugh Daniel Drive Assessments in any year increase by more than ten percent (10%) of the total amount of Annual Hugh Daniel Drive Assessments payable in the immediately preceding calendar year unless the same is approved by at least seventy-five percent (75%) in interest, as such interests are set forth in **Schedule 1** hereto, of the boards of directors of those owners' associations for the developments described in said **Schedule 1** (and those other persons who have voting rights specified in said **Schedule 1**).

(b) 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(a) above, then (i) the rights and remedies set forth in Section 8.08 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 8.08 below.

(c) 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 January 31 of each year, commencing January 31, 2004, 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 January 31 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(c), 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(b) above.

(d) Notwithstanding anything provided in the Declaration to the contrary, the terms and provisions of this Section 8.04 may not be modified or amended unless such modification or amendment is also consented to and approved in writing by GRA."

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 and are hereby ratified, confirmed and approved.

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: Christopher A. R.
Its: SR VP

**GREYSTONE RESIDENTIAL ASSOCIATION,
INC.**, an Alabama nonprofit corporation

By: Christopher A. R.
Its: President

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

By: Christopher A. R.
Its: 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 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 20th day of January, 2004.

Debbie D. Stephens
Notary Public
My Commission Expires: April 10, 2006

[NOTARIAL SEAL]

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 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 20th day of January, 2004.

Debbie D. Stephens
Notary Public
My Commission Expires: April 10, 2006

[NOTARIAL SEAL]

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 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 20th day of January, 2004.

Dakhi D. Stephens
Notary Public

[NOTARIAL SEAL]

My Commission Expires: April 10, 2006

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

Schedule 1

<u>Name of Development</u>	<u>Name of Owner's Association</u>	Percentage of Annual Hugh Daniel Drive Maintenance Costs (and Voting Rights) Allocated to Each <u>Development</u>
Greystone Office Park	Greystone Office Park Association, Inc.	22.9%
Greystone Retirement	None ¹	4.9%
Greystone Village	Greystone Village Owner's Association, Inc.	6.5%
The Glen at Greystone (including the Glen Estates)	Greystone Close' Owner's Association, Inc.	6.9%
The Crest at Greystone	The Crest at Greystone Association, Inc.	5.2%
Greystone Residential ²	Greystone Residential Association, Inc.	<u>53.6%</u>
Total		100.0%

1 Greystone Retirement consists of one (1) lot only which is subject to the Greystone Retirement Care Declaration of Covenants, Conditions and Restrictions dated April 23, 1992 and recorded as Instrument #1992-09687 in the Office of the Judge of Probate of Shelby County, Alabama. All voting, if any, required pursuant to the terms of Section 8.04(a)(iii) of the Declaration shall be undertaken by the then owner of the one (1) lot subject to the aforementioned Greystone Retirement Care Declaration of Covenants, Conditions and Restrictions.

2 Greystone Residential is a reference to all of the real property subject to the Greystone Residential Declaration of Covenants, Conditions and Restrictions dated as of November 6, 1990 and recorded in Real 317, Page 260 in the Office of the Judge of Probate of Shelby County, Alabama, as the same has been and may be amended from time to time.