

STATE OF ALABAMA     )  
                                  :  
COUNTY OF SHELBY     )

**FIFTH AMENDMENT TO  
AMENDED AND RESTATED GREYSTONE VILLAGE  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS FIFTH AMENDMENT TO AMENDED AND RESTATED GREYSTONE VILLAGE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "Amendment") is made and entered into as of the 8<sup>th</sup> day of February, 2004 by and among DANIEL OAK MOUNTAIN LIMITED PARTNERSHIP, an Alabama limited partnership ("Daniel"), GREYSTONE RESIDENTIAL ASSOCIATION, INC., an Alabama nonprofit corporation ("GRA"), GREYSTONE VILLAGE OWNER'S ASSOCIATION, INC., an Alabama nonprofit corporation (the "Association").

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

Daniel and School House Properties, an Alabama general partnership now known as Taylor Properties, L.L.C., an Alabama limited liability company ("Developer"), have heretofore executed the Amended and Restated Greystone Village Declaration of Covenants, Conditions and Restrictions dated February 21, 1994 which has been recorded as Instrument #1994-12222 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 January 31, 1995 and recorded as Instrument #1995-16397 in the Probate Office, (ii) Second Amendment thereto dated January 31, 1996 and recorded as Instrument #1996-08823 in the Probate Office, (iii) Third Amendment thereto dated as of September 22, 2001 and recorded as Instrument #2001-57314 in the Probate Office and (iv) Fourth Amendment thereto dated as of February 8, 2004 and recorded as Instrument # 20040219000086650 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 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 no longer owns any Lot or Dwelling within the Property. As a result thereof, any amendments to the Declaration must be approved by both Daniel and two-thirds (2/3rd) of the total votes of the Owners present, in person or by proxy, at a meeting of the Association called for the purpose of acting on any such proposed amendment.

On February 8, 2004, a special meeting of the Owners in the Association was called for the purpose of acting on this Amendment, at which (a) 68 percent

(~~68~~ %) of all of the Owners were present, in person or by proxy (thereby satisfying the quorum requirements set forth in the Bylaws of the Association), and (b) 100 percent (~~100~~%) of the total votes of the Owners present, in person or by proxy, at such meeting voted in favor of this Amendment. Myrtice A. Carr, as President of the Association, has joined in the execution of this Amendment in order to certify the foregoing. Accordingly, all Owners of all Lots and Dwellings in the Property shall be bound by all of the terms and provisions of this Amendment.

GRA and the Association have also 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 Property 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 Property 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 known as The Crest at Greystone” 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 Property.

(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 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 Property, 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 Property, 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 Property 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 Property 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. Brown  
Its: Sr Vice President

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

By: Christopher A. Brown  
Its: President

**GREYSTONE VILLAGE OWNER'S  
ASSOCIATION, INC.,** an Alabama nonprofit  
corporation

By: Mystie A. Carr  
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 3<sup>th</sup> day of February, 2004.

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

[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 8<sup>th</sup> day of February, 2004.

Binger A. McCoy  
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 Myrtice A. Carr, whose name as President of GREYSTONE VILLAGE OWNER'S 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 11<sup>th</sup> day of February, 2004.

Donna Ann Higley  
Notary Public

[NOTARIAL SEAL]

My Commission Expires: January 3, 2005

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

**CERTIFICATE OF PRESIDENT**

The undersigned, Myrtice A. Carr, as the President of the Greystone Village Owner's Association, Inc., an Alabama nonprofit corporation, does hereby unequivocally state and certify that the agreement of the requisite number of Owners in the Association was lawfully obtained to the above and foregoing Fifth Amendment to Amended and Restated Greystone Village Declaration of Covenants, Conditions and Restrictions pursuant to a meeting of the Owners in the Association held on February 8, 2004, at which a quorum was present.

The undersigned hereby certifies that he/she has personal knowledge of the foregoing and acknowledges and agrees that the foregoing certificate will be attached to the aforesaid Fifth Amendment to Amended and Restated Greystone Village Declaration of Covenants, Conditions and Restrictions.

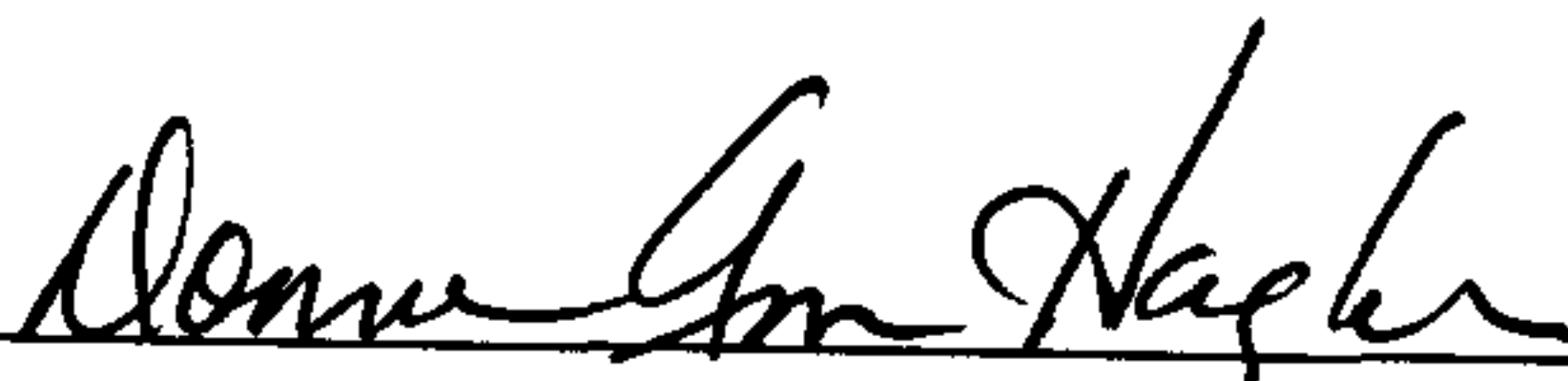
Dated as of the 11<sup>th</sup> day of February, 2004.

  
\_\_\_\_\_  
Printed Name: Myrtice A. Carr

STATE OF ALABAMA                    )  
  :  
COUNTY OF SHELBY                )

I, the undersigned, a notary public in and for said county in said state, hereby certify that Myrtice A. Carr, whose name as President of the Greystone Village Owner's 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/she, as such President and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 11<sup>th</sup> day of February, 2004.

  
\_\_\_\_\_  
Notary Public  
My commission expires: January 3, 2005

[NOTARIAL SEAL]

**Schedule 1**

<b><u>Name of Development</u></b>	<b><u>Name of Owner's Association</u></b>	<b>Percentage of Annual Hugh Daniel Drive Maintenance Costs (and Voting Rights) Allocated to Each <u>Development</u></b>
Greystone Office Park	Greystone Office Park Association, Inc.	22.9%
Greystone Retirement	None <sup>1</sup>	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 <sup>2</sup>	Greystone Residential Association, Inc.	<u>53.6%</u>
Total		100.0%

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<sup>1</sup> 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.

<sup>2</sup> 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.