

STATE OF ALABAMA)
 :
COUNTY OF SHELBY)

**FIFTH AMENDMENT TO GREYSTONE CLOSÉ
DEVELOPMENT RECIPROCAL EASEMENT AGREEMENT**

THIS FIFTH AMENDMENT TO GREYSTONE CLOSÉ DEVELOPMENT RECIPROCAL EASEMENT AGREEMENT (this "Amendment") is made and entered into as of the 13th day of ~~January~~ ^{May}, 2004 by and among DANIEL OAK MOUNTAIN LIMITED PARTNERSHIP, an Alabama limited partnership ("Grantor"), GREYSTONE RESIDENTIAL ASSOCIATION, INC., an Alabama nonprofit corporation ("GRA"), and GREYSTONE CLOSÉ OWNER'S ASSOCIATION, INC., an Alabama nonprofit corporation ("GCOA").

RECITALS:

Grantor, Greystone Closé, an Alabama joint venture ("Grantee"), GRA and GCOA have heretofore entered into the Greystone Closé Development Reciprocal Easement Agreement dated as of June 6, 1991, which has been recorded in Book 346, Page 848 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 as of September 30, 1991 and recorded in Real Book 380, Page 639 in the Probate Office, (ii) Second Amendment thereto dated as of September 10, 1993 and recorded as Instrument #1993-29620 in the Probate Office, (iii) Third Amendment thereto dated of June 16, 1995 and recorded as Instrument #1995-16399 in the Probate Office and (iv) Fourth Amendment thereto dated as of August 22, 2001 and recorded as Instrument #2001-57315 in the Probate Office (collectively, the "Reciprocal Easement Agreement"). *Capitalized terms not otherwise expressly defined herein shall have the same meanings given to them in the Reciprocal Easement Agreement.*

The Greystone Closé Development is subject to the Greystone Closé Development Declaration of Covenants, Conditions and Restrictions dated June 6, 1991 which has been recorded in Book 346, Page 873 in the Probate Office which has been amended by (i) First Amendment thereto dated December 30, 1991 and recorded in Real Book 380, Page 635 in said Probate Office and (ii) Second Amendment thereto dated June 16, 1995 and recorded as Instrument No. 1995-16398 in said Probate Office (collectively, the "Declaration").

The Declaration provides that the Annual Maintenance Expense set forth in the Reciprocal Easement Agreement constitutes part of the annual assessments payable by the "Owners" (which term, as used herein, shall have the same meaning given to it in the Declaration) of all of the "Lots" and "Dwellings" (which terms, as used herein, shall have the same meanings given to them in the Declaration).

The parties hereto desire to amend Paragraph 2 of the Reciprocal Easement Agreement in order to restate the amount of and manner in which Annual Maintenance Expenses shall be payable by GCOA to GRA.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Annual Maintenance Expense.** Effective as of January 1, 2004, Paragraph 2 of the Reciprocal Easement Agreement is deleted in its entirety and the following is substituted in lieu thereof:

“2. **MAINTENANCE COSTS WITH RESPECT TO HUGH DANIEL DRIVE.**

(a) GCOA hereby agrees to pay to GRA the following sums as the agreed upon prorata share of maintenance costs payable by the Owners of the Greystone Closé Development with respect to certain maintenance and upkeep costs incurred by GRA with respect to Hugh Daniel Drive:

(i) Commencing January 1, 2004 and on the first day of January of each year thereafter, GCOA shall pay to GRA the Annual Maintenance Expense, as hereinafter defined.

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

(1) “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

(2) “Annual Maintenance Expense” 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 Greystone Closé Development as set forth in **Schedule 1** attached

hereto and incorporated herein by reference. The amount of the Annual Maintenance Expense is subject to annual increase or decrease as provided in Paragraph 2(a)(iii) below.

(iii) Commencing January 1, 2005, the Annual Maintenance Expense 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 Maintenance Expense in any year increase by more than ten percent (10%) of the total Annual Maintenance Expense 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) The foregoing obligations of GCOA to pay the Annual Maintenance Expense shall be binding upon the successors and assigns of GCOA and, to the extent GCOA is liquidated, dissolved, terminated or determined to be insolvent, bankrupt or adjudged not to be responsible for the payment of the Annual Maintenance Expense, then the Owner of each Lot or Dwelling within the Greystone Closé Development shall pay to GRA such Owner's prorata share of the Annual Maintenance Expense.

(c) The Annual Maintenance Expense shall be remitted each year by GCOA to GRA no later than January 31 of each year. In the event GCOA fails to pay the entire amount due and owing to GRA 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 GCOA 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 GCOA hereunder, then GCOA agrees to pay all reasonable attorneys' fees and expenses, 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 available at law or in equity.

(d) Notwithstanding anything provided in the Reciprocal Easement Agreement to the contrary, the terms and provisions of this Paragraph 2 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 Reciprocal Easement Agreement, as previously amended, shall continue 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 VP

GREYSTONE RESIDENTIAL ASSOCIATION, INC., an Alabama nonprofit corporation

By: Christopher A. Brown
Its: President

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

By: Kimberly P. Little
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 Kenneth E. Little, Jr., whose name as President of GREYSTONE CLOSE 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 13 day of ^{May}~~January~~, 2004. RD ^{KEL}

Regina McGuire
Notary Public
My Commission Expires: 2/17/2004

[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
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.