

STATE OF ALABAMA)
 :
COUNTY OF SHELBY)

**SECOND AMENDMENT TO GREYSTONE RETIREMENT CARE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS SECOND AMENDMENT TO GREYSTONE RETIREMENT CARE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "Amendment") is made and entered into as of the ____ day of May, 2004 by and among DANIEL OAK MOUNTAIN LIMITED PARTNERSHIP, an Alabama limited partnership ("Daniel"), GREYSTONE RESIDENTIAL ASSOCIATION, INC., an Alabama nonprofit corporation ("GRA"), and GREYSTONE PROFESSIONAL BUILDING, LLC, an Alabama limited liability company ("Owner").

RECITALS:

Daniel has heretofore executed the Greystone Retirement Care Declaration of Covenants, Conditions and Restrictions dated as of April 23, 1992 which has been recorded as Instrument #1992-09687 in the Office of the Judge of Probate of Shelby County, Alabama, which has been amended by First Amendment thereto dated November 2, 1992 and recorded as Instrument #1992-25834 in the aforesaid Probate Office (collectively, the "Declaration"). *Capitalized terms not otherwise expressly defined herein shall have the same meanings given to them in the Declaration.*

Owner is the owner of all of the Property.

The parties desire to restate the manner in which the Annual Assessment is assessed to Owner under the Declaration as well as the method for payment of the same.

The parties further desire to acknowledge and agree that Daniel has heretofore assigned to GRA the right and obligation to maintain Hugh Daniel Drive and collect the Annual Assessment.

Pursuant to the terms and provisions of Section 9.02 of the Declaration, any amendments to the Declaration must be approved and executed by Daniel and Owner.

GRA has also joined in the execution of this amendment in order to consent to all of 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 hereby acknowledged, the parties do hereby agree as follows:

1. **Assignment and Assumption of Rights by GRA.** GRA has previously undertaken the maintenance and upkeep of Hugh Daniel Drive and each year has been paid the Annual Assessment paid by each Owner of the Property pursuant to the terms and provisions of

the Declaration. Daniel does hereby transfer, assign, set-over and deliver to GRA and GRA does hereby accept and assume (a) all of the obligations of Daniel under Section 6.02(f) of the Declaration to maintain Hugh Daniel Drive in accordance with the terms and provisions of the Declaration, (b) all rights of Daniel under Section 2.02 of the Declaration to collect the Annual Assessment each year from the Owner of the Property and (c) in common with Daniel, the right to exercise the enforcement rights set forth in Section 7.04 of the Declaration in the event the Owner the Property fails to timely pay the Annual Assessment.

2. **Annual Hugh Daniel Drive Assessments.** Effective as of January 1, 2004, Section 7.02 of the Declaration is deleted in its entirety and the following is substituted in lieu thereof:

“7.02 Computation and Payment of Annual Assessment.”

(a) The Owner of the Property shall pay to Greystone Residential Association, Inc., an Alabama nonprofit corporation and its successors and assigns (“GRA”), the following sums as the agreed upon prorata share of maintenance and upkeep costs payable by the Owner of the Property 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 the Property shall pay to GRA the Annual Assessment, as hereinafter defined.

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

(1) “Annual Assessment” 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 Property as set forth in Schedule 1 attached hereto and incorporated herein by reference. The amount of the Annual Assessment is subject to annual increase or decrease as provided in Section 7.02(a)(iii) below; and

(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; 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.

(iii) Commencing January 1, 2005, the Annual Assessment shall be subject to 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 Assessment in any year increase by more than ten percent (10%) of the Annual Assessment 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 the then Owner of the Property who shall have the voting rights specified in said **Schedule 1**).

(b) Owner agrees that in the event Owner fails to timely pay the Annual Assessment as required by Section 7.02(a) above, then GRA shall have the right to exercise all of the rights and remedies set forth in Section 7.04 below.

(c) Notwithstanding anything provided in the Declaration to the contrary, the terms and provisions of this Section 7.02 may not be amended or modified without the prior written consent of GRA and Owner.

(d) Notwithstanding anything provided in the Declaration to the contrary, the terms and provisions of this Section 7.02 may not be modified or amended unless such modification or amendment is also consented to and approved in writing by GRA."

3. **Effect of Non-Payment; Remedies of the Association.** Section 7.04 of the Declaration is amended by adding the following thereto as Section 7.04(d):

"(d) GRA shall have the right to exercise any of the rights and remedies provided in this Section 7.04 which have been granted to Developer, including, without limitation, the right to assess interest at the Applicable Rate from and after the 30th day from the due date of any Annual Assessment which is not paid when due, as well as the right to levy a lien and equitable charge upon any Lot or other portion of the Property to the extent the Annual Assessment is not paid when due. Accordingly, all references in this Section 7.04 to "Developer" shall also mean and refer to GRA."

4. **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 non-profit corporation

By: Christopher A. Brown
Its: President

GREYSTONE PROFESSIONAL BUILDING, LLC

By: [Signature] 5/15/04
Its: Manager

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 Senior 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 27th day of MAY, 2004.

[NOTARIAL SEAL]

Chris Tortorelli
Notary Public
My Commission Expires: March 3, 2008

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 Senior Vice 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 22nd day of May, 2004.

Chris Tortorelli
Notary Public
My Commission Expires: March 3, 2008

[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 William T. Mann, whose name as Manager of GREYSTONE PROFESSIONAL BUILDING, 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 said Company.

Given under my hand and official seal this 15th day of May, 2004.

Marion D. Smith
Notary Public
My Commission Expires: 7/12/04

[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.