

STATE OF ALABAMA )  
:  
COUNTY OF SHELBY )

**EASEMENT AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS**

THIS EASEMENT AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (this "Agreement") is made and entered into as of the 23<sup>rd</sup> day of May, 2006 by and between GREYSTONE DEVELOPMENT COMPANY, LLC, an Alabama limited liability company ("Developer"), and VERA AUKES MOOR and husband, M. EUGENE MOOR, III, as spouse, (collectively, "Owner").

**RECITALS:**

Owner is the owner of that certain real property (the "Owner's Property") situated in Shelby County, Alabama which is more particularly described in Exhibit A attached hereto and incorporated herein by reference.

Developer is the owner of that certain real property (the "Common Area Property") situated in Shelby County, Alabama which is more particularly described in Exhibit B attached hereto and incorporated herein by reference. The Common Area Property adjoins the western border of the Owner's Property.

Developer desires to grant to Owner a permanent and perpetual access easement over, across, through and upon that portion of the Common Area Property (the "Access Easement Property") which is more particularly described in Exhibit C attached hereto and incorporated herein by reference, for the purposes and on the terms and conditions hereinafter set forth.

The Access Easement Property will provide access to and from the Owner's Property and that certain private roadway known as Legacy Drive ("Legacy Drive"), as shown and depicted on that certain subdivision plat entitled "Greystone Legacy 1<sup>st</sup> Sector", as recorded in Map Book 26, Page 79 A, B and C in the Office of the Judge of Probate of Shelby County, Alabama.

In addition, Developer desires to grant to Owner an permanent, perpetual and non-exclusive easement over, across, through, under and upon that portion of the Common Area Property (the "Utility Easement Property") which is more particularly described in Exhibit D attached hereto and incorporated herein by reference for the purposes and on the terms and conditions hereafter set forth.

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

1. **Grant of Access Easement.**

(a) Subject to Owner's compliance with all of the terms and provisions of Paragraph 2 below, Developer does hereby grant to Owner, for the benefit of the Owner's Property, a permanent, perpetual and non-exclusive easement appurtenant (the "Access Easement") over, across, through and upon the Access Easement Property for the purposes set forth in Paragraph 1(b) below.



(b) Subject to Owner's compliance with the provisions of Paragraph 2 below, the Access Easement granted by Developer to Owner may be utilized by Owner for the purpose of constructing, installing, maintaining, operating, repairing and replacing from time to time on the Access Easement Property one (1) paved driveway (the "Driveway") which will provide access between the Owner's Property and Legacy Drive.

2. **Limitations and Restrictions on the Use of Access Easement Property.**

(a) The Access Easement Property shall be used by Owner only for the construction, operation, maintenance, repair or replacement of a Driveway (and Driveway Improvements, as hereinafter defined), which shall be constructed by Owner in accordance with the terms and provisions of Paragraph 2(b) below.

(b) As a condition precedent to Owner's exercise of the Access Easement, Owner shall satisfy all of the following terms, conditions and requirements:

(i) The Driveway to be constructed on the Access Easement Property by Owner shall be paved with either asphalt or concrete in a manner substantially similar in quality of construction as currently found in the Greystone Legacy subdivision, shall be no more than 10 feet in width and shall include appropriate and adequate storm drainage and storm sewer facilities (collectively, with the Driveway, the "Driveway Improvements"). Only one (1) Driveway shall be constructed on the Access Easement Property. In addition, Owner shall have the right, at Owner's sole cost and expense, to construct, install, maintain, repair and replace from time to time within the Access Easement Property up to two (2) mailboxes so long as such mailboxes are the same type, quality and color of the mailboxes uses throughout the Greystone Legacy subdivision (collectively, the "Approved Mailboxes");

(ii) Prior to the commencement of construction of any of the Driveway Improvements, Owner shall prepare and submit to Developer for approval plans and specifications for the Driveway Improvements (the "Driveway Plans"), which approval shall not be unreasonably withheld or delayed by Developer. Such Driveway Plans shall provide that the Driveway will meet at grade with Legacy Drive and shall provide for appropriate landscaping of the Access Easement Property by Owner;

(iii) Following approval of the Driveway Plans by Developer, Owner shall, at Owner's sole cost and expense, cause the Driveway Improvements to be constructed and completed on or before ninety (90) days from the date of commencement of construction of any Driveway Improvements on the Access Easement Property. The Driveway Improvements shall be constructed in a good and workmanlike manner in substantial accordance with the Driveway Plans approved by Developer and in accordance with all statutes, laws, ordinances, code provisions, rules, regulations and requirements (collectively, the "Governmental Requirements") of all applicable city, county, state and federal governmental or quasi-governmental agencies, bureaus, departments, divisions or regulatory agencies (collectively, the "Applicable Governmental Agencies"). All construction work relating to the construction of the Driveway and Driveway Improvements shall be performed only during the weekday hours of 7:00 a.m. and 6:00 p.m. or on Saturdays during the hours from 8:00 a.m. and 1:00 p.m. Following completion of the initial construction of the Driveway and Driveway Improvements, other than routine maintenance and repair of the Driveway and Driveway Improvements, no further construction activities shall be undertaken on or within the Access Easement



Property without the prior written consent and approval of Developer, which approval shall not be unreasonably withheld or delayed;

(iv) The Driveway Improvements shall only benefit and be used by the existing one (1) single-family residential dwelling currently situated on the Owner's Property and one (1) additional detached single-family residential dwelling which may be constructed by Owner on the Owner's Property after the date of this Agreement so long as such additional dwelling is owned and occupied by Owner or any children or grandchildren of Owner (collectively, the "Two Related Party Dwellings"). Except for the Two Related Party Dwellings, the Driveway Improvements shall not be utilized by any additional dwellings which may be constructed on the Owner's Property or any other real property situated adjacent to or in close proximity with the Owner's Property. In no event shall Owner grant, assign, transfer, convey, delegate or otherwise authorize any person or entity (other than the then owners of the Two Related Party Dwellings) any rights to use or come upon the Owner's Property to access or use the Access Easement on the Access Easement Property. In no event shall the Driveway or any of the Driveway Improvements be used by or for the benefit of any other real property other than the Two Related Party Dwellings;

(v) The Driveway and Driveway Improvements shall at all times be maintained by Owner, at Owner's sole cost and expense, in good condition and repair; and

(vi) Except for the Driveway Improvements set forth in the Driveway Plans approved by Developer and the Approved Mailboxes, no further improvements of any kind or nature shall be made by Owner to the Access Easement Property without the prior written consent and approval of Developer.

(c) If, for any reason, the restrictions set forth in Paragraph 2 above are breached or are not being complied with in all respects at all times, then, in addition to any other rights and remedies which Developer may have at law or in equity, Developer may, by written notice to Owner, cancel and terminate the Access Easement granted herein to Owner, in which event the Access Easement shall be null and void and of no further force or effect. Subject to the foregoing, the terms and provisions of Paragraphs 1 and 2 this Agreement shall be covenants running with the land which shall be binding upon and inure to the benefit of Developer, Owner and their respective heirs, executors, personal representatives, successors and assigns.

### 3. Utility Easement and Connection Rights.

(a) Subject to Owner's compliance with all of the terms and provisions of this Paragraph 3, Developer does hereby grant to Owner, for the benefit of the Owner's Property, a permanent, perpetual and non-exclusive easement appurtenant over, across, through, under and upon the Utility Easement Property for the purposes of constructing, installing, operating, maintaining, repairing and replacing from time to time thereon underground lines, pipes, conduits, equipment, machinery and appurtenances (collectively, the "Utility Lines") which may be necessary or required in order to provide to the Owner's Property any publicly or privately owned or operated utility services, including, without limitation, electrical, gas, telephone, cable television and similar types of communication services and systems, water and sanitary sewer services and systems (collectively, the "Utility Services"). Subject to Owner's compliance with all of the terms and provisions of this Paragraph 3, Developer does further grant to Owner, for the benefit of the Adjacent Saddle Creek Lot, a permanent, perpetual and non-exclusive right



to connect and tie-onto (the "Utility Connection Rights") any and all underground Utility Lines situated in or upon the right-of-way of Legacy Drive.

(b) As a condition precedent to Owner's exercise of the easements granted pursuant to Paragraph 3(a) above, Owner shall satisfy all of the following terms, conditions and requirements:

(i) All Utility Lines constructed or installed by Owner on the Utility Easement Property or Legacy Drive shall be located underground;

(ii) Owner does hereby covenant and agree that in connection with the exercise of the easement rights granted to Owner pursuant to Paragraph 3(a) above:

(1) Owner shall prosecute the initial construction and installation of any Utility Lines within the Utility Easement Property and Legacy Drive in such a manner so as to cause as little interference with pedestrian and vehicular access, ingress and egress over and upon Legacy Drive as possible;

(2) Owner will implement and enforce prudent safety and traffic control measures during the prosecution of such construction activities so as to minimize any risk of personal injury or property damage resulting from such construction activities;

(3) Once construction of any such Utility Lines within the Utility Easement Property and/or Legacy Drive commences, such construction work will be promptly completed on or before ninety (90) days from the date of commencement of any such construction work;

(4) Unless the applicable utility company or governmental agency assumes all maintenance responsibilities for all Utility Lines constructed by or for the benefit of Owner within the Utility Easement Property or Legacy Drive, Owner shall, at Owner's sole cost and expense, operate, maintain, repair and replace, if necessary, all Utility Lines constructed or installed by Owner within the Utility Easement Property or Legacy Drive;

(5) All Utility Lines constructed or installed by Owner within the Utility Easement Property or Legacy Drive shall be constructed and installed in a good and workmanlike manner and in accordance with all statutes, laws, ordinances, code provisions, rules, regulations or requirements of all Applicable Governmental Agencies and those utility companies having jurisdiction over the construction, installation, operation, maintenance and use of the same;

(6) All construction work relating to the construction of Utility Lines within the Utility Easement Property or the exercise of the Utility Connection Rights shall be performed only during the weekday hours of 7:00 a.m. and 6:00 p.m. or on Saturdays during the hours from 8:00 a.m. and 1:00 p.m.;

(7) Following completion by Owner of the initial construction and installation of Utility Lines within the Utility Easement Property and Legacy Drive, no further construction activities on or within the Utility Easement Property or Legacy Drive shall be undertaken without the prior written consent and



approval of Developer, which consent and approval shall not be unreasonably withheld or delayed; and

(8) Any damage to Legacy Drive, the Utility Easement Property and any other real property situated in close proximity to the Utility Easement Property and, any improvements thereto or to any Utility Lines situated within Legacy Drive caused by or resulting from the exercise of the easement rights granted to Owner pursuant to Paragraph 3(a) above shall be promptly repaired and replaced by Owner;

(iii) Owner shall be solely responsible for (1) paying any and all costs and expenses relating to the installation of any and all Utility Lines within the Utility Easement Property and the right-of-way of Legacy Drive, including the installation of all meters for any Utility Services provided to the Owner's Property through the exercise of the Utility Connection Rights, (2) paying any and all reservation, tap, impact and other fees and any other service, use and demand fees or charges charged from time to time by any utility company or governmental agency providing any Utility Services through the Utility Lines, and (3) obtaining any and all taps, tap rights and capacity or use allocations for the Owner's Property from the applicable utility company or governmental agency providing Utility Services through any of the Utility Lines; and

(iv) The easement rights granted to Owner pursuant to Paragraph 3(a) above shall be utilized solely for the purpose of serving the Owner's Property. In no event, however, shall any other real property be authorized to utilize any of the easement rights granted pursuant to Paragraph 3(a) above without the prior written consent of Developer, which consent may be withheld in the sole and absolute discretion of Developer.

(c) If, for any reason, the restrictions set forth in Paragraph 3 above are breached or are not being complied with in all respects at all times, then, in addition to any other rights and remedies which Developer may have at law or in equity, Developer may, by written notice to Owner, cancel and terminate the easement rights granted to Owner pursuant to Paragraph 3(a) above, in which event all easement rights granted to Owner pursuant to Paragraph 3(a) above shall be null and void and of no further force or effect. Subject to the foregoing, the terms and provisions of this Paragraph 3 shall be covenants running with the land which shall be binding upon and inure to the benefit of Developer, Owner and their respective heirs, executors, personal representatives, successors and assigns.

#### 4. Declaration of Restrictive Covenants.

(a) As a material inducement to Owner to enter into this Agreement, Developer hereby burdens the Common Area Property with a restrictive covenant that the owner of the Common Area Property shall not oppose any effort by the then owner of any portion of the Owner's Property to rezone the same for single-family residential uses (other than trailers, manufactured housing or mobile homes) so long as all homes to be constructed on any portion of the Owner's Property contain a minimum of 2,000 square feet of heated and cooled areas and an appropriate landscape buffer reasonably approved by Developer is established on the Owner's Property directly adjacent to the Developer Property, which landscape buffer shall provide a visual screen of any homes, improvements, barns, structures or children's play toys or play equipment which may be located on the Owner's Property; provided, however, that the foregoing covenant shall not preclude the Greystone Legacy Homeowners' Association, Inc. (the "Association") from objecting to any such rezoning efforts undertaken by Owner (even if the Association is the then owner of all or any portion of the Common Area Property).



(b) As a material inducement to Developer to enter into this Agreement, Owner hereby burdens the Owner's Property with a restrictive covenant that the Owner's Property shall at all times be used solely for detached single-family residential purposes, which may include barns and stables, but specifically excludes mobile homes, modular homes, manufactured housing units or house trailers.

(c) Furthermore, as a material inducement to Developer to enter into this Agreement, Owner hereby covenants and agrees to clean-up and remove, and agrees not to otherwise place at any time in the future any children's play toys, play equipment, trash, rubbish or other debris along the property lines of the Owner's Property to the extent the same would be visible from Legacy Drive.

5. **Miscellaneous.**

(a) This Agreement embodies the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior written or oral agreements and undertakings of the parties relating to any of the subject matter of this Agreement. This Agreement may not be modified or amended except by a written instrument executed by the then owner of the Common Area Property and the then owner(s) of the Owner's Property.

(b) 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.

(c) This Agreement and the covenants and obligations contained herein shall run with the land and, subject to the limitations set forth in Paragraphs 2(c) and 3(c) above, shall be binding upon and inure to the benefit of Developer and Owner and their respective heirs, executors, personal representatives, administrators, successors and assigns. Developer and Owner acknowledge and agree that Developer will, at some time in the future, transfer and convey the Common Area Property to the Association, in which event all of the rights and remedies of Developer set forth in this Agreement shall be exercised by the Association. Furthermore, to the extent Owner transfers and conveys the Owner's Property to any third party, then such third party, as successor in interest to Owner in the ownership of the Owner's Property, shall be solely responsible for the performance of all obligations of Owner set forth in this Agreement and Vera Aukes Moor and husband, M. Eugene Moor, III, as the initial Owner under this Agreement, shall be released of any further obligations or liabilities under this Agreement from and after the transfer and conveyance of the Owner's Property to any such third party.

(d) Whenever the context requires or permits, the use of the masculine gender shall be deemed to include the feminine, the singular shall include the plural and vice versa.

(e) If any provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then 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 of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(f) This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.

(g) In connection with the construction of the Driveway and Driveway Improvements on the Access Easement Property and the construction of any Utility Lines on the Utility Easement Property and the exercise of the Utility Connection Rights set forth herein, Owner shall and does hereby agree to indemnify, defend and hold Developer, the Association and their respective successors and assigns



harmless from and against any and all actions, causes of action, liabilities, losses, claims, damages, costs and expenses, including reasonable attorneys' fees and expenses, suffered, paid or incurred by Developer, the Association or any of their respective successors and assigns as a result of any injury or damage to person (including death) or property occurring in, on or upon the Access Easement Property, the Utility Easement Property or Legacy Drive as a result of or in connection the undertaking of any construction activities on or within said areas by Owner.

(h) In the event of any violation or threatened violation of this Agreement by any party hereto, then the non-defaulting party shall have the right to exercise all rights and remedies available to such party at law or in equity, including, without limitation, seeking injunctive relief to enjoin such violation or threatened violation and any and all costs and expenses paid of incurred by such non-defaulting party, including without limitation, attorneys' fees and expenses, and court costs, shall be paid by the defaulting party.

IN WITNESS WHEREOF, Developer and Owner 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: Christy A. B...  
Its: Sr Vice President

Vera Aukes Moor  
Vera Aukes Moor

M. Eugene Moor III  
M. Eugene Moor, III (as Spouse)

STATE OF ALABAMA )  
COUNTY OF SHELBY )

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Shelby Cnty Judge of Probate, AL  
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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 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 said corporation, acting in its capacity as Manager of said limited liability company.

Given under my hand and official seal this 23<sup>rd</sup> day of May, 2006.

Chris Tortorelli

Notary Public

[NOTARIAL SEAL]

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 Vera Aukes Moor and husband, M. Eugene Moor, III, whose names are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of said instrument, they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 24<sup>th</sup> day of April, 2006.

Michelle M. Moore

Notary Public

[NOTARIAL SEAL]

My commission expires: 9/08/2008

This instrument prepared by  
Stephen R. Monk  
Bradley Arant Rose & White LLP  
One Federal Place  
1819 Fifth Avenue North  
Birmingham, AL 35203-2104  
(205) 521-8000





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## EXHIBIT A

### Legal Description of Owner's Property

Lots 3 and 4B, according to the Survey of Saddle Creek Farms, as recorded in Map Book 14, Page 5 in the Office of the Judge of Probate of Shelby County, Alabama.



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## EXHIBIT B

### Legal Description of Common Area Property

The Common Area Property is that portion of that certain real property designated as "Common Area" on the Survey of Greystone Legacy, 1<sup>st</sup> Sector, as recorded in Map Book 26, Page 79 A, B and C in the Office of the Judge of Probate of Shelby County, Alabama, which lies between Legacy Drive, a private roadway, as shown on the aforesaid subdivision plat, and Lot 3, according to the Survey of Saddle Creek Farms, as recorded in Map Book 14, Page 5 in the Office of the Judge of Probate of Shelby County, Alabama (which Lot 3 constitutes part of the Owner's Property).



## EXHIBIT C

### Legal Description of Access Easement Property

The Access Easement Property shall be a 15-foot strip of land situated on the Common Area Property which will provide access from Lot 3, according to the Survey of Saddle Creek Farms, as recorded in Map Book 14, Page 5 in the Office of the Judge of Probate of Shelby County, Alabama (which Lot 3 constitutes part of the Owner's Property) to Legacy Drive, a private roadway, the exact location of which shall be mutually determined by the engineers for Owner and Developer and shall be reflected by a metes and bounds legal description which will be added to this Agreement by amendment.



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## EXHIBIT D

### Legal Description of Utility Easement Property

The Utility Easement Property shall be a 20-foot strip of land situated on the Common Area Property which will be adjacent to Lot 3, according to the Survey of Saddle Creek Farms, as recorded in Map Book 14, Page 5 in the Office of the Judge of Probate of Shelby County, Alabama (which Lot 3 constitutes part of the Owner's Property), the exact location of which shall be mutually determined by the engineers for Owner and Developer and shall be reflected by metes and bounds legal description which will be added to this Agreement by amendment.