

## Indexing Instructions:

West ½ of Section 17, the East ½ of Section 18 and the Northwest 1/4 of Section 20, all in Township 8 North, Range 2 East, Madison County, Mississippi; and Lots 1 - 7 and 10 - 66, Grayhawk, Part One, Madison County, Mississippi

587261

2785

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
GRAYHAWK

THIS DECLARATION is made this the 24<sup>th</sup> day of March, 2009, by Acadia Properties, LLC, a Mississippi limited liability company, referred to hereinafter as "Declarant":

## WITNESSETH:

WHEREAS, the undersigned, Acadia Properties, LLC, the Owner in fee of a tract of land described in Exhibit "A", has agreed that the tract shall be bound by a set of Covenants, Conditions and Restrictions with the rights, duties, privileges and obligations of the Owners in the Grayhawk Subdivision to be defined as set forth in a declaration binding that certain parcel of land as set forth herein; hence this Declaration; and,

WHEREAS, Declarant desires to create and develop thereon a residential community with designated common areas and with common facilities, for the benefit of the community; hereinafter referred to as the "Property"; and

WHEREAS, Declarant desires to provide for the preservation of the values in the subdivision and for the maintenance of certain areas as may be designated by the Owners and, to this end, desires to subject the Property to the covenants, conditions, restrictions, easements, charges, and liens hereinafter set forth, each and all of which is and are for the benefit of the Property and each Owner thereof; and

WHEREAS, the primary purposes of these covenants are the creation of a desirable residential community, pleasing to visit, and functionally convenient. Declarant has deemed it desirable for the efficient preservation of the values in the Subdivision to provide for an agency to which would be delegated and assigned the powers of administering and enforcing the covenants and restrictions and of collecting and disbursing the assessments and charges hereinafter created.

NOW, THEREFORE, Declarant declares that the Property is and shall be held, acquired transferred, sold, conveyed, and occupied subject to the covenants, conditions, restrictions, easements, charges, and liens hereinafter set forth.

ARTICLE I.  
DEFINITIONS

The following words when used in the Declaration or any Supplementary Declaration (unless the context shall otherwise prohibit) shall have the following meanings:

(A) Articles shall mean the Articles of Incorporation of the Association, including all amendments thereto as filed with the Secretary of State of Mississippi.

(B) Assessment shall mean an Owner's share of the common expenses from time to time assessed to such Owner by the Association. Assessment or Assessments refer to annual, replacement, or special assessment or any combination thereof.

(C) Association shall mean and refer to Grayhawk Owners Association, Inc., a non-profit corporation, incorporated or to be incorporated under the laws of the State of Mississippi for the purpose of effecting the intents and objectives herein set forth, its successors and assigns. All references to actions taken by the Association shall mean the actions approved by the Board of Directors.

(C) Board of Directors or the "Board" shall mean and refer to the Board of Directors of the Association.

(D) Bylaws shall mean the bylaws of the Association as they exist from time to time.

(E) Common Area shall mean all real property shown and designated on the Plat as a Common Area which is owned or otherwise made available to the Association for the common use, benefit and enjoyment of the Members, including but not limited to, all lakes and retention/detention ponds located thereon. The Common Area shall be all of the Property except (i) all platted and numbered Lots as shown and designated on a Plat, (ii) any portion of the Property shown and designated on a Plat as reserved or designated for future development as a part of or an addition to the residential community, (iii) the Streets, and (iv) easements as shown and designated on a Plat for utilities and all water and sewer lines located in such easements or within the Streets. The Common Area shall be deeded to the Association after the organization of the Association, with such conveyance subject to any indebtedness, cost and expense associated with the construction of the Common Area and/or Common Facilities and with such indebtedness, cost and expense to be assumed by the Association. The Common Area shall be shown as Common Area on each plat filed in the Land Records of the Chancery Clerk of Madison County, Mississippi.

(F) Common Facilities shall mean all buildings and improvements constructed on any portion of the Common Area for the common use, benefit, and enjoyment of the Members.

(G) Declarant shall mean and refer to Grayhawk, LLC, and its successors and assigns.

(H) Declaration shall mean this instrument as it is from time to time amended and filed for recording in the Land Records of Madison County, Mississippi.

(I) Dwelling shall mean a single family residential detached house with attached or detached garage constructed as an improvement on the Lot.

(J) Homebuilder shall mean any person or entity licensed by state or local law to engage in the construction of Dwellings and to whom a Lot has been conveyed.

(K) Invitees shall mean an Owner's tenants, guests, employees, or other guests or invitees.

(L) Lake shall mean any body of water developed by the Declarant as a lake and which is bordered in whole or in part by a Lot in Grayhawk and which is established and declared to be a Lake by Declarant.

(M) Lot shall mean and refer to any plot or tract of land as may be shown upon a recorded subdivision map or Plat of the Property, or any part thereof, exclusive of the Common Area, or any part thereof, which is designated as a lot therein and which is or may be improved with a single family residential dwelling.

(N) Member shall mean and refer to each Owner as provided herein in Article III.

(O) Mortgagee shall mean a bank, savings and loan association, insurance company, mortgage company, real estate investment trust, pension fund, corporation, recognized institutional type lender or its loan correspondent, agency of institutional type lender or its loan correspondent, agency of the United States Government, or individual(s) which own and which is the holder of a Recorded First Mortgage.

(P) Owner or Property Owner shall mean and refer to the record Owner, whether one or more persons or entities, of a fee or undivided fee interest in any Lot which is part of the Property, including contract sellers, but excluding those persons or entities who hold an interest merely as security for the performance of an obligation. Any references to any action or omission by or restriction on any action of an Owner shall include any other occupant of a Dwelling or Lot including tenants and guests of the Owner.

security for the performance of an obligation. Any references to any action or omission by or restriction on any action of an Owner shall include any other occupant of a Dwelling or Lot including tenants and guests of the Owner.

(Q) Person shall mean an individual, firm, corporation, partnership, limited liability company, association, trust or other legal entity or any combination thereof, including Declarant.

(R) Plans shall mean the drawings, diagrams, specifications and other pertinent information with respect to the construction of a Dwelling or other permitted structure on a Lot.

(S) Plat shall mean a map or plat of any portion of the Property which depicts Lots, streets, easements, Common Areas and other information

(T) Property shall mean that parcel of land described in Exhibit "A" which is subject to the Declaration.

(U) Recorded First Mortgage shall mean a mortgage or deed of trust, properly recorded in the office of the Chancery Clerk of Madison County, Mississippi, or other public Office designated by the Laws of the State of Mississippi for the recording of Mortgages the lien of which is prior, paramount, and superior to the lien of all other mortgages and deeds of trust.

(V) Grayhawk. Grayhawk Subdivision or Subdivision shall mean that area contained within the Property as described in Exhibit "A", and any additional property annexed to the Subdivision as provided herein.

(W) Supplement shall mean any supplementary declaration containing covenants, conditions and restrictions relating to the Property which is filed for record in the Land Records of Madison County, Mississippi.

## ARTICLE II. PROPERTY RIGHTS

SECTION 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area and Common Facilities which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(A) The right of the Association, acting by and through its Board of Directors, to levy reasonable fees for the use of any Common Area or Common Facilities situated on the Property by the Members and their families, tenants, and guests. Any such fees shall be charged on a uniform basis for each Member; and

(B) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions to the Members shall agree. No such dedication or transfer shall be effective unless sixty-seven (67%) percent of the voting power of all Members is in favor of such dedication, transfer, purpose, and conditions at a special meeting of the Members duly called for such purpose or an instrument agreeing to such dedication or transfer signed by the Owners having at least sixty-seven (67%) percent of the voting power has been recorded; and

(C) The right of the Association, in accordance with its Articles of Incorporation and Bylaws, to borrow money for the purpose of improving the Common Areas and Common Facilities in a manner designed to promote the enjoyment and welfare of the Members. In connection with any such loan, the Association may mortgage any of the Common Areas and Common Facilities. No such borrowing shall be done and no such mortgage shall be executed unless and until same has been approved by the vote of the Owners having at least sixty-seven (67%) percent of the voting power has been recorded; and

(D) The right of the Association, acting by and through its Board of Directors, to take such steps as are reasonably necessary to protect the property of the Association against mortgage

default and foreclosure. Any such steps shall be in conformity with the other provisions of this Declaration; and

(E) The right of the Association, acting by and through its Board of Directors, to adopt reasonable rules respecting use of the Common Areas and Common Facilities to reasonably limit the number of family members or guests of Members who may use any facilities on the Property; and

(F) The right of the Association, acting by and through its Board of Directors, to grant licenses, rights of way and easements for access or for the construction, reconstruction, maintenance, and repair of any utility lines or appurtenances, whether public or private, to any municipal agency, public utility, the Declarant or any other person. No such licenses, rights of way or easements shall be unreasonably and permanently inconsistent with the rights of the Members to the use and enjoyment of the Common Areas and Common Facilities; and

(G) The right of each Member to use the streets, roadways, and vehicular parking areas situated upon the Common Areas and Common Facilities. Each Member shall comply in all respects with all supplementary rules and regulations which are not inconsistent with the provisions of this Declaration and which the Board of Directors of the Association may from time to time adopt and promulgate with respect to parking and traffic control upon the Common Areas and Common Facilities.

SECTION 2. Rights Not Subject to Suspension. Notwithstanding anything in this Declaration to the contrary, the Association shall have no authority to suspend, either temporarily or permanently, any of the rights specified in Sub-Paragraph (G) of Section 1 of this Article II for any reason whatsoever.

SECTION 3. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and Common Facilities to such person(s) and to such number of persons as may be permitted by the By-Laws to accompany the Owner, or to such members of his or her family, as are approved by the Association, the Owner's tenants, or contract purchasers who reside on the Property and guests, all subject to such rules and regulations as the Board of Directors of the Association may adopt and uniformly apply and enforce. Notwithstanding anything to the contrary appearing elsewhere herein, the children of the Owner and their spouses may use the facilities whether or not accompanied by the Owner.

SECTION 4. Limited Common Area. Ownership of certain lots shall entitle the Owners or Owner thereof to permanent exclusive use of certain portions of the Common Area designated as Limited Common Area. The assignment of the Limited Common Area to a Lot shall be included in the conveyance to the appropriate Grantee by the Declarant, and reserved therein. Owners may not claim a right to use the Limited Common Area assigned to other Owners by virtue of the general easements or property rights granted in this Article II.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

SECTION 1. Organization of the Association. The Declarant shall organize the Association as a non-profit Corporation by filing Articles of Incorporation with the Secretary of State of Mississippi. The Association shall be responsible for the administration and maintenance of the Common Areas and Common Facilities and the enforcement of the provisions of this Declaration as they relate to the Association.

SECTION 2. Membership. The Members of the Association shall be and consist of each and all of the following, to-wit: Every person who is, or who hereafter becomes, an Owner of record of the fee title to a Lot. The expression "Owner of record of the fee title to a Lot" shall include a contract seller of any such Lot, but shall not include any person who owns such title solely as security for the performance of an obligation or payment of a debt.

SECTION 3. Voting Rights. The voting rights of the Members shall be as follows, to-wit:

(A) Each person, other than the Declarant, who is or who hereafter becomes an Owner of a Lot shall be entitled to one (1) vote for each Lot owned. Upon the sub-division of any Lot as initially conveyed by Declarant, each sub-divided part thereof meeting the requirements of the Declaration shall be considered a Lot and the Owner thereof entitled to one (1) vote.

(B) The Declarant and its nominee or nominees, if any, shall be entitled to seven (7) votes for each Lot owned.

(C) Whenever any provision of the Declaration requires a vote of a specified percentage of the voting power of the Members, then such provision shall require a vote by the specified percentage of the voting power of all Members, and Declarant shall be entitled to seven (7) to one (1) ratio herein granted.

SECTION 4. Memberships Appurtenant to Real Property. Each Owner, by purchasing a Lot in the Subdivision shall automatically become a member of the Association and shall be bound by the terms and conditions of the Declaration, the Articles of Incorporation and Bylaws of the Association, and such rules and regulation as may be promulgated and adopted by the Association under such articles and bylaws. Membership may not be held except in conjunction with and appurtenant to a Lot.

SECTION 5. Other Voting Provisions. If the fee title to a particular Lot is owned of record by more than one person or entity, then the vote appurtenant to such Lot may be exercised by anyone of the fee owners thereof, unless the other owner or owners of such fee title shall object prior to the completion of voting upon the particular matter under consideration. In the case of any such objection, the vote appurtenant to the Lot shall not be counted.

SECTION 6. Covenant of Compliance by Owners.

(A) Covenants to Comply. Every person or persons who accept a deed to a parcel of the Property within Grayhawk Subdivision covenants, whether or not it shall be so expressed in the deed of conveyance, that he will faithfully comply with and abide by the letter and spirit of the provisions of this Declaration and the bylaws and rules and regulations of the Association as same may be constituted all as they may be lawfully amended from time-to-time.

(B) Change of Ownership. The Owner and each purchaser from an Owner agree to notify the Association of a change in ownership of any Lot.

#### ARTICLE IV. COVENANTS FOR ASSESSMENTS

SECTION 1. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot owned by it, and each purchaser of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) annual maintenance assessments or charges for purposes set forth in this Article IV. Section 2, and (2) special assessments as set forth in this Article IV. Section 4. such assessments to be fixed, established and collected from time to time as hereinafter provided.

The annual maintenance and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon each Lot against which each such assessment is made. Each such assessment together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the continuing personal obligation of the person who was the Owner of such property at the time when the assessment fell due, notwithstanding the subsequent sale or transfer of the Lot.

SECTION 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, and welfare of the residents of Grayhawk, and in particular for the supervision, maintenance, and improvement of the Common Area; and for paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for the management and supervision of the Common Area, including but in no way limited to, the following:

(A) The amount of all construction, operating and maintenance expenses for the Common Areas and Common Facilities and furnishing the services furnished to or in connection with the Common Areas and Common Facilities, including charges for any services furnished by the Association; and

(B) The cost of necessary management and administration of the Common Areas and Common Facilities, including fees paid to any managing agents; and

(C) The amount of all taxes and assessments levied against the Common Area and Common Facilities; and

(D) The cost of fire and extended coverage and liability insurance on the Common Areas and Common Facilities and the cost of such other insurance as the Association may place in force with respect to the Common Areas and Common Facilities; and

(E) The cost of garbage and trash collection to the extent provided by the Association, and of utilities and other services which may be provided by the Association, whether for the Common Areas and Common Facilities or for the Lots, or both; and

(F) The cost of maintaining, replacing, repairing, and landscaping the Common Areas and Common Facilities including, without limitation, the cost of maintaining, replacing and repairing any sidewalks, streets, or roadway, other than those accepted by Madison County, Mississippi, for maintenance, and open areas in the Property and the cost of such equipment as the Board of Directors shall determine to be necessary and proper in connection therewith; and

(G) The cost of funding all reserves established by the Association, including a general operating reserve and a reserve for replacement.

SECTION 3. Maximum Annual Assessment. Each Lot Owner shall pay a prorata share of the annual assessment at the time of conveyance by Declarant to the initial Owner.

(A) The annual assessment may not be increased for any year by an amount more than ten (10%) percent above the maximum assessment for the previous year without the affirmative vote of sixty-seven (67%) percent of the membership.

(B) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum assessment permitted under the provisions of Section 3(A) of this Article IV.

SECTION 4. Special Assessments.

(A) Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, purchase, repair, or replacement or capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such

assessment shall be approved by sixty-seven (67%) percent of the votes of Members who are voting in person or by proxy at a meeting duly called for this purpose.

(B) Special Assessments for Willful or Negligent Acts. Upon an affirmative vote of sixty-seven (67%) percent of the Members of the Board of Directors, the Association may levy special assessments against individual Lot Owners, for reimbursement for repairs cleaning or maintenance on any Lot performed by the Association as a result of the willful or negligent acts of the Lot Owners and not ordinary wear and tear.

(C) Special Assessments for Fire Protection and Work Performed by Declarant or the Association.

(i) The Association is hereby authorized to assess each Lot upon which a Dwelling has been placed or constructed with an amount equal to the per Lot charge made by the governing political body for backup fire protection pursuant to any agreement now or hereafter made by and between the Association and the governing political body and as same may be hereafter amended.

(ii) The Association is hereby authorized to assess any Lot for the cost of all work or activity performed on any such Lot.

(D) Assessment for Homebuilders. Any Lot owned by any Homebuilder shall not be subject to Assessment by the Association as provided in Section 7 below until One Hundred Eighty (180) days from and after the purchase of a Lot by the Homebuilder. Any assessment for annual maintenance or any for any Special Assessment upon any Lot owned by a Homebuilder shall be twenty-five percent (25%) of the Assessment against each similar Lot not owned by a Homebuilder, until such time as (i) Homebuilder declares such Dwelling to be his or her homestead or (ii) one (1) year, whichever is less.

(E) Assessment for Declarant. Any Lot owned by the Declarant shall not be subject to any assessment by the Association.

SECTION 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or Section 4 shall be sent to all Members not less than 10 (ten) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty (50%) percent of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. If, at the second called meeting, the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at such subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. (i.e., one-fourth (1/4) of the first called meeting).

SECTION 6. Uniform Rate of Annual and Special Assessments. Both Annual and Special Assessments must be fixed at a uniform rate for all Lots on the first day of January, of each year. The due date thereof shall be established by the Board of Directors.

SECTION 7. Date of Commencement of Assessments; Due Dates The Annual Assessments provided for herein shall commence as to all Lots at the time of the filing of the subdivision Plat except as to the limitation provided for Declarant and Home Builders under Section 4(D) and (E) above.

SECTION 8. Duties of the Board of Directors with Respect to Assessments.

(A) The Board of Directors of the Association shall attempt to fix the date of commencement and the amount of the Assessment against each Lot for each assessment period at

least thirty (30) days in advance of such date or period, and shall, at that time, prepare a roster of the Lots and Assessments applicable thereto which shall be kept in the office of the Association.

(B) Written notice of the Assessment shall thereupon be delivered or mailed to every Owner subject thereto.

(C) Within ten (10) days of written request, the Board of Directors shall furnish to an Owner liable for an Assessment, a certificate in writing signed by an officer of the Association, setting forth whether said Assessment has been paid. The certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. A reasonable charge may be made by the Board for the issuance of such certificates.

SECTION 9. Effect of Non-Payment of Assessment; Personal Obligation of the Owner; the Lien; Remedies of Association.

(A) If any assessment or any part thereof is not paid on the date(s) when due, then the unpaid amount of such Assessment, together with such interest thereon and costs of collection, shall become an immediate and continuing lien on the Lot of the non-paying Owner, which lien shall be binding upon such Lot and the Owner thereof, his heirs, executors, devisees, personal representatives, and assigns. The Association shall have the right to reject partial payments of an Assessment and demand the full payment thereof. The obligation of the then existing Owner to pay such Assessment shall remain his personal obligation and shall not be extinguished by transfer of title. The lien for unpaid Assessments shall not be affected by any sale or assignment of a Lot and shall continue in full force and effect. No Owner may waive or otherwise escape liability for the Assessment provided herein by abandonment of the Lot.

(B) The Association shall attempt to give to the holder(s) of the mortgage on the Lot of any non-paying Owner written notification of such Owner's default in paying any assessment when such default has not been cured within sixty (60) days of the original due date, if such mortgagee has requested same pursuant to Article XIV, Sections 7 and 8 of this Declaration, and has paid to the Association a reasonable amount not in excess of \$50.00 for such notice to mortgagee.

(C) If any Assessment or part thereof is not paid within thirty (30) days after the due date, the unpaid amount of such Assessment shall bear such interest from the date of delinquency at the rate of eight percent (8%) per annum. Such Assessment shall not be deemed to have been paid unless accrued interest is also paid. The Association may, at its election, bring an action at law against the Owner personally obligated to pay the Assessment in order to enforce payment and/or to foreclose the lien against the Property subject thereof after giving notice to the holder of any Recorded First Mortgage. There shall be added to the amount of such Assessment the costs of prepaying and filing the complaint in such action and in the event a judgment is obtained, such judgment may include interest on the Assessment as above provided and the attorney's fee to be fixed by the Court, together with the costs of the action and/or all costs of foreclosure, including a reasonable attorney's fee.

SECTION 10. Reserves for Replacements. The Association shall establish and maintain a reserve fund for replacements of the Common Areas and Common Facilities, and shall allocate and pay to such reserve fund whatever amount may be designated from time to time by the Board of Directors. Amounts paid into such fund shall be conclusively deemed to be a common expense of the Association. All such amounts may be deposited in any banking institution, the accounts of which are guaranteed by the FDIC, or its successor as determined by the Federal Government, or, in the discretion of the Board of Directors, may be invested in obligations of, or obligations fully guaranteed as to principal by, the United States of America. The reserve for replacements is for the purpose of providing funds for replacement of the Common Areas and Common Facilities, for major repairs to any sidewalks or bikeways, any parking areas, roadways, and dams on the Common Area,



for equipment replacement, animal control, and for start-up expenses and operating contingencies of a non-recurring nature relating to the Common Areas and Common Facilities. The Association may establish such other reserves for such other purposes as the Board of Directors may from time to time consider to be necessary or appropriate. The proportional interest of each Member in any such reserves shall be considered an appurtenance to his Lot, and shall not be refunded, withdrawn, assigned, or transferred separately from or otherwise than as an appurtenance to the Lot to which it appertains and shall be deemed to be transferred with such Lot.

SECTION 11. Subordination of the Lien to Mortgages. The lien of the Assessments provided herein shall be subordinate to the lien of any Recorded First Mortgage. Sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof. No foreclosure, sale or transfer shall relieve the Owner of any personal obligation.

SECTION 12. Exempt Property. The following Property subject to this Declaration shall be exempt from the assessments, charges, and liens created herein:

- (A) Any property dedicated and accepted by the local public authority and devoted to public use.
- (B) Common Areas and Common Facilities.

SECTION 13. Assessments Are Not Dues. No portion of the Assessment for annual maintenance or any Special Assessments provided in or permitted herein are intended to be, or shall be construed to be, dues for membership in the Association.

SECTION 14. Equitable Adjustments. If a Supplement is filed for record which annexes any portion of the Additional Property to the Property and specifies that a greater or lesser level of use, benefit or enjoyment of the Common Area or Common Facilities or of services shall be available or provided by the Association with respect to any portion of the annexed Additional Property then the Supplement may provide a different method or basis for the establishment, determination and calculation of the annual maintenance or special Assessments under Section 3, Section 4 and Section 13 with respect to such annexed Additional Property. In such event, the Association shall have the authority and the duty to make equitable adjustments in and to the procedures described in this Article IV for the establishment, determination and calculation of the annual maintenance and special Assessments to reflect any such different level of use, benefit and enjoyment of the Common Area or Common Facilities or services available or provided by the Association.

SECTION 15. Run-Off, Storm Water Management and Pollution.

(A) Drainage swales and berms are required on all sides and the back of each property line where such is necessary to effect the proper flow of water in the drainage easements.

(B) Each Lot Owner shall be required to maintain such Owner's property in such a condition as to minimize off-site damage from erosion, sediment deposits and storm water. This requirement will be in effect from the beginning of site preparation and continued throughout the establishment of permanent vegetative cover. Each Owner acknowledges and agrees that Declarant is not responsible for any damages which hereafter may be suffered by Owner or other property owners or parties as a consequence of site preparation work carried out by Owner or Owner's contractors, agents or employees. Each Owner agrees to defend and to fully indemnify and hold Declarant harmless from any such damages sustained in connection therewith.

(C) The Owner and Homebuilder of each Lot are responsible for using protective measures to prevent sediment from leaving any area of the Lot. Erosion control measures which may be taken include, but are not limited to the proper installation and erection of a silt fence and the proper installation of hay bales or other deterrent barriers.

(D) To Declarant's knowledge, but without inquiry or independent investigation, neither Declarant nor has any previous owner or user of the Property used, generated, stored or disposed of, above, in, under or around the Property any hazardous waste, toxic substances or related materials ("Hazardous Materials"). For the purposes of this representation, Hazardous Materials shall include but not be limited to any substance, material or waste which is or becomes regulated by any local governmental authority, the State of Mississippi, or the United States of America. Owner hereby releases Declarant from any liability for Hazardous Materials on the Property caused by Owner's activities thereon. The term "Hazardous Materials" also includes, without limitation, any material or substance which is listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 171.101), as amended from time to time.

#### ARTICLE V.

#### GENERAL POWERS AND DUTIES OF BOARD OF DIRECTORS OF THE ASSOCIATION

SECTION 1. Powers and Duties. The Board of Directors shall have all the powers, authorities, and duties necessary or appropriate for the management and administration of the affairs of the Association. In managing and administering such affairs, the Board of Directors shall have power and authority to do all acts and things except those which by law or by the Declaration or by the Articles or by the Bylaws, as same may be amended from time to time, may be exercised and done only by the Members. The powers, authorities, and duties of the Board of Directors shall include, but shall not be limited to, the following:

(A) To provide for the construction costs, maintenance, care, upkeep and surveillance of the Common Areas and Common Facilities and to provide such services in a manner consistent with law and the provisions of the Bylaws and the Declaration; and

(B) To provide for the establishment, assessment, collection, use, and expenditure of Assessments from the Members, and for the filing and enforcement of liens therefor in a manner consistent with law and the provisions of the Bylaws and the Declaration; and

(C) To provide for the selection designation, hiring, and dismissal of the personnel necessary and appropriate for the proper care and maintenance of the Common Areas and Common Facilities and to provide services to the Property and the Members in a manner consistent with law and the provisions of the Bylaws and the Declaration; and

(D) To provide for the promulgation and enforcement of such rules, regulations, restrictions and requirements as may be deemed proper respecting the use, occupancy and maintenance of the Common Areas and Common Facilities, including but not limited to rules, regulations, restrictions, and requirements designed to prevent unreasonable interference with the use of the Common Areas and Common Facilities by the Members and others, all of which rules, regulations, restrictions, and requirements shall be consistent with law and with the provisions of the Bylaws and the Declaration; and

(E) To authorize the payment of patronage refunds if and when the funds derived from Assessments shall prove to be more than sufficient to meet all reasonably foreseeable needs and reserves of the Association during the then current and next fiscal year; and

(F) To purchase insurance upon the Common Areas and Common Facilities; and

(G) To repair, restore or reconstruct all or any part of the Common Areas and Common Facilities after any casualty loss in a manner consistent with law and the provisions of the Bylaws, and to otherwise improve the Common Areas and Common Facilities; and

(H) To lease and to grant licenses, easements, rights of way, and other rights of use in all or any part of the Common Areas and Common Facilities; and

(I) To purchase Lots and to lease, mortgage or convey the same, subject to the provisions of the Bylaws and the Declaration; and

(J) To retain or employ a Management Agent for such compensation and for the performance of such duties and services as established or prescribed by the Board of Directors from time to time; and

(K) To negotiate, prepare, execute, acknowledge and deliver all contracts, agreements, commitments and other documents relating to the Association's affairs; and

(L) To prosecute, defend, appeal, settle, compromise or submit to arbitration any suit, action, claim or proceeding at law or in equity or with or before any governmental agency or authority which involves or affects the Association; and

(M) To retain or employ and pay the fees, expenses or other compensation of accountants, attorneys, architects, contractors, engineers, consultants or other persons who may be helpful, necessary, appropriate or convenient in or to the Association's affairs, whether or not related to or affiliated with any director or officer of the Association or any Member or the Declarant; and

(N) To borrow any funds required for the Association's affairs from any person on such terms, conditions and provisions as may be acceptable to the Board of Directors, and to secure the repayment of any such loans by executing deeds of trust or by pledging or otherwise encumbering or subjecting to security interests all or any portion of the assets of the Association, including the Common Area and Common Facilities; and

(O) To establish rules, regulations, restrictions, requirements and fees and charges from time to time relating to the use of the recreational areas and amenities now or hereinafter located in or on the Common Area or Common Facilities; and

(P) To accept title to any property, either alone or with covenants, as a Common Area, or as property owned by the Association for such purposes and on such terms as the Board of Directors may approve; and

(Q) To act to enforce the provisions of this Declaration and any Supplement or Amendment hereof; however, the Association shall determine whether or not any action or omission by any party is subject to the covenants and what, if any, actions the Association shall take.

SECTION 2. Members of the Board of Directors shall be elected in accordance with and as provided for in the Bylaws. The Bylaws shall provide that so long as the Declarant or its assignees own any Lots or any portion of the Property or the Additional Property, the Declarant or its assignees, as the case may be, shall be entitled to select or elect a majority of the members of the Board of Directors of the Association.

SECTION 3. Management Agent. The Board of Directors may retain or employ a Management Agent at a rate of compensation established by the Board of Directors to perform such duties and services as the Board of Directors from time to time may authorize.

SECTION 4. Limitation of Liability. Neither the Declarant, its agents, officers, partners, members or employees nor the Association, the Board of Directors, any Director nor any Officer of the Association shall be liable to any Person for any failure of or failure to provide any service to be furnished by the Association or to be paid with funds from charges, fees or Assessments, or for any death, injury or damage to any Person or property caused by the elements or caused by or resulting from electricity, gas, or water which may discharge or flow from any portion of the Property, Common Area or Common Facilities, or from any wire, pipe, drain, conduit or similar property. Neither the Declarant, its agents, officers, partners, members, or employees, nor the Association, the

Board of Directors, any Director nor any Officer of the Association shall be liable to any Person for theft or other loss of or damage to any property which may be left or stored in, upon or around the Common Area, Common Facilities or any Lot. No diminution or abatement of Annual or Special Assessments shall be claimed or allowed for the inability to use, any inconvenience or discomfort caused by or arising or resulting from the need for or the conduct of routine or other maintenance or repairs, or the construction or reconstruction of improvements on any Lot, Common Area or Common Facilities, or from any action taken or omitted or from inaction by the Association to comply with any of the provisions of this Declaration, any Supplement, any law or ordinance or the order or directive of any governmental authority or any court.

## ARTICLE VI. INSURANCE

### SECTION 1. Association Insurance.

(A) The Association shall obtain fire and extended coverage and comprehensive public liability insurance in such limits, form, and companies, as the Board shall deem advisable to adequately insure the Common Areas and Common Facilities and protect the Owners from and against liability in connection with the Common Area.

(B) All costs, charges and premiums for all insurance authorized by the Board as provided herein shall be a common expense of all Owners and a part of the Assessment.

## ARTICLE VII. AD VALOREM PROPERTY TAXES

Each Owner shall be responsible for and promptly pay ad valorem taxes on his Lot. The Association shall pay the ad valorem taxes, if any, on the Common Area and Common Facilities.

## ARTICLE VIII. ARCHITECTURAL CONTROL

### SECTION 1.

(A) Committee Appointment and Operation. At such time as the Board of Directors in its sole discretion deems it appropriate, the Board of Directors may appoint an Architectural Review Committee which shall be composed of one (1) or more individuals who shall serve at the pleasure of the Board of Directors, and who are not required to be Members of the Association. The affirmative vote of a majority of the members of the Architectural Review Committee shall be required in order to adopt or promulgate any rule or regulation or to make any finding, determination, ruling or order, or to issue any permit, consent, authorization, approval or the like pursuant to the authority contained in this Article.

(B) Architectural Review Guidelines. The Declarant shall establish architectural guidelines for all construction in Grayhawk. Each Homebuilder or Owner constructing a Dwelling and/or other structure on any Lot shall secure a copy of the Architectural Guidelines and shall comply with all conditions therein.

(C) Architectural Review. No improvement, building, fence, wall or other structure or any addition thereto shall be commenced, erected, constructed, placed, altered, moved or maintained upon the Property, or any Lot, nor shall any exterior addition to or change or alteration therein be made until (1) the proposed Plans and specifications showing the nature, kind, shape, height, materials, exterior color or finish; (2) the plat plan showing the proposed location of such building

or structure, drives and parking areas; (3) the landscape plan; (4) the construction schedule and (5) such other information as required, shall have been submitted to and approved in writing by Declarant, the Association or the Architectural Review Committee designated by the Board. No alteration in the exterior appearance of any building or structure shall be made without like approval from the Architectural Review Committee.

(D) Declarant's Approval. Until such time as the Architectural Review Committee is in place and acting, Declarant hereby reserves the right to exercise all rights enumerated in this Article, in addition to any and all other rights of the Declarant set forth herein, or to assign such rights to the Board of Directors. Any reference to approval by the Declarant, the Board of Directors or the Association shall be deemed to include approval by the Architectural Review Committee if the Architectural Review Committee has been formed and is acting.

(E) Compliance with Plans. All construction on a Lot shall comply with the Plans as approved. If construction deviates from such approved Plans, the Owner, at his or her expense, shall be solely responsible for removing or correcting such deviation, without regard to the stage of completion or construction of a Dwelling at the time of the deviation. Upon the Association giving any Owner notice of any purported deviation from the approved Plans, the Owner shall cease construction until a determination of whether or not a deviation exists is made by the Association. If the Owner fails or refuses to cease construction and/or remove or correct the deviation, the Association and/or any other Owner may seek to enforce these covenants and these provisions by requesting a restraining order, injunction, or other judgment enforcing such covenants and causing such Owner to cease construction until the deviation is no longer in existence. If the Association seeks the relief authorized herein, the Owner shall pay all expenses the Association incurs in seeking to enforce these covenants.

#### SECTION 2. Building Sizes and Locations.

(A) For the development of some Lots in the Subdivision, it may be impossible or inadvisable to enforce the stated set-back requirements due to the natural terrain, lot configuration and/or proximity of adjacent structures. Therefore, notwithstanding anything else herein to the contrary, the Architectural Review Committee may approve specific deviations to setback requirements which it determines to be beneficial to a specific homesite, or to adjacent homesites, or to the Subdivision but in all cases must meet the minimum county zoning set-back requirements.

(B) Construction shall also be governed by the rules and regulations and Architectural Guidelines adopted by the Declarant, the Association and/or the Architectural Review Committee established by the Board and are included herein by reference.

SECTION 3. Topography. Except for the work ordinarily associated with the construction of or erection of structures allowed herein or incidental thereto, the topography of the Property shall not be altered by removal, reduction, excavation, filling, or any other means without the prior written approval of the Board of Directors. Written approval will be granted for the minimum amount of earth movement required in Plans approved pursuant to the provisions of this Declaration.

SECTION 4. Rules and Regulations, etc. The Architectural Review Committee may from time to time adopt and promulgate such rules and regulations regarding the form and content of Plans to be submitted to it for approval, and may publish and record such statements of policy, standards, guidelines, and may establish such criteria relative to setbacks, materials, or other matters relative to architectural review and the protection of the environment, as it may consider necessary or appropriate. No such rules, regulations, statements, criteria or the like shall be construed as a waiver of the provisions of this Article or any other provision or requirement of this Declaration.

SECTION 5. Building Permits. A Madison County Building Permit shall be required for all new construction.

SECTION 6. Decisions and Appeal. The decisions of the Architectural Review Committee shall be final except that any decision may be appealed to the Board of Directors by any Owner who aggrieved by any action or forbearance from action by the Architectural Review Committee or by any policy, standard, or guideline established by the Architectural Review Committee. Upon written request made within fifteen (15) days of any decision, such Member shall be entitled to a hearing before the Board of Directors within a reasonable time not to exceed thirty (30) days after the written request.

SECTION 7. Expenses. Any person or entity submitting Plans shall be responsible for the payment of reasonable charges established by the Architectural Review Committee for review of the Plans or amendments, modifications or changes to Plans. Such charges shall be paid when the Plans are submitted.

SECTION 8. Disclaimer. The Board of Directors, the Architectural Review Committee, each director and each officer of the Association, each member of the Architectural Review Committee and the Association, and, if applicable, the Declarant, shall not be liable to any Owner, Homebuilder, or any other Person on account of any claim, liability or expense suffered, incurred or paid by or threatened against such Owner, Homebuilder, or other Person arising or resulting from or in any way relating to the subject matter of the Architectural Review Committee's process any reviews, acceptances, inspections, permissions, consents or required approvals which must be obtained from the Architectural Review Committee or public authorities, whether given, granted or withheld. No approval of Plans and no publication of architectural standards or requirements shall be construed either to represent, guarantee or imply that such Plans or architectural standards will result in a properly designed Dwelling or other improvement, or to represent, guarantee or imply that any Dwelling or other structure or improvement will be built or constructed in a good, workmanlike manner. Approval of any particular Plans shall not be construed as a waiver of the right of the Architectural Review Committee to disapprove all or any portion of the Plans if such Plans are subsequently submitted for use in any other instance.

SECTION 9. Time Limitations. Construction in accordance with approved Plans shall be commenced within six (6) months after approval, whether by affirmative action or by forbearance from action, and shall be substantially completed either within twelve (12) months after construction commences, or within such other period as the Architectural Review Committee shall specify in the approval of the Plans. If construction is not commenced or is not completed as required, approval of the Plans shall be conclusively deemed to have lapsed and compliance with these provisions shall be required again.

#### ARTICLE IX. CONSENTS (Notice to Mortgagee)

Any other provision of this Declaration to the contrary notwithstanding, neither the Members, nor the Board of Directors, nor the Association, by any act or omission, shall do any of the following things without the prior written consent and approval of the holders of a least fifty-one (51 %) percent [sixty-seven (67%) percent for abandonment and termination] of all first mortgages of record encumbering the Lots:

SECTION 1. Abandon, partition, subdivide, encumber, sell or transfer any of the Common Areas or community facilities; provided, however, that the change or realignment of boundaries, the granting of a right of way, easements, and the like for utilities or for other purposes consistent with the use of any Common Areas or Common Facilities by the Members of the Association shall not be considered an encumbrance, sale or transfer within the meaning of this Subsection.

SECTION 2. Abandon or terminate this Declaration without the required sixty-seven (67%) percent consent and approval.

SECTION 3. Modify or amend any material or substantive provision of this Declaration or the Bylaws of the Association pertaining to the rights of the holders of all first mortgages of record encumbering the Lots.

SECTION 4. Materially amend any provisions of this Declaration, or add any material provisions thereto, which establish, provide for, govern or regulate any of the following:

- (A) Reserves for maintenance and repair and replacement of any Common Areas and Common Facilities;
- (B) Insurance or Fidelity Bonds;
- (C) Responsibilities for construction, maintenance and repair of the several portions of any Common Areas or Common Facilities;
- (D) Interests in any Common Areas and Common Facilities;
- (E) Subject to proviso of (1) above, reduction, convey, encumber, dedicate, transfer, or exchange of all or any part of any Common Areas and Common Facilities;
- (F) Imposition of any right of first refusal or similar restriction on the right of a Member to sell, transfer, or otherwise convey his or her Lot; or
- (G) Provisions of this Declaration and the Bylaws of the Association which are for the express benefit of mortgagees of first mortgages of record.

SECTION 5. Restore or repair any Common Areas or Common Facilities after a partial condemnation or damage due to an insurable hazard except in substantial conformance to the original plans and specifications thereof and in accordance with this Declaration.

SECTION 6. Re-allocate the interests of the Members in any Common Areas or Common Facilities partially destroyed.

## ARTICLE X. EASEMENTS

### SECTION 1.

(A) Utility Easements. The Declarant, the Association, and each utility providing service to the Property shall have and is granted or reserved non-exclusive easements and rights of way in, through, across, on, over, and under the portions of the Property which are designated as such on the Plat of the Subdivision, or contained within the body of any deed, including full right of ingress and egress, for the installation, operation, use, maintenance, repair, and removal of utilities and drainage facilities and floodway easements located in utility or drainage easements as shown and designated on the plat, the right to remove any obstruction in any utility or drainage easement which may interfere either with the use of any utility or drainage easement or with the installation, operation, use, maintenance, repair and removal of such utility or drainage facility. Nothing herein contained shall obligate the Declarant or the Association to remove any such obstacles or impediments or

obstructions, but the Declarant or the Association may require the Owner to do so, if, at the sole discretion of the Declarant or the Association such removal is the Owner's responsibility.

The Declarant shall have non-exclusive easements and rights of way in, through, across, on, over, and under the portion of the Common Area which is not improved with buildings or structures to store building supplies and materials, install, construct, maintain, reconstruct and repair sewers, water pipes, irrigation pipes, electrical wires or cables, telephone wires or cables, gas lines, storm drains, television or other communication cables, underground conduits, and any related improvements or appurtenances for all other purposes reasonably related to the completion of construction and the provision of public or private utility services to any portion of the Property. Any and all conveyance documents from the Declarant to the Association with respect to the Common Area and Common Facilities shall be conclusively deemed to incorporate the provisions of this Section 1, whether or not specifically contained in such conveyance documents. At the Declarant's request, the Association shall from time to time execute, acknowledge, and deliver to the Declarant such documents as the Declarant considers necessary to implement the provisions of this Section 1.

The reservations and rights of this Section 1 expressly include the right to (i) cut any trees, bushes, or shrubbery, (ii) make any gradings of the soil, and (ii) take any other similar action reasonably necessary to provide economical and safe utility and drainage facility installment, repair and maintenance and to maintain reasonable standards of health, safety, and appearance.

(B) Declarant hereby reserves such utility and drainage easements as are set forth in Section (A) above, or reserved in the Deed to any Grantee from Declarant, whichever is greater, including a five (5) foot utility easement along each interior lot line, a ten (10) foot utility easement along and adjacent to the front (or street) lot line, and a five (5) foot utility easement along and adjacent to the rear lot line, which reservation may be waived for good reason by Declarant or its successor in interest, the Owners Association.

(C) The Declarant and the Association may grant to other parties utility and drainage easements within the easement reserved herein or otherwise.

(D) The ownership, maintenance and repair of any and all drainage pipes, stormwater inlets, and other appurtenant drainage facilities located on any Lot shall be that of the Owner of the Lot on which such pipes, inlets and facilities are located. The Declarant shall have the right, but not the obligation, to improve, maintain and repair such pipes, inlets and facilities at any time for any purpose. In no event shall the Declarant have the duty to improve, maintain or repair any drainage pipe, stormwater inlet or other appurtenant drainage facility. Under no circumstances shall drainage facilities be considered a "utility" which is reserved to the Declarant by the Plat of the Subdivision. The Declarant has granted or will grant an easement to the Association to maintain and repair any drainage pipe, stormwater inlet, or other appurtenant drainage facility.

SECTION 2. Damage and Ingress and Egress. Any entry by the Declarant, the Association or any utility upon any Lot for the purposes permitted or contemplated by this Article X shall be made with as little inconvenience to the Owner as reasonably practical. All physical damage to any Lot or improvement on a Lot resulting from or caused by such entry shall be promptly repaired and restored. However, Declarant is not responsible for any act or activity of the utility performing any maintenance or construction on the Lot.

## ARTICLE XI. USE RESTRICTIONS

SECTION 1. Use Restrictions. The Property shall be subject to the following use



restrictions:

(A) All Lots shall be used for residential purposes only. No building shall be erected, altered, placed or permitted to remain on any Lot other than one detached single-family Dwelling not to exceed two stories in height above grade, plus a basement, if applicable. No factory built, log home, trailer, pre-existing home moved to a Lot, manufactured house or mobile home shall be allowed on any Lot in the Subdivision. All Dwellings shall be built/constructed on site in the Subdivision.

(B) The term "residential purposes" shall generally be defined as single-family homes, and shall exclude all commercial and professional uses, and among other things, garage apartment, garage shop, apartment houses, duplexes and multi-family residences, profit or non-profit nursing homes, hospitals, and other similar private or charitable enterprises, and any and all such usages of the Property are hereby expressly prohibited. No garage or outbuilding on any Lot shall be used as a residence or living quarters.

(C) Each Dwelling shall be provided with off-street parking in the form of a concrete driveway extending from the pavement on the street on which the Dwelling faces to the garage, or on a corner lot, from the pavement on the street to the side of such Dwelling to the garage. All homes must have a two-car (full-size) attached garage. All garages must have doors which conceal the contents of the garage and which will remain closed unless accommodating the entrance or exit of a vehicle or for other good cause. All automobiles, other vehicles, and equipment of any type that are not otherwise prohibited from being parked or left standing overnight in the Subdivision which are parked or left standing overnight in the Subdivision must be parked or left standing only on the aforementioned concrete driveway or in the attached garage, except small boats or light residential equipment which must be screened by an approved fence and not visible from adjoining lots or streets. However, this restriction shall not prevent a guest of residents of the Subdivision from parking such guest's automobile on the street overnight on a temporary basis only.

(D) No trash, ashes or other refuse may be thrown or dumped on any Lot.

(E) No building material of any kind or character shall be placed or stored upon any Lot until the Owner is ready to commence improvements. Building material shall not be placed or stored in the street.

(F) All driveways must be constructed of concrete and all Dwelling must have front concrete walks extending from the entrance of the Dwelling to the driveway or the street.

(G) At the time of construction of a Dwelling on any Lot, the Owner or Homebuilder shall construct a concrete sidewalk 18" from and parallel to the back of the curb, forty-eight (48") inches in width and four (4") inches thick, across the front of the Lot, and the street side if a corner Lot, excepting only the paved driveway. The surface of the sidewalk shall have a broom finish and shall connect evenly with any sidewalk existing on an adjoining Lot or any driveway.

(H) Each rear yard may be enclosed by a six-foot 4x4 cedar "good neighbor" fence running along the rear lot line, along the side lot lines to the rear corners of the dwelling, with no fence being higher than 7 feet. Corner lots – the fence will not pass the setbacks on either side facing the road. No wire or chain link fencing is permitted. The Declarant, Association or Architectural Review Committee must approve the style and materials of any fencing.

(I) (i) Lots 1 through 66 shall have a minimum heated and cooled floor area (livable square feet) of the main structure, exclusive of open porches, garages, and first floor storage area, of not less than sixteen hundred (1600) total livable square feet. Of that minimum sixteen (1600) total livable square feet, a minimum of eleven hundred (1100) square feet must be finished floor area on the first floor.

(ii) These square footage requirements may be amended by the Association with the consent of the Declarant so long as the Declarant owns any Lot or any portion of the Property.

(iii) The Declarant has the right to amend the square footage requirements for the

Lots platted in Additional Property and such square footage requirements shall be set forth in a Supplement to this Declaration.

(J) No Dwelling shall have a roof with a pitch less than eight/twelve (8/12) on the main roof structure. The Architectural Review Committee may prescribe a certain type or grade of shingles for all houses.

(K) Any construction commenced on any Dwelling as provided in this Declaration shall be substantially completed per the Plans, including without limitations, all painting, within twelve (12) months from the date such construction commenced as evidenced by the issuance of the building permit. Violation of this restriction shall subject the Lot to a fee or charge of \$50.00 per day for each day such construction remains in violation of this restriction; which charge or fee may be collected by such action or means as Declarant or the Board of Directors may approve pursuant to this Declaration.

(L) Outbuildings, when detached from the main building, shall be set back of the rear line of the Dwelling on the Lot, and shall not be located nearer than ten (10) feet to the side or rear lot line. Any outbuilding must be approved in writing by the Architectural Review Committee prior to beginning construction and be screened by an approved fence. Also, the sides and roof shall match the Dwelling. The maximum height of walls shall not exceed the fence height and the total height at the top (ridge) of the roof shall not exceed eight and one-half (½) feet from the ground. The only visible part of the building over the fence upward to the roof shall not extend above the fence more than two and one-half (½) feet. The floor area of the structure shall not exceed one hundred eight (108) square feet. No fence shall exceed seven (7) feet in height. Any variance from this must be approved in writing by the Architectural Review Committee prior to beginning construction. If required by the County, a County building permit must be obtained before commencing construction.

(M) Any Dwelling must be constructed at the floor elevation as shown on the subdivision plat.

## SECTION 2. Prohibitions Against Use.

(A) (i) Grass, weeds and vegetation on each Lot shall be kept mowed at regular intervals by the Owner, so as to maintain the same in a neat and attractive manner. Trees, shrubs, and plants which die shall be promptly removed. The above restrictions apply to all Lots purchased before and after a Dwelling is built on the Lot.

(ii) The Declarant and/or the Association may have dead trees removed from any Lot and may mow and remove debris. The Owner of such Lot shall be obligated to reimburse Declarant and/or the Association for the cost of such work. Should such Owner refuse or neglect to comply with the terms of this paragraph, the Declarant or the Association may take such action as will secure performance by the defaulting Owner as provided for elsewhere in this Declaration. The Homebuilder shall remain responsible for the upkeep of the Lot once a Dwelling is completed until the Lot is sold and/or occupied. Vacant Lots shall be maintained by Owner in such a manner to prevent such Lot from becoming unsightly or a nuisance to the Subdivision. If any of the above conditions exists, the Declarant or the Association shall give the Owner ten (10) days notice to correct such condition. If the Owner fails to do so, the Declarant or the Association may act as set forth herein. Notice shall be deemed given if sent by mail, email, hand delivery or facsimile to the address of the Owner on file with the Association.

(ii) All Lots shall be sodded from the back of the curb to the Dwelling (excluding driveways) and if a corner lot for a distance of thirty (30) feet from the back of curb or less as is appropriate in the opinion of Declarant because of the topography of the Lot and dwelling site. A minimum distance of eighteen (18) inches will be maintained between the back of the curb and sidewalk and will be sodded.

(C) No clothes line shall be erected or maintained on any of the Lots, nor shall laundry

be hung, where exposed to view of the public or other Lot Owners.

(D) No shack, barn or other outbuilding shall be erected or located on any Lot or be used as a residence, either temporary or permanent, nor shall any structure of temporary character be used as a residence.

(E) No farm machinery, equipment, trailers, recreational vehicles (RV's), tractors, vehicles unable to move under their own power, or trucks larger than three-quarter (3/4) ton shall be permitted to be parked or left standing overnight on any part of any Lot or street in the Subdivision. This restriction shall not apply to the use of vehicles for the delivery of goods to, services or maintenance for the benefit of Dwellings in the Subdivision, or in the construction of any residence on a Lot or light residential equipment screened by an approved fence and not visible from adjoining Lots or streets. Further, no automobiles, other vehicles, machinery and equipment described above, or similar machinery and equipment of any type shall be permitted to be placed on any part of any Lot or street in the subdivision at any time for the specific purpose of advertising for sale such automobile, vehicle, machinery, or equipment.

(F) No privy, cess-pool, septic tank field or disposal plant shall be erected or maintained on any Lot. All Dwellings shall have the plumbing connected to the available sanitary facilities.

(G) No obnoxious or offensive trade or activity shall be conducted on Lot, nor shall anything be done on any Lot which may become an annoyance or nuisance to the Subdivision.

(H) No building, inclusive of the garage shall be located on any Lot nearer than twenty-five (25) feet from the front lot line or nearer than ten (10') feet to any side lot line on interior lots. No building shall be located on any Lot nearer than twenty five (25) feet from the back lot line. On Lots which back/rear lot line abuts a Germantown Subdivision lot line, no building shall be located on any Lot nearer than seventy five (75) feet from the back lot line. No building shall be located on any Lot nearer than twenty (20) feet from the side street lot line. Eaves of buildings located within the set back lines provided in this paragraph may extend across the set back lines, but shall not extend across any Lot lines. The side street setbacks for any lot having frontage on two (2) streets shall be twenty (20) feet. The Architectural Review Committee may adjust these setbacks for a particular Lot as provided herein.

(I) No firearms, archery equipment or other devices of a similar nature which may be classified as weapons shall be discharged, operated or used on any Lot or street in the Subdivision.

(J) If any person owns two or more adjacent Lots, and desires to construct a Dwelling occupying a portion of both Lots as a building site, the set back requirements, relative to any common interior lot lines of such Lots or any utility or drainage easement the vacating of which is not to the detriment of any other Lot in the subdivision to the extent permitted by law may be waived by Architectural Review Committee. However, all other restrictions herein contained shall apply to the same extent as if the Dwelling had been built on a single building Lot. If any action or approval is required by any governmental entity, the Owner shall secure such approval at the Owner's sole cost. If any such action or approval is required to be done or secured by the Declarant or the Association, they shall assist the Owner to the extent reasonable and the Owner shall pay or reimburse the Declarant or the Association for any cost or expense incurred.

(K) No antennas, Citizens Band or otherwise, that require towers or guyed wires, or are attached to house (including chimney) shall be permitted on any Lot at any time without prior written approval of the Architectural Review Committee.

(L) Except as provided in this section, no sign advertising of any kind shall be maintained or permitted within any windows. The Declarant and the Association may erect reasonable and appropriate signs on any portion of the Common Area and within those easement areas established under the Declaration. The Owner of any Lot may place a "For Sale" sign on a Lot, so long as the size of the sign does not to exceed 20 inches x 24 inches or 480 square inches.

(M) No tent, except for use in overnight, weekend, or vacation camping, or trailer, whether or not a house trailer, livestock, automobile, or other trailer shall be placed on any Lot or on any other area at any time, either temporarily or permanently without prior approval of Declarant or the Association. Boat trailers may be kept on a Lot provided they are screened when not being used or awaiting use for their intended purpose. No mobile home shall be placed on any Lot or any other area at any time, either temporarily or permanently. All automobiles owned or used by Owners or occupant other than temporary guests and visitors, shall, as far as possible, be parked in enclosures which screen the automobile from street view. The Association shall have authority to promulgate rules and regulations to govern or prohibit the outside storage or parking of motor homes, tractors, trucks, (other than pickup trucks) commercial vehicles of any type, campers, motorized campers or trailers, boats or other water craft, boat trailers, ATV's, motorcycles, motorized bicycles, motorized go-carts, or any other related forms of transportation devices on any Lot. Furthermore, although not expressly prohibited hereby, the Association may regulate or at any time for proper cause, prohibit motorcycles, motorized bicycles, ATV's, motorized go-carts, and other similar vehicles, or any of them from being kept, placed, or operated on any portion of the Common Area. No Owner of a Lot shall repair or restore any vehicle of any kind upon or within any Lot, Dwelling, or within any portion of the Common Areas except for emergency repairs and then only to the extent necessary to enable the movement thereof to a proper repair facility.

(N) Each Owner shall prevent the development of any unclean, unsightly, or unkempt conditions of buildings or grounds on the Property which shall tend to substantially decrease the beauty of the Subdivision as a whole or as a specific area. No rubbish or debris of any kind shall be dumped, placed, or permitted to accumulate upon any portion of the Property. No nuisance or odors shall be permitted to operate upon or arise from the Property, so as to render any portion thereof unsanitary, unsightly, offensive, or detrimental to persons using or occupying any other portions of the Property. Noxious or offensive activities shall not be carried on in any Lot, Dwelling, or any part of the Common Areas. Each Owner, his family, tenants, invitees, guests, servants, and agents shall refrain from any act or use of a Lot, Dwelling, or the Common Areas which would cause disorderly, unsightly, or unkempt conditions or which would result in a cancellation of any insurance from any portion of the Property or which would be in violation of any law, governmental code or regulation. Without limiting the generality of the foregoing conditions, no exterior speakers, horns, whistles, cowbells, bells, or other sound devices except security and fire alarm devices used exclusively for such purposes shall be located, used, or placed within the Property in such a way as to be objectionable to or offensive to an Owner of any Lot within the Property. Any Owner, or his family, tenants, guests, invitees, servants, or agents, who dumps or places any trash or debris upon any portion of the Property shall be liable to the Association for the actual costs or removal thereof or the sum of \$150.00, whichever is greater, and any sum shall be added to and become a part of that portion of the Assessment next becoming due to which the Owner and the Lot are subject.

(O) No television antenna or satellite dish in excess of twenty-four (24") inches, radio receiver or similar device shall be attached to or installed on any portion of the Property, unless contained entirely within the interior of a building or other structure) or screened from view by shrubbery or other plants. No radio or television signals nor any other form of electromagnetic radiation shall be permitted to originate from any Lot which may unreasonably interfere with reception or other signals within the Property. The Declarant and the Association shall not be prohibited from installing equipment necessary for master antenna, security cable television, mobile radio, or other similar systems within the Property. Should cable television services and adequate television reception not be otherwise available an Owner may make written application to the Association for permission to install a satellite dish or a television antenna not permitted above. Any such dish or antenna shall be concealed to the extent reasonably possible.

(P) The design and location of landscape lighting fixtures shall be subject to the approval

of the Architectural Review Committee. Neither these nor any other illuminated devices, not including illuminated Christmas ornaments operating twenty-four (24) days prior to Christmas and ten (10) days after Christmas shall be located anywhere on the structure or grounds of any Lot in such a manner as to adversely illuminate or affect the nighttime environment of any adjoining Property.

(Q) No animals, large or small, whether horses, cows, camels, sheep or goats, or other livestock or swine, emu, bison, raptors or reptiles, poultry of any kind, and no fowl except for birds caged as inside pets shall be raised, bred, kept, staked, fed or pastured on any Lot, or in the Common Area, except as follows. No more than two (2) dogs may be regularly housed at the residence of the Owner. An Owner may keep two (2) domesticated house cats. Any dog pen must be approved by the Architectural Review Committee in writing prior to construction and be screened by an approved fence. Regardless of number, whether two (2) or less dogs or cats, the keeping of animals shall be such as to not constitute an annoyance or nuisance to the Subdivision. No kennels will be allowed unless the Owner resides on the premises. All dogs not within a residence, within a fenced yard, or in a kennel shall be kept on a leash suitable to the temperament of the animal and in the care of a person able to restrain and control the animal on the leash, and shall not be permitted to run loose in the Subdivision. The Owner of any dog shall be responsible for clean up after the dog. All pets shall be registered and inoculated as prescribed by law. The Association may make rules to limit, restrict, or prohibit certain breeds of dogs and other pets.

(R) Notwithstanding any provisions or restrictions contained in this Declaration to the contrary) it shall be expressly permissible for Declarant and its agents and employees and any Homebuilder to maintain and carry on those activities as may be reasonably required, convenient or incidental to the completion, improvement, and sale of Lots and/or Dwellings or the development of Lots, Dwellings and Common Areas.

(S) Whenever the Association and/or the Declarant is permitted by the Declaration to repair, clean, preserve, clear out or do any action on any part of the Property, entering any Lot or any portion of the Property and taking such action shall not be deemed a trespass.

(T) The Declarant or the Association shall have the authority to designate the type and quality of mailboxes or other receptacles for the deposit of mail. A schematic or a design sheet showing the specifications and materials shall be provided as part of the approval of any Plans.

(U) No Dwelling shall be sold or operated under any time sharing arrangement.

(V) If any Dwelling is destroyed or damaged by fire or other elements, the Owner shall make reasonable attempts to restore the Dwelling within twelve (12) months of the damage. If the Owner elects not to restore the Dwelling, the Owner, within six (6) months of the damage, shall clear and remove all damage from the Lot except the slab or foundation, so long as the slab or foundation is not damaged.

(W) The intent of the Declarant is that all of the Lots in the Subdivision be occupied by the Owner thereof and that no Lot be leased to a non-owner. Therefore, except upon approval of the Declarant, so long as it owns any Lot in the Subdivision, or the Association thereafter, no Lot or Dwelling shall be leased or rented by the Owner to any other party not related to the Owner except upon the written consent of the Declarant or the Association, as applicable, such consent to be granted or denied solely in the discretion of the Declarant or Association, as applicable.

(X) No above-ground swimming/recreational pools shall be erected on any of said lots. All swimming/recreational pools erected/constructed on any of said lots must be an inground swimming/recreational pool. The plans for construction of any inground swimming/recreational pool on any of said lots shall be submitted to the Architectural Review Committee prior to commencement of construction of the inground swimming/recreational pool.

### SECTION 3. General Uses.

(A) The Declarant may impose additional restrictions to any Lot by appropriate provision

in the deed, without otherwise modifying the covenants and provisions contained herein. Such additional restrictions shall inure to the benefit of all parties in the same manner as though they have been originally expressed herein.

(B) An Owner, in building or causing to be built the original Dwelling on any Lot, shall not substantially duplicate the exterior elevation including design or architecture, of any other dwelling then existing within four hundred (400) feet measured along the street on which the Lot fronts. In addition, if the Lot is a corner Lot, no Dwelling shall be substantially duplicated for a distance of four hundred (400) feet along the street forming the side lot line.

(C) (i) Landscaping Plans shall include all proposed shrub and groundcover planting noting actual plant species and spacing and all proposed lawn areas, noting the method of application (sod, seeding, hydromulching, etc.) and lawn species.

(ii) All front lawn areas shall be sodded, and all corner lots will be considered as having two front lawn areas. No hydro-mulching shall be allowed on front lawn areas.

(iii) Any area of the lawn between the sidewalk and street shall be consider as the Owner's front lawn and shall be landscaped.

(D) All of the restrictions and covenants appearing herein, as well as those appearing in a deed or other conveyance of any Lot shall be construed together but if anyone of the same shall be held to be invalid by judgment or court decree, or for any other reason are not enforceable, all others shall not be affected or impaired thereby, and shall remain in full force and effect.

(E) Violation of any of the covenants and restrictions contained herein are enforceable by any other person or persons owning any Lot and who may proceed at law or in equity against the person or persons violating or attempting to violate any of such covenants, either to prevent him or them from so doing, or to recover damages for such violation. All of the terms and provisions set forth and contained herein shall be specifically enforceable. Further, if after receipt of notice of any violation of these covenants and restrictions, and an opportunity has been provided to correct or remedy the violation the person or persons owning any Lot has failed or refused to conect or remedy the violation, suit may be instituted to enforce compliance with these covenants and restrictions. If suit is instituted to enforce these covenants, the prevailing party shall be entitled to also seek recovery of its reasonable attorney fees and court costs.

(F) There may be created, as shown on the Plat of the Subdivision, or by separate recorded instrument, such open-space tracts as the Declarant shall create and declare. Such open-space tracts shall include any retention pond, drainage canal or channel, or creek traversing the Property as well as all open-space easements created or arising out of the Subdivision and unless provided otherwise, shall be for the benefit of all Lots in the subdivision and shall be maintained by the Association, as provided in this Declaration. Such open space areas shall be designated as Common Areas. At any time following the filing of the final Plat for the Subdivision, title to the mentioned Common Areas located in the Subdivision may be conveyed to and accepted by the Association, such conveyance to be at the discretion of the Declarant.

(G) Subsequent to subject transfer of title to the Association, all responsibility and liability of the open-space tracts or Common Areas, open-space easements, and/or any amenities located thereon, shall become the responsibility and/or liability of the Association. All costs, including, but not limited to, maintenance expenses, insurance, and real property taxes, related to the above mentioned property shall be borne by the Association.

## ARTICLE XII. RULE MAKING

### SECTION 1. Rules and Regulations.

(A) Subject to the provisions hereof, the Association may establish reasonable rules and

regulations concerning the use of Lots, Dwellings, Common Areas, and Common Facilities. Particularly and without limitation, the Association may promulgate from time to time rules and regulations which will govern activities which may, in the judgment of the Association, be environmentally hazardous, such as the application of insecticides, herbicides, fertilizers and pesticides and other chemicals.

(B) Subject to the terms and provisions of this Declaration, the Declarant or the Association, may establish rules and regulations, fees, and charges from time to time pertaining to use of the recreational area and amenities as are now and hereinafter located in the Common Areas.

### ARTICLE XIII. PROPERTY SUBJECT TO THIS DECLARATION

SECTION 1. The Property. The Property is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration.

SECTION 2. Phase Development. The Declarant expressly reserves the option, right and privilege (i) to annex all or any portion of the real property described in Exhibit "B" which is the Additional Property, to the Property, and (ii) by or as a result of such annexation to subject the Additional Property to the provisions of this Declaration and to the jurisdiction of Association. The provisions of this Declaration shall not affect or apply to any portion of the Additional Property unless and until such portion of the Additional Property unless and until such portion of the Additional Property is annexed to the Property pursuant to the provisions hereof.

The Declarant shall not have the obligation, but only the option, right and privilege, to develop or annex any portion of the Additional Property. The Declarant expressly does not represent, warrant or guarantee to any Person that any portion of the Additional Property will be developed or will be annexed to the Property. By acceptance of a deed conveying any interest in a Lot, each Owner agrees and represents and warrants to the Declarant and the Association that, in purchasing or otherwise acquiring such interest in the Lot, the Owner has not relied on any proposed, current or future development of any portion of the Additional Property or annexation of any portion of the Additional Property to the Property.

SECTION 3. Annexation Procedures. To annex Additional Property to the Property as permitted herein, the Declarant shall execute and file for record a Supplement which describes the portion of the Additional Property being annexed to the Property and the new, amended or revised description of the Property. The option, right and privilege of the Declarant to annex any portion of Additional Property to the Property is subject to the following provisions:

(A) The Declarant's option, right and privilege to annex Additional Property shall terminate and expire on December 31, 2020.

(B) The Declarant may annex any portion of the Additional Property at different times and in any sequence desired by the Declarant without regard to whether or not the portion of the Additional Property being annexed is contiguous to the Property.

(C) The Supplement shall extend the provisions and scheme of this Declaration to the Additional Property being annexed, but the Supplement may contain such complementary additions to and modifications of the provisions of this Declaration as the Declarant determines to be appropriate or necessary for the different character or use, if any, of the Additional Property being annexed. Such complementary additions and modifications shall not be generally or substantially inconsistent with the provisions of this Declaration, except as permitted by herein, and otherwise shall not amend or modify the provisions of this Declaration.

SECTION 4. Effect of Annexation. Upon any Supplement being filed for record, the Additional Property described in the Supplement shall be annexed to the Property. Any and all Lots, the Common Area and the Common Facilities of or in the annexed Additional Property shall be subject to the provisions and scheme of this Declaration and the jurisdiction, functions, duties, obligations and membership of the Association, including the Articles, the Bylaws and the rules and regulations promulgated or adopted by the Association. All Owners of Lots shall be granted the rights contained herein after such annexation.

#### ARTICLE XIV. GENERAL PROVISIONS

SECTION 1. Duration. The Covenants, Conditions and Restrictions of this Declaration shall inure with and bind the land subject to this Declaration, and shall inure to the benefit of and be enforceable by the Owners of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for an initial term ending December 31, 2038, after which time the Declaration shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the Owners of a sixty-seven (67%) percent majority of the Lots has been recorded in the Land Records of Madison County, Mississippi, agreeing to abolish or amend the Covenants, Conditions and Restrictions in whole or a substantial portion thereof. No such agreements to abolish shall be effective unless made and recorded six (6) months in advance of the effective date of such abolishment.

SECTION 2. Amendments. Notwithstanding Section 1 of this Article, the Covenants, Conditions and Restrictions of this Declaration may be amended by the Declarant so long as the Declarant owns a Lot or any portion of the Property. Thereafter, this Declaration may be amended or terminated with the consent of the Owners of sixty-seven (67%) percent of the Lots, and in each case such amendment shall be evidenced by a document in writing bearing the signatures of such Owners. All amendments, if any, shall be recorded in the Land Records of Madison County, Mississippi.

#### SECTION 3. Enforcement of Declaration.

(A) Compliance. If any provision of this Declaration is breached or violated or threatened to be breached or violated by any Owner or other Persons, each of the other Owners, the Declarant and/or the Association, jointly or severally, shall have the right, but not the obligation, to proceed at law or in equity to compel a compliance with, or to prevent the threatened violation or breach of, the provisions of this Declaration. If any structure or other improvement located on any portion of the Property, including any Lot, violates any provision of this Declaration, the Declarant and/or the Association, jointly or severally, shall have the right, but not the obligation, to enter upon any portion of the Property, including any Lot, to abate or remove such structure or other improvement at the cost and expense of the Owners of the Lot where such structure or improvements is located or who otherwise causes such violation, if the violation is not corrected by such Owner within thirty (30) days after written notice of such violation. Any person entitled to file or maintain a legal action or proceeding for the actual or threatened violation or breach of this Declaration shall be entitled to recover attorney's fees and other costs and expenses attributable to such action or proceeding, and the Association shall be entitled to recover and receive any other amounts specified in Section 9 of Article IV. Any such entry and abatement or removal shall not be or be deemed to be a trespass. The failure by any person for any period of time to enforce any provision of this Declaration shall not be or be deemed a waiver of the right to enforce or otherwise bar or affect the enforcement of any and all provisions of this Declaration at any time, including any future time.



(B) Enforcement. This Declaration shall be enforced by any appropriate proceeding at law or in equity (i) against any person who breaches or violates or threatens to breach or violate any provision of this Declaration; (ii) to recover damages or seek a temporary or permanent injunction or restraining order or other specific remedy for any such breach or violation; (iii) to collect any amounts payable by any Owner to the Association under this Declaration, including Assessments, attorneys' fees, costs of collection, late charges, overhead charges or other amounts incurred by the Association to perform or discharge any obligation or duty of any Owner under this Declaration or otherwise specified in this Declaration; and (iv) to enforce any lien created by this Declaration. There is hereby created and declared to be a conclusive presumption that any actual or threatened violation or breach of this Declaration cannot be adequately remedied by an action at law exclusively for recovery of monetary damages. The Declarant, the Association, and each Owner by acceptance of a deed or other conveyance document to a Lot waives and agrees not to assert any claim or defense that injunctive relief or other equitable relief is not an appropriate remedy.

SECTION 4. Severability. Invalidation of anyone of these covenants or restrictions by judgment or court order shall not affect any other provision which shall remain in full force and effect.

SECTION 5. Captions and Gender. The captions contained in this Declaration are for convenience only and are not a part of this Declaration and are not intended in any way to limit or enlarge the terms and provisions of this Declaration. Whenever the context so requires, the male shall include all genders and the singular shall include the plural.

SECTION 6. Notices to Owner. Any notice required to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly delivered (i) when deposited in the United States mail, postage prepaid, addressed to the last known address of the person who appears as Owner on the records of the Association at the time of such mailing; (ii) when sent by email or facsimile to the last known email address or facsimile number of the person who appears as Owner on the records of the Association at the time such notice is given; or (iii) by personal delivery to such Owner or to any person found at the Owner's last known address on the records of the Association at the time of such delivery.

SECTION 7. Lender's Notices. Upon written request to the Association, identifying the name and address of the holder, insurer, or guarantor and the Lot or address, any mortgage holder, insurer, or guarantor will be entitled to timely written notice of:

(A) Any sixty (60) day delinquency in the payment of Assessments or charges owned by the Owner of any Lot on which it holds the mortgage, and as to which delinquency, collection action has been instituted.

(B) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

(C) Any proposed action that requires the consent of a specified percentage of mortgage holders.

(D) The Association may charge a fee for such notices.

SECTION 8. Notice of Mortgage. Any holder of a Recorded First Mortgage shall be entitled to notify the Association that such mortgagee holds a mortgage on a Lot.

SECTION 9. Addresses of Owners. It shall be the obligation of each Owner to provide to the Association the Owner's name, address, telephone number, email address and facsimile number,

if applicable at the time the Owner purchases a Lot and to notify the Association, in writing, of any change.

## ARTICLE XV. DECLARANT'S RIGHTS AND RESERVATIONS

### SECTION 1. Declarant's Rights and Reservations.

(A) No provision in the Articles, Bylaws, or this Declaration shall limit, and no Owner or the Association shall do anything to interfere with, the right of Declarant to subdivide or re-subdivide any portions of the Property, or realign any line common to two (2) Lots or between a Lot and a Common Area, or to complete improvements or refurbishments (if any) to and on the Common Area or any portion of the Property owned by Declarant or to alter the foregoing or the construction plans and designs, or to construct such additional improvements as Declarant deems advisable in the course of development of the Property. Such right shall include, the right to install and maintain such structures, signs, and sales office as may be reasonably necessary for the conduct of Declarant's business for completing the work and disposing of the Lots by sale, lease, or otherwise.

(B) Each Owner by accepting a deed to a Lot hereby acknowledges that the activities of Declarant may temporarily or permanently constitute an inconvenience or nuisance to the Owner, and each Owner hereby consents to such inconvenience or nuisance.

(C) This Declaration shall not limit the right of Declarant at any time prior to acquisition of title to a Lot by a purchaser from Declarant to establish on that Lot or on the Common Areas, additional licenses, easements, reservations, and rights of way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Property. The Declarant need not seek or obtain Association approval of any improvement constructed or placed by Declarant on any portion of the Property.

(D) The rights of Declarant under this Declaration, and any interest or portion of Declarant's interest in any portion of the Property may be assigned by Declarant to any successor, by a recorded, written assignment. Notwithstanding any other provision of this Declaration, the prior written approval of Declarant, as Declarant of Grayhawk, will be required before any amendment to this Article shall be effective while Declarant owns any portion (or Lot) of the Property.

(E) Declarant shall be entitled to the non-exclusive use of the Common Area without further cost or access, ingress, egress, use or enjoyment, in order to show the Property to prospective purchasers or lessees and dispose of the Property as provided herein. Declarant, its assigns and tenants shall also be entitled to the non-exclusive use of any portion of the Common Area which comprises drives or walkways for the purpose of ingress and egress and accompanying vehicle and pedestrian traffic to and from the Property.

(F) Each Owner hereby grants, by acceptance of the deed to its Lot, an irrevocable, special power of attorney to Declarant to execute and record all documents and maps necessary to allow Declarant to exercise his rights under this Article. This Article shall be applicable for so long as the Declarant owns any portion of the Property.

SECTION 2. Notwithstanding anything contained elsewhere herein (Article IX, excluded) to the contrary, all rights and duties conferred on the Association under all sections of this Declaration except for Articles VIII. (Architectural Review), X. (Easements), and XI. (Covenants) may be exercised by Declarant for five (5) years following the execution of this Declaration as to the property described in Exhibits "A" and "B". Declarant reserves the right to exercise all rights and duties and give consents and waivers under Articles VIII., X. and XI. for a period of ten (10) years following the execution of this Declaration. Declarant may assign to the Association all rights reserved hereunder at any time prior to the expiration of the periods set forth above. Any rights

reserved under this paragraph shall be automatically extinguished or divested, and vest in the Association at such time as Declarant has divested itself of all right, title, and interest in and to the Property unless such rights have been assigned as previously provided herein.

SECTION 3.

(A) Authority of Declarant. Any person authorized by the Declarant may execute any document requiring the Declarant's signature and which relates to the interpretation, implementation or enforcement of this Declaration.

(B) Successors of Declarant. Any and all rights, reservations, easements, interests, exemptions, privileges and powers of the Declarant hereunder, or any part of them, may be assigned and transferred only and exclusively by the Declarant, with or without notice to the Association.

SECTION 4. Incorporation by Reference on Resale. In the event any Owner sells, assigns, transfers or otherwise conveys any Lot, any instrument of conveyance purporting to effect such conveyance or transfer shall contain a provision incorporating by reference the covenants, conditions, restrictions, servitudes, easements, charges and liens set forth in this Declaration; however, any such sale, assignment, transfer or other conveyance shall be subject to this Declaration whether or not expressly referred to in the instrument.

SECTION 5. No Dedication to Public Uses. Nothing herein contained shall be construed as a dedication to public use or as an acceptance for maintenance of any part of any Common Areas or by any public or municipal agency, authority, or utility. Nothing herein contained shall be interpreted as imposing upon any public agency, authority or utility company any responsibility or liability for the maintenance or operation of any of the Common Areas except that it shall be the obligation of such agency, authority or utility company to repair any damages caused by same.

SECTION 6. Relationship Between Declarant and Owner/Members. Nothing contained herein creates or shall be deemed to create a fiduciary or partnership relationship between the Declarant and any Owner.

SECTION 7. Effective Date. This Declaration shall be effective when executed by Declarant and filed for record in the Land Records of Madison County, Mississippi.

SECTION 8. Additional Restrictions. The Declarant reserves the right to place additional restrictions on the Common Areas in the instrument conveying the Common Areas to the Association.

In witness whereof, the duly authorized managing member of the Declarant has executed this Declaration on, this the 24<sup>th</sup> day of March, 2009.

ACADIA PROPERTIES, LLC  
a Mississippi limited liability company

By: \_\_\_\_\_

James Darron Case  
James Darron Case, Managing Member

## EXHIBIT A

A parcel of land lying and situated in the West ½ of Section 17 and in the East ½ of Section 18, all in Township 8 North, Range 2 East, Madison County, Mississippi being more particularly described as follows:

For a Point of Beginning, commence at an iron pin representing the NW corner of Germantown, Part IV, according to the map or plat thereof which is of record and on file in the Office of the Chancery Clerk of Madison County, Mississippi and run thence S 0 degrees 00 minutes 30 seconds E along the westerly line of said Germantown Part IV for a distance of 915.00 feet to an iron pin representing the NW corner of Germantown, Part III according to the map or plat thereof which is of record and on file in the Office of the Chancery Clerk of Madison County, Mississippi; thence run S 39 degrees 00 minutes 02 seconds W along the westerly line of said Germantown Part III for a distance of 475.38 feet to an iron pin representing the SW corner of Lot 69 of Germantown, Part III; thence run S 24 degrees 57 minutes 41 seconds W along said westerly line for a distance of 60.00 feet to an iron pin; thence run S 65 degrees 02 minutes 19 seconds E along said westerly line for a distance of 126.76 feet to an iron pin representing the NW corner of Lot 68 of Germantown, Part III; thence run S 21 degrees 40 minutes 53 seconds W along the westerly line of Germantown, Part III for a distance of 611.30 feet to a point which is the SW corner of said Germantown, Part III (said point is S 19 degrees 52 minutes 39 seconds W a distance of 10.05 feet from an iron pin); thence run S 0 degrees 00 minutes 00 seconds W for a distance of 365.92 feet to an iron pin; thence run S 89 degrees 06 minutes 18 seconds W for a distance of 916.68 feet to an iron pin representing the NE corner of Lot 10 of Quail Ridge Estates Farms-Part One (Revised); thence run N 0 degrees 03 minutes 00 seconds E for a distance of 1161.40 feet to an iron pin at the NE corner of that parcel described in Book 435 at page 151; thence run N 89 degrees 51 minutes 00 seconds W for a distance of 1312.52 feet to an iron pin on the west line of the East ½ of the East ½ of Section 18; thence run N 0 degrees 21 minutes 46 seconds E along said west line for a distance of 2794.26 feet to a concrete monument representing the NW corner of the East ½ of the East ½ of said Section 18 as in use; thence run N 89 degrees 30 minutes 57 seconds E generally along a fence line for a distance of 2635.71 feet to an iron pin on the westerly line of that parcel described in Book 1975 at page 360 ; thence run S 0 degrees 21 minutes 02 seconds E along the westerly line of said parcel and of those parcels described in Book 1769 at page 27, Book 1951 at page 376 and Book 481 at page 254 for a distance of 1640.72 feet to the Point of Beginning. This Parcel contains 196.82 acres, more or less.

The above described 196.82 acres, more or less, include GRAYHAWK, PART ONE, as more particularly described below:

A parcel of land lying and situated in the West 1/2 of Section 17, the East 1/2 of Section 18, and the Northwest 1/4 of Section 20, all in Township 8 North, Range 2 East, Madison County, Mississippi, more particularly described as follows:

For a Point of Beginning, commence at an iron pin at the northwest corner of Lot 68 of Germantown, Part III, a subdivision of which the map or plat is of record and on file in the Office of the Chancery Clerk of Madison County, Mississippi, and run thence S 21 degrees 40 minutes 53 seconds W, along the westerly line of said Lot 68, for a distance of 611.30 feet to the southwest corner of said Lot 68; thence run S 89 degrees 08 minutes 26 seconds W for a distance of 350.37 feet to a concrete monument; thence run S 48 degrees 07 minutes 30 seconds W for a distance of 558.24 feet to a concrete monument; thence run S 89 degrees 06 minutes 18 seconds W for a distance of 22.89 feet to an iron pin; thence run S 00 degrees 14 minutes 58 seconds W for a distance of 1590.80 feet to a point on the northerly line of that parcel of land described in Deed Book 2372 at Page 0456; thence run S 61 degrees 09 minutes 31 seconds W, along said northerly line, for a distance of 7.56 feet to a point; thence run southwesterly, along said northerly line and the arc of a curve to the right having a radius of 1060.00 feet, a delta angle of 06 degrees 33 minutes 29 seconds, a chord bearing of S 64 degrees 26 minutes 15 seconds W, a chord length of 121.26 feet, and an arc length of 121.33 feet, for a distance of 121.33 feet to the northwest corner of said parcel; thence run N 00 degrees 27 minutes 03 seconds E for a distance of 325.92 feet to a 1" square bar; thence run N 00 degrees 13 minutes 17 seconds E, along the westerly line of that parcel of land described as Tract 2 in Deed Book 2258 at Page 0041, for a distance of 1319.06 feet to an iron pin; thence run S 89 degrees 06 minutes 18 seconds W for a distance of 12.40 feet to an iron pin; thence run N 00 degrees 02 minutes 59 seconds E for a distance of 1161.40 feet to an iron pin; thence run N 89 degrees 51 minutes 01 seconds W for a distance of 178.90 feet to a concrete monument; thence run N 04 degrees 24 minutes 39 seconds E for a distance of 363.43 feet to a concrete monument; thence run N 74 degrees 03 minutes 51 seconds E for a distance of 205.49 feet to an iron pin; thence run N 88 degrees 14 minutes 51 seconds E for a distance of 94.08 feet to a concrete monument; thence run N 01 degrees 41 minutes 14 seconds W for a distance of 213.35 feet to an iron pin; thence run N 12 degrees 28 minutes 15 seconds W for a distance of 50.00 feet to a concrete monument; thence run easterly along the arc of a curve to the right having a radius of 701.12 feet, a delta angle of 05 degrees 16 minutes 26 seconds, a chord bearing of N 80 degrees 09 minutes 58 seconds E, a chord length of 64.51 feet, and an arc length of 64.54 feet, for a distance of 64.54 feet to a concrete monument; thence run N 15 degrees 23 minutes 55 seconds W for a distance of 179.96 feet to a concrete monument; thence run N 50 degrees 28 minutes 25 seconds E for a distance of 98.42 feet to an iron pin; thence run N 40 degrees 49 minutes 29 seconds E for a distance of 115.85 feet to an iron pin; thence run N 78 degrees 30 minutes 15 seconds E for a distance of 160.23 feet to a concrete monument; thence run S 11 degrees 05 minutes 59 seconds E for a distance of 258.96 feet to an iron pin; thence run S 02 degrees 42 minutes 59 seconds W for a distance of 130.58 feet to a concrete monument; thence run southeasterly along the arc of a curve to the right having a radius of 701.12 feet, a delta angle of 04 degrees 27 minutes 14 seconds, a chord bearing of S 69 degrees 46 minutes 07 seconds E, a chord length of 54.49 feet, and an arc length of 54.50 feet, for a distance of 54.50 feet to a concrete monument; thence run S 22 degrees 27 minutes 30 seconds W for a distance of 50.00 feet to an iron pin; thence run S 00 degrees 15 minutes 01 seconds E for a distance of 188.73 feet to a concrete monument; thence run S 54 degrees 42 minutes 42 seconds E for a distance of 173.06 feet to a concrete monument; thence run S 04 degrees 20 minutes 28 seconds W for a

distance of 172.05 feet to an iron pin; thence run S 12 degrees 19 minutes 30 seconds E for a distance of 191.00 feet to a concrete monument; thence run S 80 degrees 32 minutes 14 seconds E for a distance of 363.17 feet to an iron pin; thence run S 24 degrees 57 minutes 41 seconds W for a distance of 60.00 feet to an iron pin on the southerly right-of-way of Germantown Road (per plat); thence run S 65 degrees 02 minutes 19 seconds E, along said southerly right-of-way, for a distance of 126.76 feet to the Point of Beginning. This parcel contains 37.72 acres, more or less.

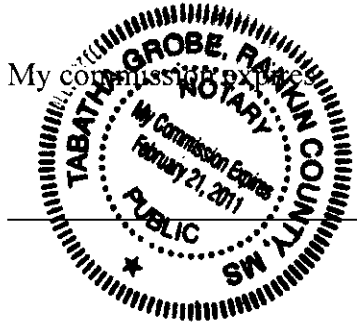
GRAYHAWK, PART ONE is also described as follows:

Lots 1 - 7 and 10 - 66, Grayhawk, Part One, a subdivision according to a map or plat thereof on file and of record in the office of the Chancery Clerk of Madison at Canton, Mississippi, in Plat Cabinet E at Slides 105B and 106A, reference to which map or plat is hereby made in aid of and as a part of this description.

STATE OF MISSISSIPPI  
COUNTY OF Hinds

PERSONALLY APPEARED before me, the undersigned authority in and for the aforesaid county and state, on this 24<sup>th</sup> day of March, 2009, within my jurisdiction, the within named James Darron Case, who acknowledged that he is a Managing Member of Acadia Properties, LLC, a Mississippi manager-managed limited liability company, and that for and on behalf of the limited liability company, and as its act and deed, he executed the above and foregoing instrument after first having been duly authorized by the limited liability company so to do.

Tabatha Grobe  
NOTARY PUBLIC



**PREPARED BY:**

TREVA L. McINNIS (MBN 10485)  
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# 91.22  
# 500

MADISON COUNTY MS This instrument was  
filed for record March 27, 2009 at 9:45A .M.

Book 2408 Page 843  
ARTHUR JOHNSTON, C. C.

BY: Hm D.C.

