

# **DECLARATION OF ADDITIONAL COVENANTS, CONDITIONS AND RESTRICTIONS FOR RESIDENTIAL PROPERTIES WITHIN WOODMOOR**

THIS DECLARATION is made and executed on this the \_\_\_\_\_ day of \_\_\_\_\_ 1987, by WOODMOOR II, a Mississippi general partnership, acting by and through its general partners, John W. Nethero, Managing Partner, and Omega Development Company, a Mississippi general partnership of which Mike P. Sturdivant is Senior Partner, said WOODMOOR II being hereinafter referred to as the "Declarant".

WHEREAS, the Declarant is the owner of the real property described in Exhibit "A" hereto; and

WHEREAS, the Declarant has created and developed a residential community of sound and stable property values and appealing quality of lifestyle, and has further provided common areas, community facilities, and amenities intended for the use and enjoyment of the residents of said community; and

WHEREAS, the Declarant desires to provide for the preservation of said values and amenities in said community and for the designation and maintenance of said common areas and community facilities, and to this end the Declarant desires to subject all of said real property described in Exhibit "A" hereto to the additional covenants, conditions, restrictions, uses, limitations, obligations, easements, servitudes, charges, assessments, and liens, hereinafter set forth, each and all of which is and are for the benefit of said real property and any additional real properties which may be may subject to said additional covenants, conditions, restrictions, uses, limitations, obligations, easements, servitudes, charges, assessments, and liens, and each and all of which is and for the benefit of the current and subsequent owners thereof; and

WHEREAS, the Declarant deems it desirable, for the efficient preservation of said values and amenities in said community and for the timely and orderly maintenance and administration of said common areas and community facilities, to create an association to which can and shall be delegated and assigned the powers and duties of maintaining and administering said common areas and community facilities, administering and enforcing the additional covenants and restrictions, and collecting and disbursing the charges and assessments hereinafter specified; and

WHEREAS, the Declarant has caused to be formed (or shortly will cause to be formed), under the laws of the State of Mississippi, a non-profit and non-share corporation named The Woodmoor Homeowners' Association, Inc., which corporation shall have as its purpose the carrying out of the powers and duties

mentioned herein and shall constitute the maintenance organization for common open space required by the provisions of the City of Clinton Zoning Ordinance; and

WHEREAS, the Declarant, or the principals of the Declarant, either alone or jointly with others, are the owners of the real property described in Exhibit "B" hereto, and the Declarant intends to develop, in phases as a part of said community, said real property described in Exhibit "B" hereto, and annex all or part of said real property described in Exhibit "B" hereto to the real property described in Exhibit "A" hereto and thereby subject all or part of said real property described in Exhibit "B" hereto to the additional covenants and restrictions of this Declaration; and

WHEREAS, the Declarant, or the principals of the Declarant; either alone or jointly with others have developed, in phases as the initial part of said community, the real properties described in Exhibit "C" hereto, and as a result of so doing the Declarant desires that any and all of said real properties described in Exhibit "C" hereto be annexed to the real property described in Exhibit "A" hereto and thereby all or part of said real property described in Exhibit "C" be subjected to the additional covenants and restrictions of this Declaration;

NOW, THEREFORE, the Declarant hereby declares that all of said real property described in Exhibit "A" hereto is and shall be held, conveyed, hypothecated or encumbered, sold, leased, rented, used, occupied and improved subject to the covenants, restrictions, conditions, uses, limitations, obligations, easements, servitudes, charges, assessments, and liens, hereinafter set forth, all of which are agreed and declared to be in aid of a plan for the development of said residential community and the improvement of said real property, all of which shall be deemed to run with and bind said real property, and all of which shall inure to the benefit of and be enforceable by the Declarant, or its successors or assigns, or any person acquiring or owning any interest in said real property or the improvements thereon, including, without limitation, any person who holds such interest solely as security for the performance of an obligation or payment of a debt.

## **ARTICLE I: DEFINITIONS AND DECLARATION**

Section 1. Definitions. The words and phrases set out below, when used in this Declaration, shall have the following meanings, respectively, to wit:

(a) The word "Association" shall mean and refer to The Woodmoor Homeowners' Association, Inc., and its successors and assigns.

(b) The word "Property" shall mean and refer to all the real property described in Exhibit "A" hereto, and all additions thereto which by annexation in accordance with the terms and provisions of this Declaration may become subject to the additional covenants and restrictions of this Declaration and brought within the jurisdiction of the Association.

(c) The word "Declaration" shall mean and include this instrument and all amendments hereto, and all Supplementary Declarations and amendments thereto executed in accordance with the provisions hereof.

(d) The expression "Additional Covenants and Restrictions" shall mean and include all the covenants, restrictions, conditions, uses, limitations, obligations, easements, servitudes, charges, assessments, and liens, set forth in this Declaration. The expression "additional covenants and restrictions" does not include the restrictive and protective covenants and appurtenant provisions of those certain instruments of record in the office of the Chancery Clerk of the First Judicial District of Hinds County, Mississippi, to which the lots listed in Exhibit "C" hereto have previously been made subject as is parenthetically noted in said Exhibit "C".

(e) The word "Lot" shall mean and refer to each of the subdivided parcels or units of property constituting a part of the Property, and shall be deemed to include, without limitation (i) condominium units or condominium apartments, as such term is defined in Sections 89-9-1 through 89-9-37 of the Mississippi Code of 1972, and any amendments or additions thereto adopted subsequent to the date hereof (which statute and amendments and additions are referred to in the Declaration as the "Condominium Act"); and (ii) each separate dwelling located in a multi-family structure, whether or not such dwelling shall be in the same or different ownership; provided that the word "Lot" shall not mean or include any portions of the Property designated as common areas.

(f) The word "Person" shall mean and include individuals, corporations, trusts, partnerships and all other legal entities, and any combination or group of any of same.

(g) The expression "Common Areas" shall mean all those portions of the Property designated of record as common areas. The expression "Community Facilities" shall mean all real property, including common areas, owned or leased by the Association or otherwise available to the Association for the use, benefit and enjoyment of its Members in accordance with the provisions of this Declaration. The designation of any portion of the Property as a common area or community facility shall not mean that the public at large acquires any easement of use or enjoyment therein.

(h) The word "Dwelling" shall mean and refer to any building or portion of a building situated upon the Property and designed and intended for use and occupancy as a residence by a single individual or family.

(i) The word "Owner" shall mean and refer to the record owner, whether one or more persons, of the fee simple title to any Lot comprising part of the Property, including contract sellers, but excluding those holding such interest solely as security for the performance of an obligation or payment of a debt.

(j) The word "Developer" shall mean and include the Declarant and every other person who is a successor in title to the Declarant as to any real property now or hereafter constituting all or a portion of the Property, and who, with the Declarant's written permission, is engaged or hereafter engages in the business of developing and selling all or any portion of the Property, provided that the word "Developer" shall not mean or include the Association. The word "Developer" shall also mean and

include any successors and assigns of the entire interest of the Declarant who, as the mortgagee in or the holder of any recorded mortgage executed by the Declarant or as the secured party or beneficiary of any recorded deed of trust executed by the Declarant, comes into possession of all or any portion of the Property pursuant to foreclosure or execution of a deed, assignment or other proceeding or arrangement in lieu of foreclosure.

(k) The expression "Multi-Family Structure" shall mean and refer to any building or group of buildings situated upon the Property and containing two or more dwellings; provided, however, that for purposes of this Declaration, the definition of "multi-family structure" shall not include either (i) a building containing condominium units as such term is defined in the Condominium Act; or (ii) a building which contains two or more dwellings in cases where each such dwelling is situated on a separate subdivided Lot and is separated from other dwellings in the building by a party wall as defined in this Declaration. By way of explanation and not by way of limitation, the expression "multi-family structure" as used herein is intended to include apartment buildings in a single ownership where the dwellings located in such apartment buildings are available for rent.

(l) The word "Mortgagee," as used herein, means and includes the mortgagee in or the holder of any recorded mortgage, and the party secured or beneficiary in any recorded deed of trust, encumbering one or more Lots. The word "mortgage," as used herein, means and includes mortgage, deed of trust, and any similar encumbrance. The expression "first mortgage," as used herein, means a mortgage with priority over all other mortgages encumbering the same Lot. The word "holder," as used herein, means the person entitled to the security afforded by a mortgage. The word "first mortgagee," as used herein, means the holder of a first mortgage. The word "institutional," when used to describe a mortgagee or holder, shall mean and include mortgagees or holders who are banks, trust companies, insurance companies, mortgage insurance companies, savings and loan associations, trusts, mutual savings banks, credit unions, pension funds, mortgage companies, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, all corporations, and any agency or department of the United States Government or of any state or municipal government.

(m) The word "Member" shall mean and include every person holding any class of membership in the Association.

(n) The word "Community," as used in this Declaration, shall mean that certain residential development known generally as "Woodmoor", which has been constructed, which is being constructed, and which hereafter will be constructed, by the Declarant and others on the real property described in Exhibits "A", "B", and "C" hereto.

(o) The expression "Board of Directors" shall mean and include the Board of Directors of the Association.

(p) The word "Bylaws" shall mean and include the Bylaws of the Association and all amendments thereto.

(q) The word "Herein" shall mean in this Declaration.

Section 2. Property Subject to Declaration. The real property which is and shall be held, conveyed, hypothecated or encumbered, sold, leased, rented, used, occupied, and improved subject to this Declaration is located in Section 19, Township 6 North, Range 1 West, City of Clinton, First Judicial District, Hinds County, Mississippi, and is more particularly described in Exhibit "A" hereto, which Exhibit "A" by this reference is made a part hereof for all purposes.

Section 3. Declaration of Initial Common Area. All of the real property described in Exhibit "A" hereto is set aside as, and hereby declared to constitute, a common area, and as such said property henceforth shall be held and owned for the common use, benefit, and enjoyment of the Members of the Association.

## **ARTICLE II: ANNEXATION OF ADDITIONAL PROPERTY**

Section 1. Annexation of Additional Real Property. At any one or more times on or prior to April 15, 2007, and without the assent of the Class A Members, the Declarant, or any other person with the written assent of the Declarant, shall have the right, privilege, and option to annex to the Property any additional contiguous or non-contiguous real property situated in Hinds County, Mississippi, which is situated within the perimeter of the tracts of land described in Exhibits "B" and "C" hereto, which Exhibits "B" and "C" by this reference are made a part hereof for all purposes, and which tracts of land are hereinafter referred to as the "lands and properties subject to annexation". The lands described in Exhibit "B" hereto are hereinafter referred to as the "undeveloped lands subject to annexation". The properties described in Exhibit "C" hereto are hereinafter described as the "developed lots subject to annexation". Any such annexation shall have the effect of making the annexed property part of the Property and of extending the scheme of the within additional covenants and restrictions to such annexed property. However, no such annexation shall occur until same has been accomplished in the manner hereinafter prescribed.

Any annexations of additional real property to the Property shall be made by recording a Supplementary Declaration of Additional Covenants, Conditions and Restrictions in the land records in the office of the Chancery Clerk of the First Judicial District of Hinds County, which Supplementary Declaration shall, by declaration therein, extend the scheme of the within additional covenants and restrictions to the annexed additional property therein described. Such Supplementary Declaration shall be executed by the person who owns the fee simple title to the additional property being annexed, and if such person is other than the Declarant, shall be executed also by the Declarant. Such Supplementary Declaration may contain, with respect to the additional property annexed thereby, whatever complementary additions and modifications to the additional covenants and restrictions set forth herein as may be appropriate to reflect the different character or use, if any, of the annexed additional property, provided, however, that in no event shall any such addition or modification be substantially inconsistent with the provisions of this Declaration.

Section 2. Annexation of Real Property Not Now Contemplated As Part of the Community. At any one or more times on or prior to April 15, 2007, and without the assent of the Class A Members, the Declarant

shall have the right, privilege, and option to amend the real property described in Exhibit "B" hereto, the undeveloped lands subject to annexation, to include such other real property as the Declarant may hereinafter acquire, with the intent to develop in conformance with the general plan of development for Woodmoor approved by the Board of Aldermen for the City of Clinton. Such amendment shall be made by executing a written instrument setting forth such amendment, describing therein the parcels of land theretofore constituting the undeveloped lands subject to annexation and the additional parcel(s) of land being included, and filing the written instrument for record in the office of the Chancery Clerk of the First Judicial District of Hinds County.

### **ARTICLE III: ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

Section 1. Membership. The Members of the Association shall be and consist of every person who is, or who hereafter becomes, an Owner of a Lot comprising part of the Property:

Section 2. Action by Members of the Association. The Association shall have two classes of voting membership. Whenever in this Declaration any action is required to be taken by a specified percentage of "each class of the then Members" of the Association, then such action shall be required to be taken separately by the specified percentage of the then outstanding Class A Members and by the specified percentage of the then outstanding Class B Members. Whenever in this Declaration any action is required to be taken by a specified percentage of the "then Members" of the Association, then such action shall be required to be taken by the specified percentage of the then outstanding total membership of the Association.

Section 3. Voting Rights. Each Member shall have one vote in the election of each officer of the Association. For all other purposes, the voting rights of the Members shall be by class of membership, and shall be as follows, to wit:

(a) Class A Members. Each person, other than persons herein defined as "Developers", who is or who hereafter becomes the Owner of a Lot shall be a Class A Member of the Association. Class A Members shall be entitled to one vote for each Lot owned.

(b) Class B Members. Each of the persons herein defined as "Developers" and the nominee or nominees, if any, of each such person, shall be Class B Members of the Association. Class B Members shall be entitled to one vote for each Lot owned.

Section 4. Memberships Appurtenant to Real Property. In every case, the membership of a Class A Member and the membership of a Class B Member shall be appurtenant to the ownership of a Lot. A membership shall not be held, assigned, transferred, pledged, hypothecated, encumbered, conveyed or alienated in any manner except in conjunction with and as an appurtenance to the ownership, assignment, transfer, pledge, hypothecation, encumbrance, conveyance or alienation of the Lot to which the membership is appurtenant.

Section 5. Termination of Class B Memberships. The Class B Memberships shall terminate and automatically shall be converted into Class A Memberships upon the first to occur of the following dates, to wit:

(a) The 15th day of April of any year on which the total number of Lots owned of record by Class A Members is equal to or greater than five times the total number of Lots owned of record by Class B Members; or

(b) The date of April 15, 2007; or

(c) The date on which all remaining Class B Members shall voluntarily relinquish all Class B Memberships by a written document or documents delivered to the Association.

Upon the termination of the Class B Memberships, as provided above, all persons herein defined as "Developers" thereafter shall be and remain Class A Members as to each and every Lot concerning which they own the fee title otherwise required for Class A membership.

Section 6. Reinstatement of Class B Memberships. If on any one or more occasions prior to April 15, 2007, all Class B Memberships should terminate, and if after any such termination the Declarant, in accordance with the provisions of Article II, should annex additional real property to the Property, and if any such annexation results in the Developers owning one-sixth or more of the total number of Lots upon the whole of the Property, then on each such occasion the status of the Developers as Class B Members shall be fully reinstated, and following each such occasion the status of the Developers, and the nominee or nominees, if any, of each of the Developers, shall continue to be Class B Members until the first thereafter to occur of the alternative dates specified in Subparagraphs (a), (b), and (c) above in Section 5 of this Article. Following each such reinstatement of the Class B Memberships, and for so long thereafter as the Class B Memberships shall continue to exist, the Developers, and the nominee or nominees, if any, of each of the Developers, shall have all the rights and powers of Class B Membership, as herein prescribed.

Section 7. Other Voting Provisions. As to all matters except the election of officers, only one vote may be cast with respect to any one Lot. Any person qualifying as a Member of more than one voting class of membership may exercise the votes to which he is entitled for each such class of membership. If the fee title to a particular Lot is owned of record by more than one person, the vote appurtenant to such Lot may be exercised by any one 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 said Lot shall not be counted.

Section 8. Board of Directors. The affairs of the Association shall be managed and controlled by a Board of Directors consisting of the number of individuals from time to time prescribed by the Bylaws, which number, however, shall not be less than three or more than nine. Directors need not be Members of the Association. From and after the first annual Members' meeting, and for so long as there is a Class B Member, the Board of Directors shall consist of Appointed Directors and Elected Directors. During all times when there is no Class B Member, all Directors shall be Elected Directors.

Appointed Directors shall be selected and appointed by the concurrence of a majority of the Class B Members, and shall serve at the pleasure of a majority of the Class B Members. The initial Board of Directors shall consist of ~~three~~ six individuals, all of whom shall be Appointed Directors, and unless earlier replaced, said initial Directors shall serve until the first annual meeting of Members. From and after the first annual Members' meeting, and for so long as there is a Class B Member, the number of Appointed Directors at all times shall be equal to two-thirds of the total number of Directors prescribed from time to time by the Bylaws, or if at any time the total number of Directors prescribed by the Bylaws is not evenly divisible by three, then the number of Appointed Directors shall be equal to the whole number next larger than two-thirds of the total number of Directors prescribed by the Bylaws.

Elected Directors shall be elected by the Class A Members at annual Members' meetings, and shall serve until their successors shall be elected and qualified in accordance with the Bylaws.

#### **ARTICLE IV: MEMBERS' RIGHT OF ENJOYMENT**

Section 1. Members' Right of Enjoyment. Except as is provided in Section 2 of this Article, every Member shall have a right and easement of enjoyment in and to the common areas and community facilities, which easement shall be appurtenant to and shall pass with the fee title to the Lot owned by such Member, subject, in every case, however, to the following, to wit:

(a) the right of the Association, in accordance with its Charter of Incorporation and Bylaws, to borrow money for the purpose of improving the common areas and community facilities or any portion thereof, in a manner designed to promote the enjoyment and welfare of the Members, and in aid thereof to mortgage any of the common areas and community facilities, provided, however, that no such borrowing shall be done and no such mortgage shall be executed unless and until same has been approved by the vote of at least two-thirds of each Class of the then Class A Members and the then Class B Members of the Association, voting separately; and

(b) the right of the Association, acting by and through its Board of Directors, to levy reasonable admission and other fees for the use of any community facilities (excluding streets, roads and parking areas) situated upon the Property by the Members and their families, tenants and guests; provided, however, that any such fees shall be charged on a uniform basis for each Member, and, provided further, that in no event shall the Association levy any fee for the use of any streets, roadways or parking areas which are situated upon the Property; and

(c) 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; provided, however, that any such steps are in conformity with the other provisions of this Declaration; and



(d) the right of the Association, acting by and through its Board of Directors, to adopt reasonable house rules respecting use of the common areas and community facilities and to limit the number of guests of members who may use any facilities on the Property; and

(e) the right of the Association, acting by and through its Board of Directors, to suspend any Member's voting rights and any Member's rights to use the common areas and community facilities (except rights to use streets, roadways and parking areas, which latter rights shall not be subject to suspension for any reason) for any period during which any assessment remains unpaid and for any period not exceeding sixty (60) days for any infraction of any of the published rules and regulations of the Association; and

(f) the right of the Association to dedicate or transfer all or any part of the common areas or community facilities to any public or municipal agency, authority or utility for any purpose consistent with the purposes of the Declaration, and subject to such conditions as may be agreed to by the Members; provided, however, that no such dedication or transfer or determination as to purpose or as to conditions, shall be effective unless a majority of each Class of the then Members of the Association consent to such dedication, transfer, purpose and conditions, at a special meeting of the Members duly called for such purpose; and

(g) 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 government agency, public utility, the Declarant or any other person, provided, however, that no such licenses, rights-of-way or easements shall be unreasonable and permanently inconsistent with the rights of the Members to the use and enjoyment of the common areas and community facilities; and

(h) the right of the Association, acting by and through its Board of Directors, to open the common areas and community facilities, or any portions thereof, to a wider group of persons, all for such purposes and on such terms and conditions as the Board of Directors may from time to time consider appropriate; and

(i) the right of the Association, acting by and through its Board of Directors, to restrict the use and enjoyment of certain parts of the common areas and community facilities is in accordance with a prior reservation scheduled by the Management Agent; and

(j) the right of the Association to exchange or transfer all or any part of the Common Area for any other part of the Property which is not Common Area but which is the same or larger in size and has similar or better accessibility to the Members than the part of the Common Area being exchanged or transferred; provided, however, that no such exchange or transfer shall be effected unless an instrument signed by the Members of the Association entitled to cast two-thirds (2/3) of the total votes of the Class A and Class B Members combined has been recorded in the Office of the Chancery Clerk of the First Judicial District of Hinds County, Mississippi, approving or ratifying said exchange or transfer, and unless written notice of the proposed exchange or transfer is sent to every member at least thirty (30) days in advance of said exchange or transfer being affected. Any part of the Common Area exchanged or transferred for any other part of the Property shall cease to be Common Area upon said exchange or transfer being affected, and that any part of the Property exchanged or transferred for Common Area shall

simultaneously become Common Area so that at no time shall the Common Area owned and maintained by the Association be diminished.

(k) the rights of the Owners of Lots to perpetual easements over and upon any of the common areas and community facilities for such portions of their dwellings that may overhang or otherwise encroach upon any of the common areas or community facilities, for support, for the purpose of necessary repairs and maintenance, for maintenance of reasonable appurtenances to the dwellings, and for reasonable ingress and egress to and from any dwelling through and over the common areas and community facilities; and

(l) the right of each Member to use the streets, roadways, and vehicular parking areas situated upon the common areas and community facilities; provided, however, that 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 community 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 Subparagraphs (k) and (l) of Section 1 of this Article for any reason whatsoever.

Section 3. Delegation of Right to Use. Any Member of the Association may delegate his rights to the use and enjoyment of the common areas and community facilities to the members of his family who reside permanently with him and to his tenants, contract-purchasers and guests, all subject to such reasonable rules and regulations as the Board of Directors of the Association may adopt and uniformly apply and enforce.

## **ARTICLE V: DETERMINATION OF ASSESSMENTS**

Section 1. Annual Maintenance Assessments. Each person who becomes a fee simple Owner of a Lot comprising part of the Property, by acceptance of a deed therefore, whether or not the deed shall so state, and each person who as a fee simple owner of a part of the undeveloped lands and developed lots subject to annexation so executes a Supplementary Declaration of Additional Covenants, Conditions and Restrictions subjecting his Lot to the within additional covenants and restrictions, shall be deemed to covenant and agree to pay the Association each month, in advance, a sum equal to one-twelfth (1/12) of such person's annual maintenance assessment, which expression, "annual maintenance assessment", as used herein, shall mean such person's proportionate share of the amount required by the Association, as estimated by the Board of Directors, to meet its annual expenses, including but in no way limited to the following, to wit:

(a) the amount of OH operating expenses for operating the common areas and community facilities and furnishing the services furnished to or in connection with the common areas and community facilities, including charges by the Association for any services furnished by it; and

(b) the costs of necessary management and administration of the common areas and community facilities, including fees paid to any Management Agent; and

(c) the amount of all taxes and assessments levied against the common areas and community facilities, and

(d) the costs of fire and extended coverage and liability insurance on the common areas and community facilities and the costs of such other insurance as the Association may place in force with respect to the common areas and community facilities; and

(e) the costs 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 community facilities or for all Lots, or both; and

(f) the costs of maintaining, replacing, repairing and landscaping the common areas and community facilities (including, without limitation, the costs of maintaining, replacing and repairing the sidewalks, streets, roadways and open areas within the Property), and the costs of such equipment as the Board of Directors shall determine to be necessary and proper in connection therewith; and

(g) the costs of funding all reserves established by the Association, including, when appropriate, a general operating reserve and a reserve for replacements.

The Board of Directors from time to time may fix and change the beginning and ending dates of the annual period (herein called the "assessment year") to be used in calculating and dealing with annual maintenance assessments, but unless and until the Board of Directors shall prescribe a fiscal year, the calendar year shall be used as the assessment year.

The Board of Directors shall determine the amount of the maintenance assessment for each Member annually, but may do so at more frequent intervals should circumstances make such appropriate. Upon resolution of the Board of Directors, installments of maintenance assessments payable by the Class A Members may be levied and collected on a quarterly, semi-annual or annual basis, rather than on the monthly basis as specified above. Any Class A Member may prepay one or more installments of any maintenance assessment, without premium or penalty.

The Board of Directors shall prepare, or cause to be prepared, an annual operating budget for the common areas and community facilities. The Board of Directors shall make reasonable efforts to fix the amount of the annual maintenance assessment against each Lot for each assessment period at least thirty (30) days in advance of the beginning of the period, and shall, at the same time, prepare a roster of the Lots and the annual maintenance assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any Member at any reasonable time during normal business hours. At the same time, written notice that the annual maintenance assessments have been made and are available for inspection shall be sent to the Members. The omission by the Board of Directors, before the expiration of any assessment period, to fix the amount of the annual maintenance assessment for that or the next period, shall not constitute a waiver or modification in any respect of

the provisions of this Article, and shall not constitute a release of any Member from the obligation to pay his proportionate share of the annual maintenance assessment, or any installment thereof, for that or any subsequent assessment period, but the annual maintenance assessment fixed for the preceding period shall continue to be the maintenance assessment payable by the Members until a new maintenance assessment is fixed. No Class A Member may exempt himself from liability for maintenance assessments by the abandonment of any Lot or by the abandonment of his right to use and enjoy the common areas and community facilities.

Except as may be specifically provided herein, this Declaration does not contemplate that the Association shall have any responsibility for the maintenance or repair of any dwelling or its appurtenances or for the maintenance and care of lawn and garden areas, and the responsibilities and duties of the Association for such maintenance, repairs, and care shall be limited to the common areas and community facilities.

Section 2. Special Maintenance Assessments. In addition to the regular maintenance assessments authorized by this Article, the Association may levy during any assessment year one or more special maintenance assessments, applicable to that year only, for the purpose of paying in whole or in part the costs of any construction and reconstruction, inordinate repair or replacement of any improvement, fixtures or personal property constituting part of the community facilities or for such other purpose or purposes as the Board of Directors may deem appropriate; provided that prior to being levied any such assessment shall be approved by at least two-thirds (2/3) of the then Class A Members and at least two-thirds (2/3) of the then Class B Members, voting separately. A meeting of the Members shall be duly called for the purpose of approving any special maintenance assessment.

Section 3. Reserves for Replacements. The Association shall establish and maintain a reserve fund for replacements of the common areas and community facilities, and shall allocate and pay monthly 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, and all such amounts may be deposited in any banking institution, the accounts of which are insured by any agency of the United States, 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 of the common areas and community facilities may be expended only for the purpose of affecting the replacement of the common areas and community facilities, for major repairs to any sidewalks, parking areas, streets or roadways on the Property, for equipment replacement, and for start-up expenses and operating contingencies of a non-recurring nature relating to the common areas and community 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 Class A Member in any such reserves shall be considered an appurtenance to his Lot, and shall not be 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 4. Maximum Annual Maintenance Assessments. Anything herein to the contrary notwithstanding, the initial maximum annual maintenance assessment for each of the Lots to which

Class A membership is appurtenant shall not exceed the sum of Sixty Dollars (\$60.00) per annum, provided that the maximum amount thus prescribed may be increased from time to time from and after April 15, 1987, in accordance with the provisions in other Sections of this Declaration. All annual maintenance assessments shall be levied at a uniform rate for each Lot to which Class A membership is appurtenant.

Section 5. Increase In Maximum Annual Maintenance Assessment.

(a) For each assessment year beginning on or after January 1, 1989, the maximum annual maintenance assessment for Class A Members, as hereinabove provided for, may be increased by the Board of Directors, without a vote of the Class A Members, by an amount equal to ten percent (10%) of the maximum annual maintenance assessment for the preceding year plus each member's proportionate share of the amounts by which any ad valorem property taxes and any casualty and other insurance premiums payable by the Association have increased over the amounts payable for the same or similar items in the preceding year.

(b) For each assessment year beginning on or after January 1, 1989, the maximum annual maintenance assessment for the Class A Members may be increased above that permitted by the next preceding paragraph if, and only if, any such increase shall first be approved by the affirmative vote of at least two-thirds (2/3) of the then Class A Members and at least two-thirds (2/3) of the then Class B Members, voting separately. A meeting of the Members shall be duly called for this purpose. Any increase properly approved pursuant to this Subparagraph (b) shall be effective for the next succeeding assessment year and for each succeeding assessment year thereafter, unless the then Class A Members and the then Class B Members, by the affirmative vote of at least two-thirds (2/3) of each of said Classes, shall otherwise specify.

Section 6. Assessments Are Not Dues. The assessments and charges herein mentioned are not intended to be, and shall not be construed as being, in whole or in part, dues for membership in the Association.

Section 7. Damage to Common Properties. In the event the Board of Directors of the Association determines that any Owner has failed or refused to discharge properly his obligations with respect to the maintenance, repair or replacement of any items for which the Owner is responsible or finds that any Owner is responsible for damage to the area of common responsibility that is not covered by insurance, the Association shall give the Owner, written notice of the Association's intent to provide the necessary maintenance, repair or replacement at the Owner's sole cost and expense, which notice shall set forth with particularity the maintenance, repairs and replacement deemed necessary. The Owner shall have fifteen (15) days from the date of mailing the notice by Certified United States Mail to complete the maintenance, repair or replacement or appear before the Board of Directors to contest its determination. If the Owner fails in this obligation the Association may provide such maintenance, repair and replacement at the Owner's sole cost and expense and the cost, plus all costs of collection including a reasonable attorney fee, shall be added to and become part of the assessment for which the Owner is responsible and shall become a lien against the Lot of the Owner enforceable by the Association.

## **ARTICLE VI: ENFORCEMENT OF ASSESSMENTS**

Section 1. Non-Payment of Assessment. Any assessment levied against a Class A or a Class B Member pursuant to this Declaration, or any installment of any such assessment, which is not paid on the date when due, shall be delinquent and, together with interest thereon and the cost of collection thereof, as hereinafter provided, shall thereupon become a continuing lien upon the Lot or Lots belonging to the Member or Members against whom such assessment is levied, and shall bind such Lot or Lots in the hands of the then Owners, their heirs, devisees, personal representatives and assigns. In addition, the personal obligation of every Member to pay all assessments levied against him pursuant to this Declaration shall remain his personal obligation for the full statutory period permitted by law, and a suit to recover a money judgment for non-payment of any such assessment, or any installment thereof, may be maintained without foreclosing or waiving any lien herein created to secure same.

Any assessment levied pursuant to this Declaration, or any installment thereof, which is not paid within ten (10) days after it is due, shall bear interest from the date due until paid at the maximum rate permitted by the law of the State of Mississippi, and, in addition, there shall be added to any such delinquent assessment whatever late charges the Board of Directors may from time to time prescribe. The Association may bring an action at law against the Member or Members personally obligated to pay any assessment, or may foreclose the lien against any Lot or Lots then belonging to said Member or Members in the manner now or hereafter provided for foreclosure of mortgages and other liens on real property in the State of Mississippi containing a power of sale, or the Association may do both. Any such foreclosure by the Association shall be subject to the same requirements, both substantive and procedural, as are prescribed from time to time by the laws of the State of Mississippi applicable to foreclosure of mortgages and other liens on real property containing a power of sale. In any event, reasonable attorney's fees and reasonable costs of collection shall be added to the amount of each delinquent assessment.

In the event any proceeding to foreclose the lien for any assessment due the Association pursuant to this Declaration is commenced with respect to any Lot or Lots, then the Owner of such Lot or Lots, upon resolution of the Board of Directors, may be required to pay reasonable rental for such Lot or Lots, and the Association shall be entitled to the appointment of a receiver to collect same.

The Board of Directors may post a list of Members who are delinquent in the payment of any assessments or other fees which may be due the Association, including any installment thereof, in any prominent location upon the Property.

Section 2. Assessment Certificates. The Association shall upon demand at any time furnish to any Member liable for any assessment levied pursuant to this Declaration (or any other person legitimately interested in the same) a certificate in writing signed by an officer of the Association, setting forth the status of said assessment, i.e., whether the same is paid or unpaid. Such certificate shall be conclusive evidence of the payment of any assessment therein stated to have been paid. A charge not to exceed Twenty Dollars (\$20.00) may be levied in advance by the Association for each certificate so delivered.

Section 3. Acceleration of Installments. Upon default in the payment of any one or more installments of any assessment levied pursuant to this Declaration, the entire balance of said assessment thereupon shall be and become due and payable in full, unless the Board of Directors, in its discretion, shall otherwise direct.

Section 4. Priority of Lien. As to each Lot subject thereto, the lien to secure payment of an assessment, as established by this Declaration, shall have preference over any other liens, assessments, judgments or charges of whatever nature, except the following:

(a) general and special assessments for ad valorem property taxes on such Lot; and

(b) the lien of any first mortgage on such Lot duly recorded prior to the assessment of the lien specified in this Declaration, or duly recorded after receipt of a written statement from the Board of Directors stating that payments on the assessment giving rise to the lien established pursuant to this Declaration were current as of the date of recordation of the mortgage.

Section 5. Subordination to Mortgages. Notwithstanding any other provision of this Declaration to the contrary, the lien upon any Lot to secure any assessment levied pursuant to this Declaration shall be subordinate to the lien of any duly recorded first mortgage on such Lot made in good faith and for value received, and the lien hereunder shall in no way affect the rights of the holder of any such first mortgage; provided, however, that such subordination shall apply only to assessments, and installments thereof, which have become due and payable prior to the sale or transfer of such Lot pursuant to the sale or transfer of such Lot pursuant to a foreclosure of any such first mortgage, or prior to the execution of any deed, assignment or other proceeding or arrangement in lieu of foreclosure.

Any holder of any such duly recorded first mortgage made in good faith and for value received who comes into possession of such Lot pursuant to a foreclosure of the mortgage, or pursuant to the execution of any deed, assignment or other proceeding or arrangement in lieu of foreclosure, and any purchaser at a foreclosure sale, as well as any transferee under any deed, assignment or other proceeding or arrangement in lieu of foreclosure, shall take the Lot free of any claims for unpaid maintenance assessments levied against the Lot which accrued prior to the time such holder comes into possession of the Lot, or prior to the foreclosure sale or prior to the execution of any deed, assignment or other proceeding or arrangement in lieu of foreclosure, as the case may be, except for claims for a proportionate share of such unpaid maintenance assessments resulting from a reallocation of such unpaid maintenance assessments among the various Lots upon the Property. However, such foreclosure, deed, assignment or other proceeding or arrangement in lieu of foreclosure shall not relieve the mortgagee in possession or the purchaser at foreclosure or the transferee under any deed, assignment, or other proceeding or arrangement in lieu of foreclosure from any liability for any maintenance assessments thereafter becoming due, or from the lien herein created to secure the payment of any such maintenance assessments, which lien, if it be asserted as to any such maintenance assessments thereafter becoming due, shall have the same effect and be enforced in the same manner as is provided herein.

No amendment to this Section shall affect the rights of the holder of any first mortgage on any Lot (or the holder of any indebtedness secured thereby) recorded prior to the recordation of any such amendment, unless said holder shall join in the execution of any such amendment.

The Board of Directors, in its sole and absolute discretion, may extend the provisions of this Section to the holders of mortgages (or the holders of the indebtednesses secured thereby) not otherwise entitled to the benefits hereof.

Section 6. Additional Default. Any recorded first mortgage encumbering a Lot or Lots on the Property shall provide that any default by the mortgagor in the payment of any assessment levied pursuant to this Declaration, or any installment thereof, likewise shall be a default under such mortgage, but failure to include such a provision in any such mortgage shall not affect the validity or priority thereof, and the protection extended to the holder of any such mortgage (or the indebtedness secured thereby) by Section 5 of this Article shall not be altered, modified or diminished by reason of any such failure.

Section 7. Commencement of Liability for Annual Assessments. Each Class A Member's liability to pay monthly installments of annual maintenance assessments shall commence on the date a deed conveying the Lot to which such membership is appurtenant shall be delivered to the Member named as grantee in the deed or shall commence on the date that the Lot is made subject to these additional covenants and restrictions as provided for herein. The first such monthly installment for each Class A Member shall be paid for the next successive month following said date. Except as is herein elsewhere provided, all monthly installments of annual maintenance assessments shall be due and payable on the first day of each successive month.

Section 8. Assessment of Developers. Anything in this Declaration to the contrary notwithstanding, any Lot owned by any one or more of the Developers shall not be subject to assessment by the Association until sixty (60) days after the completion of construction of any dwelling or dwellings constructed upon such Lot.

Section 9. Exempt Property. No portion of the common areas or community facilities shall be subject to assessment of any kind by the Association.

## **ARTICLE VII: REQUIREMENTS AND PROHIBITIONS**

Section 1. House Rules, etc. No Member or other person shall violate any rules for the use of the common areas and community facilities or house rules or other Community rules and regulations not inconsistent with the provisions of this Declaration which may be adopted from time to time by the Board of Directors and promulgated in writing among the membership, and the Board of Directors, as is herein elsewhere prescribed, is fully authorized to adopt all such rules and regulations.

Section 2. Leasing. Any Owner of any Lot or dwelling, who shall lease such Lot or dwelling, promptly following execution of any such lease and upon the request in writing of the Board of Directors, shall forward a conformed copy of such lease to the Board of Directors. All such leases shall be in writing. Any



such lease shall contain a provision to the effect that the rights of the tenant to use and occupy the premises which are the subject matter of the lease shall be subject and subordinate in all respects to the provisions of this Declaration, to the Bylaws of the Association, and to such reasonable house rules as the Board of Directors from time to time may promulgate among the membership relating to the use of the common areas and community facilities, and any such lease shall further provide that any failure by the tenant to comply with any of same shall be a default under the lease.

#### **ARTICLE VIII: MANAGEMENT AGENT**

Section 1. Management Agent. The Board of Directors shall employ for the Association a management agent or manager (herein called the "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 in writing. The Association shall not undertake "self-management" or otherwise fail to employ the Management Agent without prior written approval of the holders of at least fifty percent (50%) of all first mortgages of record encumbering the Lots. The Management Agent shall perform such duties and services as the Board of Directors shall direct and authorize in writing, which duties and services may include, without limitation, the power and authority in the Management Agent.

(a) To establish (subject to the approval and confirmation of the Board of Directors) and to provide for the collection of the annual maintenance assessment and any other assessments specified in this Declaration, and to provide for the enforcement of liens securing same in any manner consistent with law and with the provisions of this Declaration; and

(b) To provide for the care, upkeep, maintenance and surveillance of the common areas and community facilities; and

(c) To select, hire, and dismiss such personnel as may be required for the good working order, maintenance, and efficient operation of the common areas and community facilities; and

(d) To promulgate (with approval and confirmation of the Board of Directors) and to enforce such rules and regulations and such restrictions, requirements, house rules, and the like as may be deemed proper respecting the use and care of the common areas and community facilities; and

(e) To provide such other services (including accounting services) for the Association as may be consistent with law and the provisions of this Declaration.

(f) The management agreement entered into by the Association shall provide inter alia, that such agreement may be terminated for cause by either party upon thirty (30) days' written notice thereof to the other party. The term of any such management agreement shall not exceed one year; provided, however, that the term of any such management agreement may be renewable by mutual agreement of the parties for successive one-year periods.

Section 2. Limitation of Liability. The Association shall not be liable for any failure of any service to be furnished by the Association or paid for out of the common expense fund, or for injury or damage to person or property caused by the elements or resulting from water which may leak or flow from any portion of the common areas or community facilities, or from any wire, pipe, drain, conduit, or the like. The Association shall not be liable to any Member for loss of or damage to any articles, by theft or otherwise, which may be left or stored upon the common areas or community facilities. No diminution or abatement of assessments, as herein elsewhere provided for, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the common areas or community facilities, or from any action taken by the Association to comply with any of the provisions of this Declaration or with any law or ordinance or with the order or directive of any county or other governmental authority.

Section 3. Declarant As Management Agent. The Board of Directors may employ as the Management Agent the Declarant or any principal thereof.

## **ARTICLE IX: LAKE COMMON AREAS**

Section 1. Designation of Lake Common Areas. From time to time and in accordance with the manner prescribed in Section 1 of Article II of this Declaration, the Declarant may annex to the Property one or more parcels of real property, all or part of each of which may be described and designated as a Lake Common Area in the Supplementary Declaration of Additional Covenants and Restrictions effecting such annexation or on the plat incorporated by reference into such Supplementary Declaration. A parcel of real property so described and designated is hereinafter referred to as a "lake common area". Unless otherwise clearly indicated by the provisions of this Article, lake common areas shall in all respects be held and owned for the common use, benefit, and enjoyment of all the Members of the Association as are other common areas within the Property.

Section 2. Special Restrictions Affecting Lots Adjacent to Lake Common Areas. To preserve the grandeur of a lake common area, there are hereby created special restrictions, rights, and easements hereinafter described and defined upon a such parcel of real property described and designated as a lake common area and upon a part of each Lot adjacent to a lake common area, which restrictions, rights, and easements shall be appurtenant to and shall run with and bind the land within such lake common area and the land adjacent to such lake common area and shall inure to the benefit of and be enforceable by the Association or the Owner of any other Lot adjacent to such lake common area, and by their respective legal representatives, heirs, successors and assigns, for as long as a lake is operated and maintained on such lake common area in a manner which preserves the values and amenities of the Community, or if such is of lesser duration, for a term of thirty (30) years from the date of recordation of this Declaration, after which term said restrictions, rights, and easements shall be automatically extended for successive periods of ten (10) years each, unless terminated at the end of any such period by an instrument executed and acknowledged within sixty (60) days preceding the end of such period by the Association, acting by and through its Board of Directors, and by the Members who own at least a

majority of the Lots adjacent to all lake common areas, which instrument shall be filed for record in the office of the Chancery Clerk of the First Judicial District of Hinds County. The special restrictions, rights, and easements herein created and hereinafter described and defined are collectively referred to as the "Lake Easements".

Section 3. Parts of a Lot Subject to the Lake Easements. Unless the restriction, right, or easement is clearly applicable to all of a Lot adjacent to a lake common area or unless otherwise clearly and specifically described in a Supplementary Declaration of Covenants and Restrictions annexing Lots adjacent to a lake common area to the Property, that part of any Lot within fifteen (15) feet of a lake common area shall be subject to the Lake Easements.

Section 4. Walls and Fences. No solid line of fence, wall, or shrubbery shall be erected or permitted to remain on that portion of any Lot subject to the Lake Easements.

Section 5. Easement of Light, Air and View. There is hereby reserved for the benefit of the Declarant and the Association, and their respective successors and assigns, the right and easement of light, air and view over and across the area subject to the Lake Easements.

Section 6. Landscaping. The Owner of each Lot adjacent to a lake common area shall landscape and maintain all that part of his Lot which is visible from the lake common area in an attractive, well kept manner consistent with the overall landscaping plan for the entire lake common area.

Section 7. Use of Lake Water. For so long as there is a Class B Member, the Declarant reserves unto itself and its successors and assigns the non-exclusive right to withdraw and use water impounded within a lake common area for irrigation of any real property owned by the Declarant, any common area, and/or any Lot, or for any beneficial purpose subject only to the provisions of Sections 51-3-1 through 51-3-55 of the Mississippi Code of 1972. All other water impounded within a lake common area shall be withdrawn and used only by the Association or by an Owner having the approval of the Association.

Section 8. Lake Water Level. Neither the Declarant nor the Association shall be required to maintain the water level of any lake at any certain elevation or between any certain maximum and minimum elevations. The Association may lower the water level or drain a lake if such is prudent or necessary for the discharge of its responsibilities herein, for the installation, maintenance and repair of any street, dock, pier, shoreline improvement, sewer, drain, pipe, wire or cable, or any related appurtenance, or for any other purpose.

Section 9. Docks, Piers, and Shoreline Improvements. An Owner of a Lot abutting a lake common area may erect one dock or pier extending into the watercourse after first receiving the approval of plans and specifications therefore by the Board of Directors. Any dock or pier so erected must be maintained in sound condition. A dock or pier must be erected completely within the area over which the erecting Owner has exclusive responsibility. A dock or pier must be gated and kept locked when not in use by the Owner, a member of the Owner's family or the invited guest of the Owner. The Owner of a Lot abutting a lake common area may construct shoreline improvements within his area of exclusive responsibility to

improve shoreline appearance, facilitate maintenance, or minimize bank erosion, after first receiving the approval of plans and specifications therefore by the Board of Directors. Any such improvements must be maintained in sound condition. Broken concrete or stone rip rap, shall not be used for shoreline improvements.

Section 10. Exclusive Responsibility For Lake Shore and Proximate Water Surface. The Owner of a Lot abutting a lake common area is hereby delegated the revocable, exclusive, non-assignable right to exercise for the Association the responsibility for the use and maintenance of that part of the lake common area within an area delineated by the Owner's abutting Lot line, extensions of adjacent lot lines into the lake common area, and a line thirty (30) feet from the edge of the lake water surface when the lake water surface is level with the spillway overflow. An Owner of a Lot abutting a lake common area and exercising exclusive responsibility for the use of such delineated area shall not prevent another Owner, a member of such other Owner's family, or the invited guest of such other Owner from periodically swimming, sailing, or fishing through that part of the lake within such delineated area, or, engaging in any quiet activity of limited duration within such delineated area which does not disturb or interrupt the use of the delineated area by the Owner exercising such responsibility. The Owner exercising such responsibility shall determine what is or is not a quiet activity within such delineated area, unless or until the Board of Directors publishes a definitive list of quiet activities within all such delineated areas or unless and until the Board of Directors shall revoke for cause an Owner's right to exercise for the Association such responsibility.

Section 11. Responsibilities of the Association. The Association shall be responsible for the maintenance of the dam and outlet works of a lake, for the maintenance of appropriate water quality in a lake, for the removal of excessive amounts of vegetation, debris, and/or sediment from a lake, for the regulation of the use and activities of the water surface of a lake, for the propagation, control, and management of wildlife of any kind which habitat in or around lakes, and for the acquisition of all permits and approvals, including extensions, renewals, and additions, required by Section 51-3-1 through 51-3-55 of the Mississippi Code of 1972. The Association shall not be responsible for the safety of any person in or on the surface of a lake or in or on the outlet works of a lake.

Section 12. Use and Protection of Lakes. Lakes shall be used for fishing, swimming, sailing, and boating, except that no person may use a boat over twelve (12) feet in length or a boat which is mechanically powered with a motor capable of developing more than one (1) horsepower. No person may fill a lake or place any solid or harmful liquid in or near a lake. No person may enlarge the surface area of a lake without the approval of the Board of Directors.

Section 13. Right to Maintain Lots. There is hereby reserved for the benefit of the Declarant, the Association, and Members who own a Lot adjacent to a lake common area, and their respective successors and assigns, upon, over, through and across the area subject to Lake Easements, a right and easement to landscape and maintain said area. Such maintenance and landscaping may include regular removal of underbrush, trees less than two inches in diameter, trash, or debris; the planting of grass, trees, and shrubbery; watering; application of fertilizer; and mowing.

## **ARTICLE X: EASEMENTS**

Section 1. Reservation of Easement Rights by the Declarant. The Declarant, for itself and its assigns, hereby reserves a non-exclusive easement and right-of-way in, through, over, and across the common areas and community facilities for the purposes of the storage of building supplies and materials, the installation, construction, maintenance, reconstruction and repair of sewers, water pipes, irrigation pipes, electrical wires or cables, telephone wires or cables, gas lines, storm drains, television cables, underground conduits, and related appurtenances to any of same, and for all other purposes reasonably related to the completion of construction and the provision of utility services, whether public or private, to the Community and to other real property in the vicinity of the Community. Any and all instruments of conveyance made by the Declarant to the Association with respect to any of the common areas and community facilities shall be conclusively deemed to incorporate this reservation, whether or not specifically set forth in such instruments. At the request in writing of the Declarant, the Association shall from time to time execute, acknowledge, and deliver to the Declarant such further assurances of this reservation as may be necessary.

Section 2. Conveyance of Easements for Utilities and Related Purposes. The Association is authorized and empowered to grant (and shall from time to time grant) such other easements, licenses, and rights-of-way over the common areas and community facilities for the installation, operation and maintenance sewers, water pipes, electrical wires or cables, telephone wires or cables, gas lines, storm drains, television cables, underground conduits, and related appurtenances for any and all purposes benefitting the Community and other real property in the vicinity thereof as may be considered necessary or appropriate by the Board of Directors for the orderly maintenance, preservation and enjoyment of the common areas and community facilities and for the preservation of the health, safety, convenience, and welfare of the Owners of the Lots, the owners of such other real property, or the Declarant.

## **ARTICLE XI: ADDITIONAL PROVISIONS**

Section 1. Amendment. Subject at all times to all other limitations set forth in this Declaration, this Declaration or any Supplementary Declaration may be amended as follows:

(a) At any time when there is one or more Class B Members only by an instrument executed and acknowledged by the Declarant and by the Owners of all Lots subject to this Declaration, or in the case of a Supplementary Declaration, by the Owners of all Lots subject to said Supplementary Declaration, who own at least fifty percent (50%) of all Lots subject to the Declaration or said Supplementary Declaration.

(b) At any time when there are no Class B Members only by an instrument executed and acknowledged by the Owners of all Lots subject to this Declaration, or in the case of a Supplementary Declaration, by the Owners of all Lots subject to said Supplementary Declaration, who own at least fifty percent (50%) of all Lots subject to the Declaration or said Supplementary Declaration.

(c) Until April 15, 1990, by an instrument executed and acknowledged only by the Declarant provided that such amending instrument does not modify or amend any material or substantive provision of this Declaration or the Supplementary Declaration being amended.

Such amending instrument shall be recorded in the land records in the Office of the Chancery Clerk of the First Judicial District of Hinds County. Unless a later date shall be specified in any such amending instrument, any amendment hereto shall be effective on the date of recording of the amending instrument.

Section 2. Duration. Unless amended in accordance with the provisions of Section 1 of this Article and the other requirements of this Declaration, and except where permanent easements or other permanent rights or interests are herein created, the additional covenants and restrictions of this Declaration shall run with and bind the land now and hereafter constituting the Property, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot, and by their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date of recordation of this Declaration, after which term the said additional covenants and restrictions shall be automatically extended for successive periods of ten (10) years each, unless terminated at the end of any such period by an instrument executed and acknowledged within sixty (60) days preceding the end of such period by Class A Members who own at least a majority of the Lots then owned by Class A Members, which instrument shall be filed for record in the Office of the Chancery Clerk of the First Judicial District of Hinds County.

Section 3. Construction and Enforcement. The provisions hereof shall be liberally construed to effectuate the purpose of creating a uniform plan for the operation of the common areas and community facilities. Enforcement of these additional covenants and restrictions may be by any proceeding at law or in equity against any person violating or, attempting to violate any of such additional covenants and restrictions, either to restrain or enjoin violation or to recover damages, or both, and against any Lot to enforce any lien created hereby; and the failure or forbearance by the Association or the Owner of any Lot to enforce any additional covenant or restriction herein shall in no event be deemed a waiver of the right to do so thereafter.

The provisions hereof may be enforced, without limitation, by the Association, or by any Owner or any mortgagee of any Lot which becomes subject to the provisions hereof, or by any other person who has any right to the use of any of the common areas and community facilities, including, again without limitation, any person who has any right to the use of any street or roadway owned by the Association.

There shall be and hereby is created and declared to be a conclusive presumption that any violation or breach or attempted violation or breach of any of the within covenants or restrictions cannot be adequately remedied by an action at law or exclusively by recovery of damages.

Section 4. 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 (exclusively) by the Declarant, with or without notice to the Association.

Section 5. Incorporation by Reference on Resale. In the event any Owner sells or otherwise transfers any Lot, any deed purporting to effect such transfer shall contain a provision incorporating by reference the covenants, restrictions, servitudes, easements, charges and liens set forth in this Declaration.

Section 6. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, by ordinary mail, postage prepaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 7. No Dedication to Public Use. Nothing herein contained shall be construed as a dedication to public use or as an acceptance for maintenance of any common areas or community facilities by any public or county agency, authority, or utility, and nothing herein contained shall be interpreted as imposing upon any public, municipal or county agency, authority or utility any responsibility or liability for the maintenance or operation of any of the common areas or community facilities.

Section 8. Severability. Invalidation of any one or more of these covenants or restrictions by judgment, decree or order shall in no way affect any of the other provisions herein, each and all of which shall be severable and shall remain in full force and effect.

Section 9. Consents. 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 at least fifty percent (50%) of all first mortgages of record encumbering the Lots:

(a) Abandon, partition, subdivide, encumber, sell or transfer (except by exchange as provided in Article IV Section 1 Paragraph (j)) any of the common areas or community facilities; provided, however, that the realignment of boundaries, the granting of rights-of-way, easements and the like for utilities or for other purposes consistent with the use of the common areas and community facilities by the Members of the Association shall not be considered an encumbrance, sale or transfer within the meaning of this Subsection; or

(b) Abandon or terminate this Declaration; or

(c) Modify or amend any material or substantive provision of this Declaration or the Bylaws of the Association pertaining to the rights of said holders of all first mortgages of record encumbering the Lots; or

(d) Substantially modify the method of determining and collecting maintenance assessments as provided in this Declaration.

Section 10. Additional Rights of Mortgagees - Notice. The Association shall promptly notify the holder of the first mortgage on any Lot as to which any assessment levied pursuant to the Declaration, or any installment thereof, shall become and remain delinquent for a period in excess of sixty (60) days, and the Association shall promptly notify the holder of the first mortgage on any Lot as to which there is default by the Owner with respect to performance of any other obligation under this Declaration which

remains uncured for a period in excess of sixty (60) days following the date of such default. Any failure to give any such notice shall not affect the validity or priority of any first mortgage on any Lot, and the protection extended in this Declaration to the holder of any such mortgage shall not be altered, modified or diminished by reason of such failure. Also, any failure to give any such notice shall not affect the validity of the lien for any assessment levied pursuant to this Declaration, nor shall any such failure affect any of the priorities for liens as specified In Article VI hereof.

No suit or other proceeding may be brought to foreclose the lien for any assessment levied pursuant to the Declaration except after ten (10) days written notice to the holder of the first mortgage encumbering the Lot which is the subject matter of such suit or proceeding.

Any institutional first mortgagee of any Lot upon the Property may pay any taxes, utility charges or other charges levied against the common areas or community facilities which are in default and which may or have become a charge or lien against any of the common areas or community facilities, and any such institutional first mortgagee may pay any overdue premiums on any hazard insurance policy, or secure new hazard insurance coverage on the lapse of any policy, relating to the common areas or community facilities. Any first mortgagee who advances any such payment shall be due reasonable reimbursement of the amount so advanced from the Association.

Section 11. Casualty Losses. In the event of substantial damage or destruction to any of the common areas or community facilities, the Board of Directors shall give prompt written notice of such damage or destruction to the holders of all first mortgages of record on the Lots. No provision of this Declaration or the Bylaws of the Association shall entitle any Member to any priority over the holder of any first mortgage of record encumbering said Member's Lot insofar as concerns the distribution to said Member of any insurance proceeds paid or payable on the account of any damage to or destruction of any of the common areas of community facilities.

Section 12. Condemnation or Eminent Domain. In the event any part of the common areas and community facilities is made the subject matter of any condemnation or eminent domain proceeding, or is otherwise sought to be acquired by any condemning authority, then the Board of Directors shall give prompt written notice of any such proceeding or proposed acquisition to the holders of all first mortgages of record encumbering the Lots. No provision of this Declaration or the Bylaws of the Association shall entitle any Member to any priority over the holder of any first mortgage of record encumbering said Member's Lot insofar as concerns the distribution to said Member of the proceeds of any condemnation or settlement relating to taking of any part of the common areas and community facilities.

Section 13. 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.



IN WITNESS WHEREOF, the said WOODMOOR II, a Mississippi General Partnership organized and existing under the laws of the State of Mississippi, has on the \_\_\_\_\_ day of \_\_\_\_\_, 1987, caused these presents to be executed in its name by its general partners, and does hereby appoint its Managing Partner as its true and lawful attorney-in-fact to acknowledge and deliver these presents as the act and deed of said WOODMOOR II.

WOODMOOR II  
A Mississippi General Partnership  
By: John W. Nethero, Managing Partner

Omega Development Company  
A Mississippi General Partnership  
By: Mike P. Sturdivant, General Partner

**ACKNOWLEDGEMENT                      STATE OF MISSISSIPPI                      COUNTY OF HINDS**

Personally appeared before me, the undersigned authority in and for the State and County aforesaid, the above and the within named JOHN W. NETHERO, who, being by me first duly sworn, stated on his oath that he is Managing General Partner of Woodmoor II, a Mississippi general partnership, and who acknowledged to me that he signed and delivered the above and foregoing Declaration of Additional Covenants, Conditions and Restrictions for Residential Properties Within Woodmoor as his own act and deed, for and in behalf of said Woodmoor II on the day and year therein mentioned.

Given under my hand and seal of office on this \_\_\_\_\_ day of \_\_\_\_\_, 1986.

NOTARY PUBLIC

**ACKNOWLEDGEMENT                      STATE OF MISSISSIPPI                      COUNTY OF TALLAHATCHIE**

Personally appeared before me, the undersigned authority in and for the State and County aforesaid, the above and the within named MIKE P. STURDIVANT, who, being by me first duly sworn, stated on his oath that he is Senior Partner of Omega Development Company, a Mississippi general partnership and General Partner of Woodmoor II, a Mississippi general partnership, and who acknowledged to me that he signed and delivered the above and foregoing Declaration of Additional Covenants, Conditions and Restrictions for Residential Properties Within Woodmoor as his own act and deed, for and in behalf of said Omega Development Company and Woodmoor II on the day and year therein mentioned.

Given under my hand and seal of office on this \_\_\_\_\_ day of \_\_\_\_\_, 1987.

NOTARY PUBLIC