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RICHLAND TITLE, INC. ✓
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HATTIESBURG, MS 39402

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

BACKWATER

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STATE OF MISSISSIPPI
COUNTY OF LAMAR

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
BACKWATER

THIS DECLARATION is made this 21st day of July, 2003, by Backwater Development, LLC, a Mississippi limited liability company, by and through Backwater Development Management Company, LLC, a Mississippi limited liability company (hereinafter referred to as "Declarant") :

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property situated in Lamar County, Mississippi, more particularly described on Exhibit "A" attached hereto, and 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, the undersigned owners of Lots A7, 32, 37 and 44 and their respective mortgagees desire to consent to the addition of the Declaration of Covenants, Conditions and Restrictions to that certain real property described on Exhibit "A", in the office of the Chancery Clerk of Lamar County, Mississippi.

WHEREAS, Declarant desires to provide for the preservation of the values in said community 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 said property and each owner thereof; and

WHEREAS, the primary purposes of these covenants and the foremost consideration in the origin of same has been the creation of a residential community which is aesthetically pleasing and functionally convenient. Declarant has deemed it desirable for the efficient preservation of the values in said community, to provide for an agency to which would be delegated and assigned the powers

of administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

NOW, THEREFORE, Declarant declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes referred to as "Covenants and Restrictions") hereinafter set forth.

ARTICLE I
DEFINITIONS

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

- (a) "Assessment" shall mean a lot owner's share of the common expenses from time to time assessed such lot owner by the Association. Assessment or Assessments refer to annual, replacement or special assessment or any combination thereof.
- (b) "Association" shall mean and refer to The Backwater Owners Association, Inc., a non-profit corporation, 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.
- (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, which bylaws may be initially in the form of Exhibit "B" attached hereto.
- (e) "Common Area" shall mean all real property (including the improvements thereon) owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot shall be all of the Property less and except all platted and numbered lots as shown on the subdivision plats of Backwater to be filed of record in the office of the Chancery Clerk of Lamar County, Mississippi.
- (f) "Common Facilities" shall mean all buildings and improvements constructed on any portion of the Common Area.
- (g) "Declarant" shall mean and refer to Backwater Development, LLC, its successors and/or assigns.

- (h) "Declaration" shall mean this instrument as it is from time to time amended;
- (i) "Dwelling" shall mean a residential dwelling house.
- (j) "Green space" shall mean certain portions of Common Area which are designated to be maintained in its natural condition so that the natural, scenic and recreational resources, soils, wetlands, wildlife, game and migratory birds currently in evidence at Backwater be maintained and enhanced. Such areas are designated as such on the recorded plat.
- (k) "Invitees" shall mean an owner's tenants, guests, patrons, employees or other guests or invitees.
- (l) "Lot" shall mean and refer to any plot or tract of land shown upon the recorded subdivision map or plat of the Property, exclusive of the Common Area, which is designated as a lot therein and which is or will be improved with a residential dwelling.
- (m) "Member" shall mean and refer to each Owner as provided herein in Article III.
- (n) "Mortgagee" shall mean a bank, savings and loan association, insurance company, mortgage company, real estate investment trust, recognized institutional type lender or its loan correspondent, agency of the United States government or individuals, which owns or which is the holder of a Recorded First Mortgage.
- (o) "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 Properties, including contract sellers, but excluding those persons or entities who hold an interest merely as security for the performance of an obligation.
- (p) "Person" shall mean an individual, firm, corporation, partnership, association, trust or other legal entity or any combination thereof, including Declarant.
- (q) "Property" or "Properties" shall mean and refer to that certain real property hereinbefore described which is subject to this Declaration.
- (r) "Recorded First Mortgage" shall be deemed to mean a mortgage or deed of trust, properly recorded in the office of the Chancery Clerk of the Lamar County, Mississippi or other public office designated by the statutes and laws of the State of Mississippi for the recording of mortgages in Lamar County, Mississippi, the lien of which is prior, paramount, and superior to the lien of all other mortgages and deeds of trust.

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 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 admission and other fees for the use of any community facilities (excluding streets, roads and parking areas which have been accepted by Lamar County, Mississippi for maintenance) 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
- (b) the right of the Association 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
- (c) 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 as may be agreed to by the Members. No such dedication or transfer shall be effective unless two-thirds (2/3rds) 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 or an instrument agreeing to such dedication or transfer signed by two-thirds (2/3rds) of each class of Members has been recorded; and
- (d) the right of the Association, in accordance with its Charter of Incorporation and By-Laws, to borrow money for the purpose of improving the Common Areas and community facilities 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 (2/3rds) of each Class; and
- (e) the right of the Association 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
- (f) the right of the Association to adopt reasonable rules respecting use of the Common Areas and community facilities to reasonably limit~the number of guests of Members who may use any facilities on the Property; 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 municipal agency, public utility, the Developers or any other person, provided, however, that 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 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 bases as the Board of Directors may from time to time consider appropriate; and
 - (i) 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
 - (j) 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.
 - (k) the right to dedicate or grant to Lamar County or such other governmental authority having jurisdiction over the Property, the streets and right-of-ways as shown on the recorded plat of Backwater and all additions thereto as annexed pursuant to the provisions of this Declaration. In the event that said streets and right-of-ways have

not been dedicated to Lamar County or the governmental authority having jurisdiction over the property the Association shall have the right to dedicate said streets and right-of-ways to such governmental authority at such time that such authority will accept the dedication thereof and agree to maintain the streets and right-of-ways as public streets.

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-paragraphs (i) and (j) of Section 1 of this Article II for any reason whatsoever.

Section 3. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family who reside permanently with him, his tenants, or *contract* purchasers who reside on the Property 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 III

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. The Members of the Association shall be and consist of each and all of the following, to-wit:

- (a) 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.
- (b) The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Members with the exception of Declarant and its nominee or nominees, if any. Class A Members shall be entitled to one vote for each Lot owned. When more than one person or entity holds an interest or interests in any Lot, all such persons or entities shall be Members, and the vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more

than one vote be cast with respect to any such Lot.

Class B. The Class B Member(s) shall be the Declarant and its nominee or nominees, if any. The Class B Member(s) shall be entitled to three (3) votes for each Lot owned except as restricted under Section 2 hereof. When the total votes outstanding in the Class A membership equal the votes outstanding in the Class B membership, then the Class B membership shall cease and be converted into Class A membership. Notwithstanding the foregoing, on November 1, 2017, all Class B memberships shall cease and be converted into Class A memberships.

Section 2. 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 "Declarant", 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 "Declarant," 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 three votes for each Lot owned.

Section 3. Memberships Appurtenant to Real Property. In every case, the membership of both Class A and Class B Members 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 4. Termination and Reinstatement of Class B Members. If on any one or more occasions all Class B memberships should terminate, and if after any such termination of the Declarant or its nominee or nominees, if any, by annexation to the Property in accordance with the Declaration, should add additional property to the Property theretofore subject to the Declaration, then on each such occasion the status of the Declarant(s) as Class B Members shall be fully reinstated, and following each such occasion the Declarant, or the nominee or nominees, if any, of

the Declarant, shall continue to be Class B Members until such time as the total votes outstanding of Class A and Class B Members resulting from the newly added property has been equalized. At such time, the Class B membership resulting from such addition shall cease and be converted to Class A memberships. Following each such reinstatement of the Class B memberships, and for so long thereafter as the Class B memberships shall continue to exist, the Declarant(s), and the nominee or nominees, if any, of the Declarant(s), shall have all rights and powers of Class B membership, as herein prescribed.

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 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.

ARTICLE IV COVENANTS FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot owned by it within the Properties, hereby covenants and agrees, 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 Article IV, Section 2 and (2) special assessments as set forth in 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.

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 the Properties, and in particular for the supervision, improvement and maintenance of the Common Area; and for paying the cost of labor, equipment (including the expense of leasing any equipment)

and materials required for, and management and supervision of the Common Area, including but in no way limited to the following:

- (a) the amount of all operating expenses for operating the Common Areas and Common Facilities and furnishing the services furnished to or in connection with the Common Areas and Common Facilities, including charges by the Association for any services furnished by it; 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 Areas 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 the sidewalks, streets, other than those accepted by Lamar 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, when appropriate, a general operating reserve and a reserve for replacement.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Six Hundred and Sixty dollars (\$660.00) per Lot.

- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 10% above the maximum assessment for the previous year without a vote of the membership.
- (b) From and after January 1 of the year immediately following the conveyance of the

first Lot to an Owner, the maximum annual assessment may be increased above ten percent (10%) by a vote of two-thirds (2/3rds) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

- (c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum assessment permitted under the provision 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, repair or replacement of capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3rds) of the votes of each class 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 two-thirds (2/3) of each class of Members in interest, the Association may levy special assessments against individual Lot Owners, for reimbursement for repairs occasioned by 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, its Nominee or Nominees, if any, 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 City of Hattiesburg and/or Lamar County for backup fire protection pursuant to an agreement by and between the Association and the City of Hattiesburg and/or Lamar County now in force and as 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 pursuant to Article IX, Section 4 or Article XI, Section 15.

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 and 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of 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 ($\frac{1}{2}$) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Annual and Special Assessments. Both annual and special capital assessments must be fixed at a uniform rate for all Lots payable as set forth in Section 4 above. Unless two-thirds ($\frac{2}{3}$) of each class of Members and their respective first mortgagees (and if their interest be affected, the Federal National Mortgage Association, Federal Housing Administration and the Veterans Administration) have given prior written approval, the Board of Directors of the Association shall not change the pro rata interest or obligations of any Lot (or owner thereof) for the purposes of levying annual and special capital assessments and charges. The Association may add to the assessments to an individual Lot Owner such additional maintenance expense as may be required to care for such Owner's yard to the extent the extra expense is due to special or extraordinary landscaping beyond that which is normal among the other owners.

Section 7. Date of Commencement of Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots, except Lots owned by Developers or Declarant, on the first day of the month following the conveyance of the common areas. Assessments on Lots owned by Developers or Declarant shall commence as provided in Section 16 hereof. The first annual assessment shall be prorated according to the number of months remaining in the calendar year. The due dates shall be established by the Board of Directors.

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

- (a) The Board of Directors of the Association shall 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) The Board of Directors shall, upon demand at any time, furnish to any Owner liable for said assessment, a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Said 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: The 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 shall, together with such interest thereon and cost of collection thereof as hereinafter provided, become a 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, however, shall remain his personal obligation and shall not be extinguished by transfer of title. The lien for unpaid assessments shall be unaffected 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 his Lot.
- (b) The Association shall give written notification to the holder(s) of the mortgage on the Lot of the non-paying Owner of such Owner's default in paying any assessment when such default has not been cured within sixty (60) days, if such mortgagee has requested same, pursuant to Article XIV, Section 7 of this Declaration.
- (c) If any assessment or part thereof is not paid within forty (40) days after the delinquency date, the unpaid amount of such assessment shall bear interest from the date of delinquency at the maximum interest rate per annum which can be charged to individuals and the Association may, at its election, bring an action at law against the owner personally obligated to pay the same 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 as set out in Article XIV, Section 7. There shall be added to the amount of such assessment the costs of preparing and filing the

complaint in such action and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable 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, and all such amounts may be deposited in any banking institution, the accounts of which are guaranteed by the FDIC, 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 the replacement of the Common Areas and Common Facilities, for major repairs to any sidewalks, parking areas, boat ramps, pavilion, streets or roadways and dams on the Common Area, for equipment replacement, and for startup 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 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.

Section 12. Exempt Property. The following Property subject to this Declaration shall be exempt from the assessments, charge and lien created herein:

- (a) All properties dedicated and accepted by the local public authority and devoted to public use.

- (b) All areas unplatted or reserved by the Declaration on the recorded plat of the Property.
- (c) The Common Area and Community Facilities.

Section 13. Dwelling and Lawn Maintenance. Generally, 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, garden and landscaped areas on any Lot, and the Association shall have the responsibility and duty only for the maintenance, repair and care of the Common Area and Common Facilities. However, the Association may provide the exterior maintenance and repair of Dwellings and their appurtenances and/or the maintenance and care of lawn, garden and landscaped areas of certain Lots pursuant to (i) a determination by the Board of Directors either on its own recommendation or initiative or the recommendation or request of Owners of certain Lots, or (ii) the provisions of a Supplement which annexes all or a portion of the Additional Property to the Property and provides that the Association shall perform such maintenance, repair and care in or on a specified portion of the annexed Additional Property. The cost of such maintenance, repair and care shall be included in the annual maintenance Assessments of such Lots and a charge and a lien upon each such Lot and the Owners of such Lots. In no event shall the Association maintain and care for lawn, garden and landscaped areas in or on any enclosed portion of any Lot which is intended for use only by the occupants of the Dwelling of such Lot.

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 or 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. Assessments are Not Dues. No portion of the annual maintenance and Special Assessments provided in or permitted by this Article IV are intended to be, or shall be construed to

be, dues for membership in the Association.

Section 16. Assessment of Developers and Builders. Any Lot owned by a Developer or Builder shall not be subject to Assessment by the association until sixty (60) days after completion of construction of any Dwelling on such Lot or, if earlier, one hundred eighty (180) days after the date a deed for such Lot is delivered to the Developer or Builder. Any annual maintenance and/or Special Assessment upon any Lot owned by a Developer or Builder shall be twenty-five (25%) of the Assessment against each similar Lot not owned by a Developer or Builder. The Declarant shall not be subject to Assessment by the Association until one hundred eighty (180) days after the Plat, or, if applicable, an amended or supplemental Plat is filed for record in connection with the annexation of all or a portion of the Additional Property to the Property.

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, and 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 Charter or by the By-Laws, 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 care, upkeep and surveillance of the Common Areas and community facilities and services in a manner consistent with law and the provisions of the By-Laws and this Declaration; and
- (b) to provide for the establishment, assessment, collection, use and expenditure of assessments and carrying charges from the Members, and for the filing and enforcement manner consistent with law and the provisions of the By-Laws and this Declaration; and
- (c) to provide for the designation, hiring and dismissal of the personnel necessary and appropriate for the proper care and maintenance of the Common Areas and

- community facilities and to provide services on the project in a manner consistent with law and the provisions of the By-Laws and this 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 community facilities, including but by no means limited to rules, regulations, restrictions and requirements designed to prevent unreasonable interference with the use of the Common Areas and community 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 By-Laws and this Declaration; and
 - (e) to authorize, in their discretion, 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 of the Association during the then current fiscal year; and
 - (f) to purchase insurance upon the Common Areas and community facilities in the manner provided for in the By-Laws and this Declaration; and
 - (g) to repair, restore or reconstruct all or any part of the Common Areas and community facilities after any casualty loss in a manner consistent with law and the provisions of the By-Laws and this Declaration, and to otherwise improve the Common Areas and community 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 community facilities; and
 - (i) to purchase Lots and to lease, mortgage or convey the same, subject to the provisions of the By-Laws and this Declaration; and
 - (j) to employ for the Association, at their sole discretion, a management agent or manager (herein at times referred to as 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 shall prescribe. Any 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 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.

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 community facilities and protect the Owners from and against liability in connection with the Common Area and community facilities.
- (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.

Section 2. Owners' Insurance

- (a) Each Owner shall keep his residence insured at all times for its full replacement value against losses due to fire, windstorm, hail, explosion, riot, civil commotion, aircraft, vehicles, and smoke, and any other hazards that may be covered under standard extended coverage provisions, and shall furnish the Association proof of such coverage. In every case of a loss due to any of these hazards in which the improvements have not been totally destroyed or completely destroyed, Owner shall promptly repair the improvements. If the improvements have been totally or completely destroyed, Owner shall promptly clean the Lot to a condition acceptable to the Architectural Review Committee. Thereafter, Owner may rebuild by following the procedures established by Article VIII hereof. In the event the Owner fails to repair the damage or clean the Lot, the Board of Directors, after thirty (30) days written notice may clear the lot and levy a special assessment against the Lot for all costs incurred in cleaning said Lot. Repair or reconstruction of the improvements as used here shall mean restoring the improvements to substantially the same condition which existed prior to the damage.
- (b) Each Owner's fire insurance policy shall contain a waiver of subrogation clause; and each Owner shall furnish the Association with a copy of his policy. Each Owner does, by his acceptance of a deed, irrevocably constitute and appoint the Association his true and lawful attorney in his name, place, and stead for the purpose of accomplishing the repair or reconstruction of the improvements in the event the

Owner fails or refuses to carry out any of the provisions contained herein. If insurance proceeds are insufficient to cover the cost of reconstruction, then the Association may pay the excess and the cost thereof shall become a part of the assessment to which said Lot is subject.

- (c) Each Owner shall be responsible at his own expense and cost for his own personal insurance on the contents of his own residence, carport or parking space, including decorations, furnishings and personal property therein, and his personal property stored elsewhere on the properties; and for his personal liability not covered by liability insurance for all Owners obtained as a part of the common expense.

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 on the Common Area and Common Facilities.

ARTICLE VIII

ARCHITECTURAL CONTROL

Section 1. ARCHITECTURAL REVIEW

- (a) No building, fence, wall, pier or other structure shall be commenced, erected, placed, altered or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made until the proposed plans and specifications showing the nature, kind, shape, height, materials, exterior color or finish, (plot plan showing the proposed location of such building or structure, drives and parking areas), landscape plan, and construction schedule shall have been submitted to and approved in writing by the Board, or by an architectural sub-committee, the Architectural Review Committee, composed of three (3) or more representatives appointed 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. No propane gas storage tank or related equipment or fixtures may be installed upon any Lot without like approval.

- (b) Two (2) copies of all plans and related data shall be furnished the Architectural Review Committee. One copy shall be retained by the committee and the other copy shall be retained by the Property Owner or Builder marked "Approved" or "Disapproved". Approval shall be dated and shall not be effective for construction commenced more than six (6) months after such approval. Disapproved plans and related data shall be accompanied by a reasonable statement of items found unacceptable. In the event the Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted, approval will not be required and this Article will be deemed to have been fully complied with.
- (c) No approval of plans and specifications, and no publication or architectural standards bulletins shall ever be construed as representing or implying that such plans, specifications or standards will, if followed, result in a properly designed residence. Such approvals and standards shall in no event be construed as representing or guaranteeing that any residence will be built in a good, workmanlike manner. The Board or Committee may require payment of a cash fee, as established from time to time by the Board, to partially compensate for the expense of reviewing plans or related data, at the time they are submitted for review. This paragraph shall not apply to any Property utilized by a governmental agency or institution.
- (d) Refusal of approval of plans, specification, or location may be based by the Architectural Review Committee upon any ground, including purely aesthetic considerations, so long as they are not arbitrary and capricious. Neither the board or the Architectural Review Committee shall be liable to a Property Owner or to any other person on account of any claim, liability or expense suffered or incurred by or threatened against a Property owner or such other person arising out of or in any way relating to the subject matter of 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.

Section 2. Building Sizes and Locations.

- (a) The heated square footage of the main house or residential structure constructed as a one-story residence on any Lot, except for buildings constructed on zero lot line lots, patio and cluster lots, exclusive of porches and garages, shall be not less than 2800 square feet. In the case of any residence of more than one story, the

requirements as to living area shall be at least 2800 square feet for both stories with not less than 1600 square feet on the ground level.

- (b) No residential building shall be erected on any Lot nearer than thirty-five feet (35') from the front lot line as indicated on the plat of Backwater, except for buildings constructed on waterfront lots, zero lot line lots, patio and cluster lots.
- (c) Building locations on waterfront lots are set forth in Section 3 of Article IX. The Architectural Review Committee shall establish the location of and the size of all buildings to be constructed on all waterfront lots.
- (d) For some Lots in Backwater it may be impossible or inadvisable to enforce the above stated set-back requirements or those set forth in Section 3 of Article IX due to the natural terrain, lot configurations and/or proximity of adjacent structures. Therefore, notwithstanding anything else herein to the contrary, the Architectural Review Committee may approve specific deviations to said setback requirements which it believes to be beneficial to a specific homesite or to adjacent homesites.

Section 3. Topography and Vegetation. The topography and vegetation characteristics of the Property shall not be altered by removal, reduction, cutting, excavation, filling or any other means without the prior written approval of the Architectural Review Committee. Written approval may, but need not, be granted hereunder until a plan designed to protect the Property from pollution resulting from erosion, pesticides or the seepage of fertilizer or other materials has been submitted to and accepted by the Architectural Review Committee. Written approval will be granted for the minimum amount of earth movement and vegetation reduction required in plans and specifications approved pursuant to the provisions of the Declaration.

Section 4. Tree Removal. No trees, bushes, shrubs or underbrush of any kind may be removed without the written approval of the Architectural Review Committee. Provided that a buffer ten feet in width can be maintained on each side of the Property, approval for the removal of trees located within the main dwelling or accessory building or within ten (10) feet of the approved site for such building will be granted unless such removal will substantially decrease the beauty of the Property. This buffer zone must be maintained free of all drives and any other improvements. In no instance should a lot be clear cut of trees, shrub or underbrush.

Section 5. Rules and Regulations, etc. The Architect Review Committee may from time to time adopt and promulgate such rules and regulations regarding the form and content of plans and specifications 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 architect styles or details, colors, 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. The decisions of the Architectural Review Committee shall be final except that any member who is aggrieved by any action or forbearance from action by the Committee (or any policy, standard or guideline established by the Committee) may appeal the decision of the Architectural Review Committee to the Board of Directors, and upon written request, such members shall be entitled to a hearing before the Board of Directors.

Section 6. Environmental Hazards.

- (a) To secure the natural beauty of the Property, the Architectural Review Committee may promulgate and amend from time to time rules and regulations which will govern activities which may, in its judgement, be environmental hazards such as the application of fertilizers and pesticides or other chemicals. Failure of any Property Owner or tenant of Property in Backwater to comply with the requirements of such rules and regulations shall constitute a breach of this Declaration.
- (b) The Declarant hereby reserves unto itself, its successors in title and assigns and agents a perpetual and releasable right on, over and under all property in Backwater for the purpose of taking any action necessary to effect compliance with such environmental rules and regulations. The cost of such action by the Declarant shall be paid by the respective property owner(s) of the property upon which the work is performed.

Section 7. Further Siting Authority. To prevent excessive "run" or drainage from any Lots, the Declarant and the Architectural Review Committee reserves the right to establish a maximum percentage of Property which may be covered by a building, patio, driveway or other structures. In the establishment of such maximum percentage, the Declarant and the Architectural Review Committee shall consider topography, percolation rate of the soil, soil types and conditions, vegetation cover and other relevant environmental factors. Neither this or any other right reserved herein by the Declarant or the Architectural Review Committee shall be construed however, to be an obligation of either the Declarant or the Association to take any action.

Section 8. Committee Appointment and Operation. The Board of Directors shall appoint

an Architectural Review Committee which shall be composed of three (3) or more individuals who shall serve at the pleasure of the Board of Directors. The affirmative vote of a majority of the members of the Architectural Review Committee shall be required in order to adopt or promulgate any rules 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.

ARTICLE IX
GREEN SPACE AND WATERFRONT AREAS

Section 1. Intent. It is the intention of the Declarant that the natural, scenic and recreational resources, soils, wetlands, wildlife, game and migratory birds currently in evidence at Backwater be maintained and enhanced by designation of certain areas of the Common Area herein as "green space" and on plats filed by the Declarant for record with the Chancery Clerk of Lamar County, Mississippi. It is with the aforementioned that green space is further defined and policies relating thereto elaborated in this article and elsewhere throughout this Declaration.

Section 2. Wildlife. Pursuant to the aforesaid overall objectives of wildlife conservation, no hunting or trapping shall be permitted on any portion of the property at any time except *for* undesirable wildlife as authorized and approved by rules and regulations promulgated by the Association from time to time. The Declarant, its successors in title and assigns and/or the Association expressly reserves the right to erect wildlife feeding stations, to plant small patches of cover and food crops for wildlife, to make access trails or paths or boardwalks through green space, and Common Area for the purpose of permitted observation and study of wildlife, hiking and riding, to erect small signs throughout the green space designating points of interest and attraction, and to take such other steps as reasonably necessary and proper to further the community use and enjoyment of the green spaces. The Declarant, its successors in title and assigns, and/or the Association, shall have the right, but shall not be obligated, to protect from erosion all green space and shoreline on all Lots abutting the lake by planting trees, plants, and shrubs where and to the extent necessary, or by such mechanical means as construction and maintenance of siltation basins, or other means deemed expedient or necessary by the Declarant and/or the Association, respectively. The right is likewise reserved to the Declarant and to the Association to take steps necessary to provide and insure adequate drainage ways in the green space, Common Area to cut fire breaks, remove diseased, dead or dangerous trees and carry out other similar activities, the cost of which services to be paid by assessment of the Association in accordance with Article IV of this Declaration.

Section 3. Waterfront Areas. To preserve the natural character of Backwater, there is hereby established construction and clearing restrictions on all properties which front on the lake and that portion of the Property comprising the lake, swamp and flooded area (hereinafter collectively referred to as "lake") shall be preserved substantially in its present natural state except for moderate clearing for view and breeze as approved by the Architectural Review Committee. Notwithstanding the foregoing, the Declarant hereby reserves to itself, its successors in title and assigns, the right to exempt properties from said construction and clearing restrictions in those cases where the Architectural Review Committee in its discretion, determines, in a manner neither arbitrary nor capricious, that such exemption will not materially lessen the natural appearances and scenic beauty of the lake or determines that such exemption is necessary to protect the shoreline from erosion or from pollution. The following horizontal construction set-back restriction from the lake is hereby established; (1) no house sites, no building or other structure shall be constructed or maintained on any Waterfront Property within seventy-five (75) feet of the property line which extends onto the lake or fifty (50) feet from the natural shoreline, whichever is greater, except as indicated on the plat of Backwater, and no parking areas designated to accommodate more than two automobiles shall be constructed or maintained on any Property within seventy-five (75) feet of the lake. (ii) In Common Area and Green Space, no building or other structures shall be constructed or maintained within twenty (20) feet of the lake and no parking areas designated to accommodate more than two automobiles shall be constructed or maintained within forty (40) feet of the lake except for recreational facilities constructed by the Declarant and/or approved by the Architectural Review Committee. All piers shall be constructed in accordance with the design and building criteria adopted by the Architectural Review Committee and the location and extension of same into the lake shall be approved by the Architectural Review Committee prior to commencement of construction, provided however, all pier and docks shall be constructed within the extended boundaries of the side lot lines and in no event shall any structure extend into the lake more than six (6) feet from the existing natural water line of the Lot.

Section 4. Shoreline Stabilization. Each homeowner is responsible for maintaining the shoreline of waterfront lots. No bulkheads or retaining walls will be allowed as it is the intent to perpetuate the natural shoreline.

Section 5. Other Regulations. The use of the Common Areas, Common Facilities, green areas and lake by the property owners, their guests, invitees, and employees, shall be governed by the applicable rules, regulations and policies as from time to time promulgated by the Association. The Declarant and the Association shall have the right and authority to lower the level of the lake

at such times as they or either of them believe it to be in the best interest of the lake and property for the maintenance, preservation and development of the shore lines and the maintenance and preservation of fish and other wildlife. The Declarant and/or the Association shall not be liable for any matter or claim of any nature whatsoever arising directly or indirectly from the exercise of the right and authority thereby reserved.

ARTICLE X
EASEMENTS

Section 1. Utility Easements. Easements for installation, maintenance, repair and removal of utilities and drainage facilities and floodway easements over, under and across the Property are reserved by Declarant for itself, its successors and assigns and each Owner. Full rights of ingress and egress shall be had by Declarant and its successors and assigns and each Owner at all times over the Property for the installation, operation, maintenance, repair or removal of any utility together with the right to remove any obstruction that may be placed in such easement that would constitute interference with the use of such easement, or with the use, maintenance, operation or installation of such utility. Such rights shall include right of entry into any Lot. Perpetual, alienable and releasable easements for the conveyance and use of electricity, telephone equipment, gas, sewer, water, drainage and other public conveniences and other utilities in said Common Areas. These reservations and rights expressly include the right to cut any trees, bushes, or shrubbery, rights to make any gradings of the soil, or take any other similar action reasonably necessary to provide economical and safe utility installment and to maintain reasonable standards of health, safety and appearance.

Section 2. Ingress and Egress by the Association. Full rights of ingress and egress shall be had by the Association at all times over and upon each Lot for the maintenance and repair of each Lot in accordance with the provisions hereof, and for the carrying out by the Association of its functions, duties and obligations hereunder; provided, that any such entry by the Association upon any Lot shall be made with as little inconvenience to the Owner as practical, and any damage caused thereby shall be repaired by the Association at the expense of the maintenance fund.

Section 3. Common Drive or Driveway and Walkway Easements. Declarant hereby creates for the Owners of all Lots, a perpetual non-exclusive easement for ingress and egress over and across the drive common to or used by owners of said Lots as shown on the plat of subdivision of Backwater.

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ARTICLE X
USE RESTRICTIONS

THE PROPERTY SHALL BE SUBJECT TO THE FOLLOWING USE RESTRICTIONS:

Section 1. Use of Lots and Dwelling. Except as permitted by Section 9 hereof, each Lot and dwelling shall be used for residential purposes only, and no trade and business of any kind may be carried on therein. The use of a portion of a dwelling as an office by the Declarant or his tenant shall not be considered to be a violation of this covenant if such use does not create regular customer, client, or employee traffic, provided that in no event shall any Lot or dwelling be used as a storage area for any building contractor or real estate developer. Lease or rental of a dwelling for residential purposes shall not be considered to be a violation of this covenant so long as the lease (i) is for not less than the entire dwelling and all the improvements thereon, (ii) is for a term for at least twelve (12) months, and (iii) is otherwise in compliance with the rules and regulations as may be promulgated and published from time to time by the Board of Directors. All leases shall be required to be in writing, and prior to commencement of any such lease, the Property Owner shall provide the Association and the managing agent of the Association, if any, with copies of such lease. Any lessee or tenant shall in all respects be subject to the terms and conditions of this Declaration and the rules and regulations adopted hereunder. Notwithstanding any provisions in this Section 1 to the contrary, Declarant, its successors or assigns, If the right is so transferred by the Declarant, shall have the perpetual right to designate in writing to the Association from time to time dwellings in the development which may be leased for such period of time as the Declarant shall determine, including daily and weekly rentals, and for these dwellings, Declarant shall not be required to supply copies of the leases therefore to the Association.

Section 2. Exterior Appearances.

- (a) Except for maintenance areas within the Common Areas and those fences erected by Declarant or the Association, no chain-link fences shall be permitted within the development unless approved by the Architect Review Committee. Any unenclosed garages must be adequately screened from street views. Further, no foil or other reflective materials, sun screens, or other reflective materials shall be permitted. When not in use, all garage doors shall be kept closed. No projections of any type shall be placed or permitted above the roof of any improvement except approved chimneys or vents or other objects as may be approved by the Architectural Review

Committee.

- (b) Each Property Owner shall provide a screened area to serve as a service yard and an area in which garbage receptacles, fuel tanks or similar storage receptacles, electric and gas meters, air conditioning equipment, clotheslines, and other unsightly objects must be placed or stored in order to conceal them from view from the road and adjacent properties. Plans for such screened area delineating the size, design, texture, appearance and location must be approved by the Architectural Review Committee prior to construction. Garbage receptacles and fuel tanks may be located outside of such screened areas only if located underground.

Section 3. Signs. Except as may be required by legal proceedings, no signs, advertising or ornaments of any kind shall be maintained or permitted within any windows, on the exterior of any windows located within the development or elsewhere or any portion of the property by anyone, including, but not limited to, the Property Owner, a realtor, contractor, or sub-contractor, without the express written permission of the Architectural Review committee. The approval of any signs and posters, without limitation, name and address signs, shall be upon such conditions as may be from time to time determined by the Architectural Review Committee and may be arbitrarily withheld. If any such sign or advertising device is approved, it shall only contain one name and/or one number plate, not exceeding 120 square inches and if for sale purposes such sign shall not exceed six square feet in area and shall be subject to the right of the Architectural Review Committee to restrict color and content. Notwithstanding the foregoing, the restrictions of this Section 3 shall not apply to Declarant, his agents or assigns, so long as Declarant shall own any of the Lots. In addition, the Board of Directors, on behalf of the Association, shall have the right to erect reasonable and appropriate signs on any portion of the Common Area and within those easement areas established under the Declaration.

Section 4. Mail Boxes: All mail boxes shall conform to specific specifications as set out and required by the Architectural Review Committee.

Section 5. Sewage Pumps: All lot owners will be required to use sewage pump model number P102-24 x 48, Pump Package Complete, which must include an alarm unit control model number EACLB-50, so as to maintain the integrity of the sewer system.

Section 6. Other Buildings and Vehicles. No tent, trailer, barn or other similar outbuilding or structure shall be placed on any Lot or on any other area at any time, either temporarily or

permanently without prior approval of the Architectural Review Committee. No mobile home shall be placed on any lot or any other area at any time, either temporarily or permanently. Each owner shall provide for parking for at least two automobiles per owner for each dwellings owned or maintained by such owner. All automobiles owned or used by owners or occupancies other than temporary guests and visitors, shall, as far as possible, be parked in enclosures which screen the automobile from street view. No boats shall be kept on the street and, as far as possible, be parked in enclosures which screen the boat from street view. The Board of Directors shall have authority to promulgate rules and regulations to govern or prohibit the outside storage or parking upon any Lot, dwelling or within any portion of the Common Areas, (other than areas provided therefore within the Common Areas, if any) 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, motorcycles, motorized bicycles, motorized go-carts, or any other related forms of transportation devices. Furthermore, although not expressly prohibited hereby, the Board of Directors may at any time prohibit motor homes, campers, trailers of any kind, motorcycles, motorized bicycles, motorized go-carts and other similar vehicles, or any of them from being kept, placed, stored, maintained, or operated upon any portion of the Property. No owners or other occupants of any portion of the Property shall repair or restore any vehicle of any kind upon or within any Lot, dwelling, or within any portion of the Common Areas, except (i) within enclosed garages or workshops or (ii) for emergency repairs and then only to the extent necessary to enable the movement thereof to a proper repair facility. Declarant hereby reserves the right (without any obligation to do so) to designate within the additional Property a parking area for boat trailers, motor homes or similar vehicle.

Section 7. Unsightly Conditions and Nuisances. It shall be the responsibility of each Property Owner and tenants thereof to prevent the development of any unclean, unsightly or unkept conditions of buildings or grounds on the Property which shall tend to substantially decrease the beauty of the community 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. Nor shall any nuisance or odors 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. Nocuous or offensive activities shall not be carried on in any Lot dwelling or any part of the Common Areas, and 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 cause embarrassment, discomfort, annoyance or nuisance to the Occupants of other portions of the Property 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, 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. 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 his Lot are subject.

Section 8. Antennae. No television antennae, satellite dish, 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, nor shall radio or television signals nor any other form of electromagnetic radiation be permitted to originate from any Lot which may unreasonably interfere with reception or other signals within the Property; provided however, that Declarant and the Association shall not be prohibited from installing equipment necessary for master antennae, security cable television, mobile radio, or other similar systems within the Property and should cable television services be unavailable, and adequate television reception not be otherwise available, then an owner may make written application to the Architectural Review Committee for permission to install a television antennae.

Section 9. Lights. The design and location of landscape lighting fixtures shall be subject to the approval of the Architectural Review Committee. Neither these or any other illumination devices, including but not limited to Christmas ornaments, located anywhere on the structure or grounds of any Lot shall be located, directed or of such intensity to affect adversely the nighttime environment of any adjoining Property.

Section 10. Pets. No animals, livestock or poultry of any kind, shall be raised, bred, kept, staked or pastured on any Lot, or in the Common Area, except dogs, cats, birds or other household pets which shall be kept and maintained in accordance with the rules and regulations adopted from time to time by the Board of Directors.

Section 11. Sales and Construction Activities. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, it shall be expressly permissible for Declarant and his agents, employees, heirs and assigns to maintain and carry on such facilities and 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, Common Areas and the additional Property, including, without limitation, the installation and operation of sales and construction trailers, offices, and dwellings as may be approved by the Declarant from time to time, provided that the location of any construction trailers of any assignees of Declarants rights under this Section 9 shall be subject to Declarants approval. The right to maintain and carry on such facilities shall contain specifically the right to use dwellings as model residences, and to use any dwellings as office for the sale of Lots and/or dwellings, and for related activities.

Section 12. Time Sharing. No Lots or dwellings shall be sold under any time sharing, time interval, or assume of right-to-use programs.

Section 13. Trespass. 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.

Section 14. Subdivided. No Lot shall be subdivided or its boundary lines changed, except with the written consent of the Board of Directors and the Declarant so long as Declarant owns any Lots subject to. the Declaration however, the Declarant hereby expressly reserves unto himself, his heirs, or assigns the right to replat any Lot or such Lots owned by him, shown on the plat of any subdivision within Backwater and to take such other steps as are reasonably necessary to make such replatted Lot suitable and fit as a building site including, but not limited to, the relocation of easements, walkways, rights of ways and other amenities to conform to the new boundaries of said replatted Lots. The provisions of this Section 12 shall not prohibit the combining of two or more contiguous Lots into one larger Lot or making two Lots out of three or more contiguous Lots, provided that each of the resulting Lots are larger and contain a minimum Lot frontage equal to or greater than their original frontage on the Lot having the least frontage before combining said Lots or portions thereof. Only the exterior boundary lines of the resulting larger lot(s) shall be considered in the interpretation of these covenants.

Section 15. Certain Construction Rights. The Declarant expressly reserves to himself, his heirs, and assigns and any other provisions of this Declaration notwithstanding, the right to build bridges, walkways, or expanse across any natural or man made canals, creeks or lagoons on the Property. Nothing in this section shall be construed as placing an affirmative obligation to the Declarant to provide or construct any such improvement.

Section 16. Certain Controls.

- (a) To implement effective and adequate erosion controls and protect the beauty of the lake, the Declarant and/or Association, severally, their successors in title and assigns and agents shall have the right to enter upon any lakefront Property before and after a building has been constructed thereon for the purpose of performing any grading or landscaping work or constructing and maintaining erosion prevention devices. Provided, however, that prior to exercising its rights to enter upon the properties for the purpose of performing any grading or landscaping work or constructing or maintaining erosion prevention devices, the Declarant or Association as the case may be, shall give the Property Owner the opportunity to take any corrective actions required by giving the property owner notice indicating what type of corrective action is required and that it must be performed within a reasonable period of time. The notice shall specify the immediate corrective action that must be taken by such Property Owner and the time by which such action must be completed. If Property Owner fails to take the corrective action specified, or be late, Declarant or the Association, as the case may be, may then exercise his right to enter in upon the Property in order to take the necessary action. The costs of such erosion prevention measures when performed by the Declarant or the Association, as the case may be shall be paid by the Property Owner thereof.
- (b) After the Declarant has completed the construction of the improvements necessary for a subdivision development on this property, the developer will be required to carry forward all erosion controls measures set forth in the plan to ensure builders and/or new owners within the proposed subdivision will take measures to prevent or mitigate sediment from leaving individual lots. The developer will be required to present to the new lot owner of builder in writing the parts of the SWPPP that will be appropriate for their lot. The developer will be required to set the following condition on the builder or new lot owner:

The Purchaser shall be required to maintain 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 through the establishment of permanent vegetative cover. Purchaser acknowledges and agrees that Seller is not responsible for damages which may be suffered by

Purchaser or other property owners or parties as a result of site preparation work carried out by Purchaser and his/her subcontractors and Purchaser agrees to hold Seller harmless from any such damages sustained in connection therewith.

- (b) To implement effective insect, reptile, and fire ant control, and vegetation and trash control, the Declarant or the Association, and their successors in title and assigns and agents, have the right to enter upon any property on which a building or structure has not been constructed and upon which no landscaping plan has been implemented for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth, removing trash or dispensing pesticides on all such property which in the opinion of the Declarant or the Architectural Control Committee distracts from the overall beauty, setting and safety of the Property. The cost of this vegetation and trash control shall be kept as low as reasonably possible and shall be paid by the respective Property Owner. Such entry shall not be made until thirty (30) days after such Property Owner has been notified in writing for the need of such work and unless such Property Owner fails to perform the work within said thirty (30) day period.
- (c) The provisions of this section shall not be construed as an obligation on the part of the Declarant or the Association to mow, clear, cut or prune any property, to provide garbage or trash removal services to perform any grading or landscaping work, construct or maintain erosion prevention devices, or to provide water pollution control on any privately owned property.
- (d) Entrance upon Property pursuant to the provisions of this section shall not be deemed trespass. The rights reserved unto the Declarant and the Association in this section shall not be unreasonably employed and shall be used only where necessary to effect the stated intents and purpose of this Declaration.
- (e) No water may be pumped from the lake for any purpose, including irrigation of landscaping.

Section 17. Water Wells and Septic Tanks. No septic tanks are allowed except for those specifically tied into the community sewer system.

Section 18. Use of the Lake. No gasoline or diesel motor boats or jet skis may be used on the Lake. Only electric motors may be used on boats on the Lake. Regulations governing the operation of the Lake and the use of boats, fishing or other Lake uses shall be adopted by the Board

of Directors of the Association and the Owners of Lots in Backwater.

Section 19. Compliance.

- (a) In the event of a violation or a breach of any other restrictions contained in this Declaration by any Property Owner, or agent of such Property Owner, other property owners, or in any event, jointly or severally shall have the right to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any event. In addition to the foregoing, the Declarant and/or the Association severally shall have the right, but shall not be obligated to proceed at law or in equity to compel a compliance to the term hereof or to prevent the violation of any breach in any event.
- (b) In addition to the foregoing, the Declarant and/or the Association severally shall have the right, but shall not be obligated, whenever there shall have been built at any place on the Property any structure which is in violation of these restrictions, to enter upon the Property upon which such violation exists and similarly abate or remove the same at the expense of the Property Owner if, after thirty days written notice of such violation, it shall not have been corrected by the Property Owner. Any person entitled to file a legal action for the violation of these covenants shall be entitled to recover reasonable attorney fees as a part of such action. Any such entry and abatement or removal shall not be deemed a trespass.
- (c) The failure to enforce any rights, reservations, or restrictions contained in this Declaration, however long continued shall not be deemed a waiver of this right to do so hereafter as to the same breach, or as to a breach occurring prior to or subsequent thereto and shall not bar or affect its enforcement. The invalidation by any court of any restrictions of this Declaration shall in no way affect any of the other restrictions, but they shall remain in full force and effect.

ARTICLE XII
RULE MAKING

Section 1. Rules and Regulations.

- (a) Subject to the provisions hereof, the Board of Directors may establish reasonable rules and regulations concerning the use of Lots, dwellings and the Common Areas

- and facilities located thereon. Particularly and without limitation, the Board of Directors may promulgate from time to time rules and regulations which will govern activities which may, in the judgement of the Board of Directors, be environmentally hazardous, such as the application or fertilizers and pesticides and other chemicals.
- (b) Subject to the terms and provisions of this Declaration the Board of Directors 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 hereby expressly reserves the option and right to add subject additional lands to this Declaration, pursuant to and subject to the following provisions:

- (a) The consent of the Owners shall not be required for the annexation of future phases, and the Declarant may proceed with such annexation at his sole option and determination;
- (b) Declarant's option to annex future phases shall expire twenty-five (25) years after the date of recording this Declaration, if not sooner exercised. Declarant may annex and add to Backwater, and include as Property, subject to this Declaration, all or any part of the property described in Exhibit "B" hereinafter sometimes referred to as "future phases". All lots, Common area, Common Facilities and Green Space of said future phases, if and when said future phases or a portion thereof is so annexed, shall be in all respects subject to the provisions, restrictions, covenants, terms and conditions of this Declaration, the Charter and By-laws of the Association, and such amendment, restriction, rules and regulations as may be promulgated thereunder. However, the Declarant may at any time prior to the expiration of such period terminate his option to add said phrase(s) by recording in the office of the Chancery Clerk of Lamar County, Mississippi, an executed, notarized document terminating this option and notify each owner of existing lots of the decision not to add additional phases. Notice

shall be by U. S. Certified Mail addressed to each owner at the address of his lot or at his last known address.

- (c) The Declarant may add future phases at different times in any sequence desired by the Declarant.
- (d) In the event that Declarant determines to exercise his option to annex future phases, he shall have the easements as set forth in Article XV in future phases have not been annexed within twenty-five (25) years from the date of recording of this Declaration, all of Declarant's rights to annex future phases, shall terminate.
- (e) Declarant hereby reserves the right at any time hereafter, prior to the expiration of twenty-five (25) years from the date of recording hereof, without joinder or consent of any Owner or Mortgagee; to record an amendment(s) to this Declaration executed by Declarant to properly reflect the addition of future phases.
- (f) The Declarant may make additional lands subject to this Declaration by filing of record a Supplemental Declaration which shall extend the scheme of the Covenants, Conditions, and Restrictions of such Declaration to such Property or properties; provided, however, that such Supplemental Declaration may contain such complementary additions and modifications of the covenants, conditions, and restrictions contained herein as may be necessary to reflect the different character, if any, of the added properties but which are not generally inconsistent with the concept of this Declaration, provided, however, in no event shall such Supplemental Declaration otherwise modify the covenants established by this Declaration for the existing Properties.
- (g) No other residential Property and *Common Area* may be annexed to the properties without the consent of two-thirds (2/3rds) of each class of Members and such consent as required by Section 9 of Article XIV.
- (h) Any additions made pursuant to this Section 2, when made, shall automatically extend the jurisdiction, functions, duties and membership of the Association to the properties added and grant to all Owners all Property rights set forth in Article II of this Declaration to all properties now or hereafter annexed.
- (i) The covenants, conditions and restrictions of this Declaration shall not affect or apply to any of the real Property described in this Section unless and until such Property or a portion thereof is annexed by this Declaration pursuant to and in compliance with the provisions of this Section 2 of Article XIV. Upon a merger or consolidation of the Association with another Association, as provided in its Articles of Incorporation, its properties, rights and obligations may, by operation of law, be transferred to

another surviving or consolidated Association or, alternatively, the properties, rights and obligations of another Association may, (by operations of law, be added to the properties,, rights and obligations of another association) be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated Association may administer the covenants and restrictions established by this Declaration, together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration except as hereinafter provided.

- (j) Each Owner hereby grants a power coupled with an interest to the Declarant, his heirs and assigns to make or consent to the said amendment(s) to the Declaration on behalf of each Owner to add future phases to this Section 2 of Article XIII. Title to each lot is declared and expressly made subject to the terms and conditions hereof, and acceptance by any Grantee of a deed from the Declarant or from any Owner shall constitute appointment of the attorney-in-fact herein provided. All of the Owners irrevocably constitute and appoint Declarant, his heirs and assigns, as their true and lawful attorney-in-fact for the purpose of dealing with the addition of future phases to the Property as herein provided. As attorney-in-fact, the Declarant shall have full and complete authorization, right and power to make, execute and deliver an amendment to this Declaration or By-laws or any other instrument with respect to the interest of a lot owner which are necessary and appropriate to exercise the powers herein granted;
- (k) Each Owner and each Mortgagee, grantee, heir, personal representative, successor and assign of each lot owner, by such persons or entities acceptance of any deed or mortgage or other interest in or with respect to any lot, shall be deemed to have expressly agreed and consented to (i) each and all of the provisions of this Section 2, (ii) the recording of such amendment to the Declaration and (iii) all of the provisions of each amendment to this Declaration which may hereafter be recorded in accordance with the provisions of this Section 2.
- (l) DECLARANT SHALL HAVE NO OBLIGATION TO CONSTRUCT OR ADD FUTURE PHASES TO THE DEVELOPMENT AND DOES NOT WARRANT, REPRESENT OR GUARANTY THAT FUTURE PHASES WILL BE ADDED TO THE DEVELOPMENT. EACH OTHER AGREES, BY ACCEPTANCE OF A DEED TO A UNIT, THAT HE HAS NOT RELIED ON FUTURE PHASES BEING

ADDED TO THE DEVELOPMENT IN PURCHASING HIS LOT.

ARTICLE XIV
GENERAL PROVISIONS

Section 1. Duration. The Covenants, Conditions and Restrictions of this Declaration shall run 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 a term of thirty-five (35) years from the date this Declaration is recorded in the Office of the Chancery Clerk of Lamar County, Purvis, Mississippi, after which time said covenants shall be automatically extended for the successive periods of ten (10) years unless an instrument signed by a majority of the Owners has been recorded in the Deed Records, in said Chancery Clerk's Office agreeing to abolish the said Covenants, Conditions and Restrictions in whole or a substantial portion thereof; provided, however, that no such agreements to abolish shall be effective unless made and recorded one (1) year 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 and/or changed in part with the consent of ninety percent (90%) of the Lot Owners if amended and/or changed during the thirty-five (35) year period of this Declaration, and thereafter said Covenants may be amended or terminated with the consent of at least seventy-five percent (75%) of the Lot Owners, and in each case such amendment shall be evidenced by a document in writing bearing each of their signatures. All amendments, if any, shall be recorded in the Office of the Chancery Clerk of Lamar County, Mississippi.

Section 3. Enforcement. Enforcement of these Covenants, Conditions and Restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate them, or to recover damages, or to enforce any lien created by these covenants; and failure by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.

Section 5. Headings. The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration.

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 when deposited in the United States mails, 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.

Section 7. Notices to Mortgagees. Notwithstanding any provision herein to the contrary, the holder(s) of a Recorded First Mortgage on any Lot is entitled to, and shall receive, written notification from the Association of any default by the respective mortgagor/owner in the performance of such mortgagor's/owner's obligation(s) as established by this Declaration.

Section 8. Consent of Holders of First Deed of Trust and Federal National Mortgage Association/Federal Housing Administration/Veterans Administration. During any period when any Lot in the project is encumbered by a Recorded First Mortgage, the Owners, by any act or omission, shall not do any of the following things without the prior written consent and approval of the holders of all outstanding Recorded First Mortgages, and if their interests be affected, the Federal National Mortgage Association, Federal Housing Administration and the Veteran's Administration:

- (a) Abandon, partition, subdivide, encumber, sell or transfer any of the Common Area provided, however, that the granting of rights of way, easements and the like for public utilities or for other purposes consistent with the use of the Common Area by the Owners shall not be considered an encumbrance, sale or transfer within the meaning of this Subsection;
- (b) Abandon or terminate this Declaration; or
- (c) Modify or amend any material or substantive provision of this Declaration.
- (d) Annex additional properties; or merge or consolidate the Association.

Section 9. Additional Rights of Mortgagees Notice.

- (a) The Association shall promptly notify the holder of the Recorded 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 Recorded

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 Recorded 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 IV hereof.

- (b) No suit or other proceeding may be brought to foreclose the lien for any assessment levied pursuant to this Declaration except after ten (10) days' written notice to the holder of the Recorded First Mortgage encumbering the Lot which is the subject matter of such suit or proceeding.
- (c) Any holder of a Recorded First Mortgage on any Lot upon the Property may pay any taxes, utility charges or other charges levied against the Common Area which are in default and which may or have become a charge or lien against any of the Common Area. Any holder of a Recorded First Mortgage who advances any such payment shall be due immediate reimbursement of the amount so advanced from the Owners.
- (d) No mortgagee and no beneficiary or trustee under a deed of trust shall become personally liable for or obligated for any unpaid maintenance fund assessment.
- (e) No amendment to this Declaration shall affect the rights of the holder of any Recorded First Mortgage recorded prior to recordation of such amendment who does not join in the execution thereof.
- (f) The holders, insurers or guarantors of any first mortgage on a lot in the property will, upon request, be entitled to: (i) inspect the books and records of the property during normal business hours; (ii) receive an annual audited financial statement of the project within ninety days following the end of any fiscal year of the project; (iii) written notice of all meetings of the Owners Association and be permitted to designate a representative to attend all such meetings; and (iv) current copies of this Declaration, the Bylaws of the Association and all other rules concerning the project.

Section 10. 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 11. Record of Mortgage. Any owner who mortgages his unit shall notify the Association of such fact and shall furnish the Association the name and address of his mortgagee and a copy of his mortgage held by such mortgagee. The mortgagee shall be entitled to notify the Association that such mortgagee holds a mortgage on a lot. The Board of Directors shall maintain such information in a book entitled "Holders of Recorded First Mortgages"

Section 12. Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is by mail, it shall be deemed to have been delivered forty-eight hours after a copy of the same has been deposited in the United States mail, post pre-paid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the residence of such person if no address has been given to the Association; provided, however, that notice of meetings need not be mailed by Certified Mail, Return Receipt Requested. Such addresses may be changed from time to time by notice in writing to the Association.

ARTICLE XV

DECLARANT'S RIGHTS AND RESERVATIONS

Section 1. Declarant's Rights and Reservations. No provisions in the Charter, By-laws or this Declaration shall limit, and no Owner or the Association shall do anything to interfere with, the right of Declarant to subdivide or resubdivide any portions of the Property, or to complete improvements or refurbishments (if any) to and on the Common Area, Green Space or any portion of the Property owned solely or particularly by Declarant or to alter the foregoing or the construction plans and designs, or to construct such additional improvements or add future phases in the course of development of Backwater, pursuant to Article XIII, Section 2 of this Declaration as Declarant deems advisable in the course of development of the Property. Such right shall include, but shall not be limited to, the right to install and maintain such structures, displays, signs, billboards, flags and sales offices as may be reasonably necessary for the conduct of his business for completing the work and disposing of the lots by sale, lease or otherwise. 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 Owners, and each owner hereby consents to such inconvenience or nuisance. 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, 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 Board approval of any improvement constructed or placed by Declarant on any portion of the Property. The rights of Declarant under this Declaration may be assigned by Declarant to any successor and any interest or portion of Declarant's interest in any portion of the Property by a recorded, written assignment. Notwithstanding any other provision of this Declaration, the prior written approval of Declarant, as Declarant of Backwater, will be required before any amendment to this Article shall be effective while Declarant owns a lot. Declarant shall be entitled to the non-exclusive use of the Common Area, Green Area, without further cost or access, ingress, egress, use or enjoyment, in order to show the Property to his prospective purchasers or lessees and dispose of the Property as provided herein. Declarant, his assigns and tenants shall also be entitled to the non-exclusive use of any portion of the Common Area, Green Area, which comprises drives or walkways for the purpose of ingress and egress and accompanying vehicle and pedestrian traffic to and from the Property. Each Owner hereby grants, by acceptance of the deed to this 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 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.


IN WITNESS WHEREOF DECLARANT HAS CAUSED this instrument to be duly executed on the day and year first above mentioned.

390

WITNESS THE SIGNATURES of the Declarant, Owners and all of the Mortgagees who have liens against the real property.

DECLARANT:

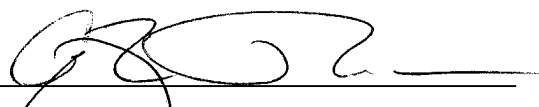
BACKWATER DEVELOPMENT, LLC
A Mississippi limited liability company

BY: 
Greg Courtney, Member
Backwater Development Management
Company, LLC, A Mississippi limited
liability company, Manager


BY: 
Cliff Norman, Member
Backwater Development Management
Company, LLC, A Mississippi limited
liability company, Manager

OWNERS:


WILLIAM MORRIS, II

BY: 
CLIFF NORMAN, as Attorney in Fact for
William Morris, II


PAULA MORRIS

BY: 
CLIFF NORMAN, as Attorney in Fact for
Paula Morris


HERBERT B. FLOYD

BY: 
CLIFF NORMAN, as Attorney in Fact for
Herbert B. Floyd

TERESA G. FLOYD


BY: 
CLIFF NORMAN, as Attorney in Fact for
Teresa G. Floyd

GARREN BATES

BY: 


CLIFF NORMAN, as Attorney in Fact for
Garren Bates

ANNABETH BATES

BY: 


CLIFF NORMAN, as Attorney in Fact for
Annabeth Bates

JOEL S. FORD

BY: 

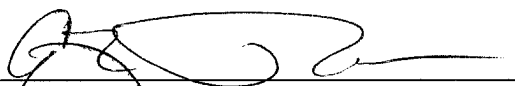
CLIFF NORMAN, as Attorney in Fact for
Joel S. Ford

TERRY P. FORD

BY: 


CLIFF NORMAN, as Attorney in Fact for
Terry P. Ford

JASON T. BODOUIN

BY: 


CLIFF NORMAN, as Attorney in Fact for
Jason T. Bodouin

AMELIA BARRON BODOUIN

BY: 


CLIFF NORMAN, as Attorney in Fact for
Amelia Barron Bodouin

HERMINE M. GRANBERRY

BY: 

CLIFF NORMAN, as Attorney in Fact for
Hermine M. Granberry

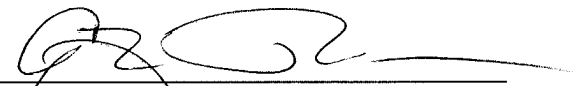
MARCIA B. LINE

BY: 

CLIFF NORMAN, as Attorney in Fact for
Marcia B. Line

MORTGAGEE:

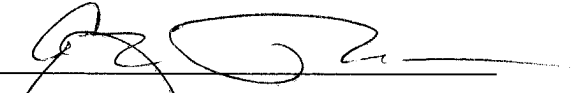
**THE FIRST NATIONAL BANK OF
SOUTH MISSISSIPPI**

BY: 


CLIFF NORMAN, as Attorney in Fact for
First National Bank of South Mississippi

392

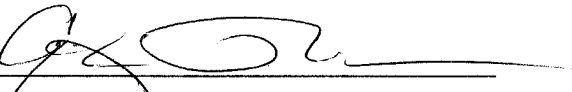
GRAND BANK FOR SAVINGS, fsb

BY: 
CLIFF NORMAN, as Attorney in Fact for
Grand Bank for Savings, fsb

AMSOUTH BANK

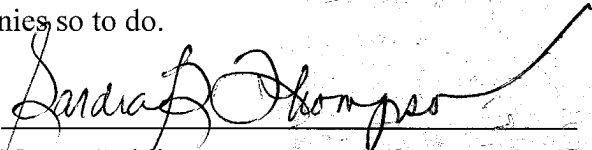
BY: 
CLIFF NORMAN, as Attorney in Fact for
AmSouth Bank

CITIZENS NATIONAL BANK

BY: 
CLIFF NORMAN, as Attorney in Fact for
Citizens National Bank

STATE OF MISSISSIPPI
COUNTY OF LAMAR

Personally appeared before me, the undersigned authority in and for the said county and state, on this 21 day of JULY, 2003, with my jurisdiction, the within named **GREG COURTNEY and CLIFF NORMAN**, who acknowledged that they are the members of **Backwater Development Management Company, LLC, a Mississippi limited liability company**, which is the Manager of **Backwater Development Company, LLC, a Mississippi limited liability company**, and that for and on behalf of said limited liability companies, and as their acts and deeds as manager of **Backwater Development, LLC** and as members of **Backwater Development Management Company, LLC**, they executed the above and foregoing instrument, after first having been duly authorized by said limited liability companies so to do.

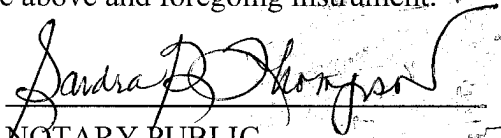


Notary Public

My commission expires:
2/11/2005

STATE OF MISSISSIPPI
COUNTY OF LAMAR

Personally appeared before me, the undersigned authority in and for said County and State, on this 21 day of JULY, 2003, within my jurisdiction, the within named **CLIFF NORMAN**, who acknowledged that he is attorney in fact for **WILLIAM MORRIS, II and PAULA MORRIS**, who acknowledged that he executed the above and foregoing instrument.




NOTARY PUBLIC

My Commission Expires:
2/11/2005

394

STATE OF MISSISSIPPI
COUNTY OF LAMAR

Personally appeared before me, the undersigned authority in and for said County and State, on this 21 day of JULY, 2003, within my jurisdiction, the within named **CLIFF NORMAN**, who acknowledged that he is attorney in fact for **HERBERT B. FLOYD and TERESA G. FLOYD**, who acknowledged that he executed the above and foregoing instrument.

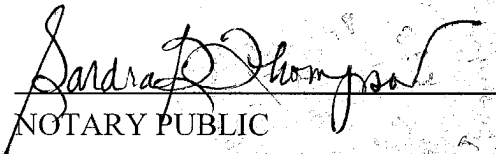

NOTARY PUBLIC

My Commission Expires:

2/11/2005

STATE OF MISSISSIPPI
COUNTY OF LAMAR

Personally appeared before me, the undersigned authority in and for said County and State, on this 21 day of JULY, 2003, within my jurisdiction, the within named **CLIFF NORMAN**, who acknowledged that he is attorney in fact for **GARREN BATES and ANNABETH BATES**, who acknowledged that he executed the above and foregoing instrument.

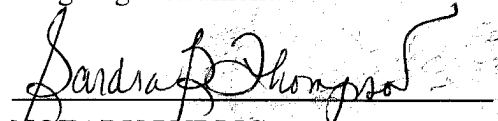

NOTARY PUBLIC

My Commission Expires:

2/11/2005

STATE OF MISSISSIPPI
COUNTY OF LAMAR

Personally appeared before me, the undersigned authority in and for said County and State, on this 21 day of JULY, 2003, within my jurisdiction, the within named **CLIFF NORMAN**, who acknowledged that he is attorney in fact for **JOEL S. FORD and TERRY P. FORD**, who acknowledged that he executed the above and foregoing instrument.

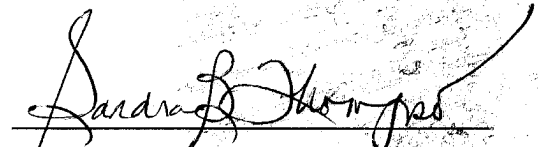


NOTARY PUBLIC

My Commission Expires:
2/11/2005

STATE OF MISSISSIPPI
COUNTY OF LAMAR

Personally appeared before me, the undersigned authority in and for said County and State, on this 21 day of JULY, 2003, within my jurisdiction, the within named **CLIFF NORMAN**, who acknowledged that he is attorney in fact for **JASON T. BODOUIN and AMELIA BARRON BODOUIN**, who acknowledged that he executed the above and foregoing instrument.



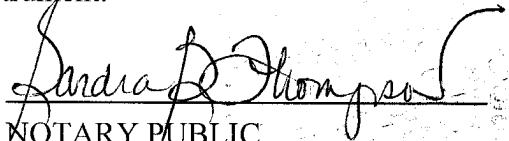
NOTARY PUBLIC

My Commission Expires:
2/11/2005

396

STATE OF MISSISSIPPI
COUNTY OF LAMAR

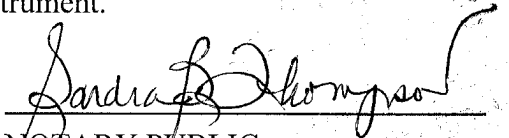
Personally appeared before me, the undersigned authority in and for said County and State, on this 21 day of JULY, 2003, within my jurisdiction, the within named **CLIFF NORMAN**, who acknowledged that he is attorney in fact for **HERMINE M. GRANBERRY**, who acknowledged that he executed the above and foregoing instrument.


NOTARY PUBLIC

My Commission Expires:
2/11/2005

STATE OF MISSISSIPPI
COUNTY OF LAMAR

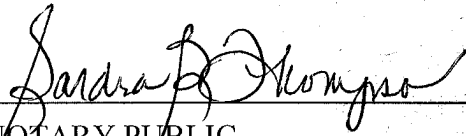
Personally appeared before me, the undersigned authority in and for said County and State, on this 21 day of JULY, 2003, within my jurisdiction, the within named **CLIFF NORMAN**, who acknowledged that he is attorney in fact for **MARCIA B. LINE**, who acknowledged that he executed the above and foregoing instrument.


NOTARY PUBLIC

My Commission Expires:
2/11/2005

STATE OF MISSISSIPPI
COUNTY OF LAMAR

Personally appeared before me, the undersigned authority in and for said County and State, on this 21 day of JULY, 2003, within my jurisdiction, the within named **CLIFF NORMAN**, who acknowledged that he is attorney in fact for **THE FIRST NATIONAL BANK OF SOUTH MISSISSIPPI**, for and on behalf of said bank and as its act and deed he executed the above and foregoing instrument, after first having been duly authorized by said bank so to do.



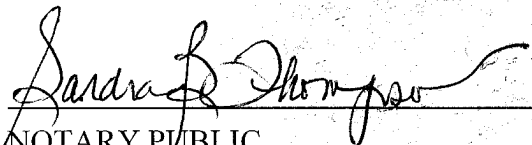
NOTARY PUBLIC

My Commission Expires:

2/11/2005

STATE OF MISSISSIPPI
COUNTY OF LAMAR

Personally appeared before me, the undersigned authority in and for said County and State, on this 21 day of JULY, 2003, within my jurisdiction, the within named **CLIFF NORMAN**, who acknowledged that he is attorney in fact for **GRAND BANK FOR SAVINGS, fsb**, for and on behalf of said bank and as its act and deed he executed the above and foregoing instrument, after first having been duly authorized by said bank so to do.



NOTARY PUBLIC

My Commission Expires:

2/11/2005

398

STATE OF MISSISSIPPI
COUNTY OF LAMAR

Personally appeared before me, the undersigned authority in and for said County and State, on this 21 day of JULY, 2003, within my jurisdiction, the within named **CLIFF NORMAN**, who acknowledged that he is attorney in fact for **AMSOUTH BANK**, for and on behalf of said bank and as its act and deed he executed the above and foregoing instrument, after first having been duly authorized by said bank so to do.

Landra Thompson

NOTARY PUBLIC

My Commission Expires:

2/11/2005

STATE OF MISSISSIPPI
COUNTY OF LAMAR

Personally appeared before me, the undersigned authority in and for said County and State, on this 21 day of JULY, 2003, within my jurisdiction, the within named **CLIFF NORMAN**, who acknowledged that he is attorney in fact for **CITIZENS NATIONAL BANK**, for and on behalf of said bank and as its act and deed he executed the above and foregoing instrument, after first having been duly authorized by said bank so to do.

Landra Thompson

NOTARY PUBLIC

My Commission Expires:

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