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**DECLARATION AND PLAN OF CONDOMINIUM  
FOR  
OLD OAKS OF OXFORD, A CONDOMINIUM**

**PHASE 1a & 2**

<b>GRANTOR:</b>	<b>PREPARED BY:</b>
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<b>GRANTEE:</b>	<b>INDEXING INSTRUCTIONS:</b>
THE WORLD	A Fraction Of The Northeast Quarter Of Section 25, Township 8 South, Range 3 West, Lafayette County, Mississippi

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### **EXHIBITS**

Exhibit "A"	Legal Description of Property
Exhibit "B"	Legal Description of Additional Property
Exhibit "C"	Bylaws of the Association
Exhibit "D"	Plat and Plans of the Condominium
Exhibit "E"	Allocated Interests and Votes
Exhibit "F"	Allocation of Interests Upon Addition of Additional Property
Exhibit "G"	Storm Water Management, Inspection and Maintenance Plan and Information

**STATE OF MISSISSIPPI  
COUNTY OF LAFAYETTE**

**DECLARATION and PLAN of CONDOMINIUM**

**PHASE 1a & 2**

**THIS DECLARATION** is made this 1<sup>st</sup> day of October, 2018, by **OLD OAKS OXFORD, LLC**, a Mississippi limited liability company (the "Developer"), pursuant to the provisions of the Mississippi Condominium Law, MISS. CODE ANN. §§ 89-9-1, *et seq.* (the "Law"), for the purpose of forming a condominium and establishing certain easements, covenants and restrictions to run with the land (the "Declaration"):

**WITNESSETH:**

**WHEREAS**, Developer is the owner of a parcel of real property located in Lafayette County, Mississippi, more particularly described on Exhibit "A" attached hereto on which are located eighteen (18) residential Units in the Condominium, common areas, and certain other improvements in accordance with the Plan of Old Oaks of Oxford, a Condominium, and recorded in Plat Cabinet C at Slide 92 in the Office of the Chancery Clerk of Lafayette County, Mississippi, a copy of which is included in Exhibit "C" attached to this Declaration (the "Property" or "Condominium Property"); and

**WHEREAS**, it is the desire and intent of the Developer, by recording this Declaration, to establish a Condominium (as defined in the Law) to be known as **OLD OAKS OF OXFORD, A CONDOMINIUM, Phase 1a & 2** under the provisions of the Law and to impose upon the real property covered hereby mutually beneficial restrictions under a general plan for the benefit of all of the Condominium Units contained therein and the Owners thereof.

**WHEREAS**, the Developer has acquired an interest in certain additional real property (the "Additional Property") located in the proximity of the property described on Exhibit "B", which Developer may desire to submit to the condominium form of ownership to be a part of the Condominium in the future. The Additional Property, all or a portion of which may be added to the Condominium, is depicted on Exhibit "B" attached hereto, and may be added to the Condominium in phases as the Developer sees fit in its sole discretion

**NOW, THEREFORE**, Developer, upon recording hereof, does submit that certain real property situated in Lafayette County, Mississippi, more particularly described on Exhibit "A" attached to this Declaration, together with the improvements

thereon, and owned by the Developer in fee simple absolute to the provisions of the Mississippi Condominium Law to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, improved and in any other manner utilized, subject to the provisions of said Law and subject to the covenants, conditions, restrictions, uses, limitations and affirmative obligations set forth in this Declaration, all of which are declared and agreed to be in furtherance of a plan for the improvement of said property and the division thereof into the condominium form of ownership and all of which shall run with the land and shall be binding on all parties (including Owners as hereinafter defined) having or acquiring any right, title or interest in said property or any part thereof, and shall be for the benefit of each Owner of any portion of said property or any interest therein, and shall inure to the benefit of, and be binding upon, each successor-in-interest to the Owners thereof.

## ARTICLE I

### DEFINITIONS

**Section 1.01 Definitions.** Certain terms as used in this Declaration shall be defined as follows, unless the context clearly indicates a different meaning therefore:

(a) **"Additional Property"** shall mean all or any portion of the real property depicted on Exhibit "B" attached hereto and the improvements now or hereafter constructed thereon, which property may be submitted in whole or in part in one or more phases to the Condominium.

(b) **"ARC"** shall mean the Architectural Review Committee appointed pursuant to Section 4.04 hereof with the rights and obligations conferred upon such Architectural Review Committee pursuant to this Declaration. In the absence of an appointed ARC any references to the ARC shall default to the Board

(c) **"Articles"** shall mean the Articles of Incorporation of Old Oaks of Oxford Condominium Owner's Association, Inc., a Mississippi nonprofit corporation.

(d) **"Association"** shall mean Old Oaks of Oxford Condominium Owner's Association, Inc., a nonprofit corporation organized pursuant to the Mississippi Nonprofit Corporation Act, MISS. CODE ANN. §§ 79-11-101, *et seq.*, of which all Owners shall be Members and which corporation shall administer the operation, management, maintenance, control, and administration of the Condominium Property, prior to a sale of any Dwelling Units.

(e) **"Board of Directors"** or **"Board"** shall mean the Board of Directors of the Association, elected pursuant to the Bylaws of the Association.

(f) **"Bylaws"** shall mean the set of Bylaws, a copy of which is attached hereto as Exhibit "B," recorded simultaneously with this Declaration, providing for the self-government of the Condominium Property by the Association, and such amendments thereto as may be recorded from time to time.

(g) **"Common Elements"** shall mean and include the following:

(i) All Land not designated as a Unit, including, but not limited to parks; lakes; entrances and other portions of the Land typically used for more than one user or Owner;

(ii) Any compartments or installations of central services, such as Common Element power, electricity, fire protection, storm water detention systems, water lines, storm water detention systems, sewer lines, and the like, and all similar devices and installations existing for common use, but excluding all compartments or installations of utilities and services which exist for private use by only one Unit;

(iii) The premises and facilities, if any, used for the maintenance or repair of the Property;

(iv) Sidewalks, drives and roadways not located on a Unit, the Private Road(s), landscaping, and central mail boxes, if any;

(v) All common recreational facilities such as the grounds, yards, lakes, parks, entrances, and drives and parking areas designated as Common Elements on the Plan;

(vi) All easements, rights or appurtenances affecting or relating to the use of the Condominium Property;

(vii) All other elements (other than the Units) desirable or rationally of common use or necessary to the existence, upkeep and safety of the Condominium Property.

(h) **"Common Expenses"** shall mean the expenses arising out of the ownership of the Common Elements for which the Owners are liable to the Association and shall include, but not be limited to, expenses of administration of the Condominium Property; expenses of insurance; expenses of maintenance, operation, repair, replacement, rehabilitation, restoration, renovation and

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<sup>1</sup> The Developer and Association reserve the right to petition the Governing Authority at the time for the dedication of the Private Roads to public use with the Governing Authority responsible for maintenance and repair should said Authority accept the same and a majority of the Owners agree by vote in accordance with the Declaration and By-Laws.

betterment of the Common Elements; any valid charge against the Condominium Property as a whole; and expenses declared to be Common Expenses by the provisions of the Condominium Documents, as the same may be amended, from time to time, in accordance with the provisions thereof.

(i) **"Common Surplus"** shall mean the excess of all the receipts of the Association, including, but not limited to, assessments, rents, profits and revenues over the amount of the Common Expenses.

(j) **"Condominium Documents"** shall mean the Declaration and Plan of Condominium and all Exhibits hereto, the Bylaws, the Articles of Incorporation of the Association, as the same shall be amended from time to time, and the Rules and Regulations of the Association.

(k) **"Declaration of Condominium"** or **"Declaration"** shall mean this instrument and all Exhibits hereto as it, from time to time, may be amended. This Declaration shall include the declaration of restrictions required by Miss Code § 89-9-17.

(l) **"Developer"** or **"Declarant"** shall mean Old Oaks Oxford, LLC, a Mississippi limited liability company, its successors and assigns, other than an Owner, who shall receive by assignment from the said Developer all, or a portion of its rights hereunder as such Developer, by an instrument expressly assigning such rights as Developer to such assignee.

(m) **"Dwelling"** shall mean a single-family residence constructed pursuant to applicable government regulations in place at the time of construction and in accordance with the provisions of this Plan. Only one (1) Dwelling shall be allowed to be constructed on each Unit.

(n) **"Improvement" or "Improvements"** shall mean and refer to all dwellings, any building, structure, or landscaping, constructed, erected or placed upon any Unit which in any way affects the exterior appearance of any Unit. Improvements shall include, by way of illustration and not limitation, the dwelling, buildings, sheds, foundations, covered patios, underground utilities, septic tanks, driveways, walkways, paving, parking areas, trees, shrubbery, landscaping, fences, screening, walls, signs, and any other artificial or man-made changes or alterations to the natural condition contained on any Unit. "Improvements" shall also mean any grading, excavation, or fill place on the Unit.

(o) **"Land"** shall mean the parcel or tract of real estate described in Exhibit "A" to this Declaration, submitted to the provisions of the Law, and such other parcels or tracts of real estate as may be submitted to the provisions of the Law by one or more amendments of this Declaration from time to time.

(p) **"Law"** shall mean the Mississippi Condominium Law, MISS. CODE ANN. §§ 89-9-1, *et seq.*, as the same may be amended from time to time.

(q) **"Limited Common Elements"** shall mean and include any area designated herein as Limited Common Elements or on the Plan and any amendment to the Plan. The Limited Common Elements shall include among any other property so designated, the portion of a yard, driveway, or sidewalk that benefits only one specific Unit, and any other area designated for the use of fewer than all Unit Owners. Should any Limited Common Element ever be determined not to be a Limited Common Element under the Law, the same shall be part of the Common Elements with an exclusive easement of use appurtenant to the Units to which it was originally assigned as a Limited Common Element.

(r) **"Limited Common Expenses"** shall mean the expenses arising from the maintenance or repair of the Limited Common Elements for which the Unit Owner(s) to which the Limited Common Elements attach may be liable to the Association should the Association decide to separately assess Limited Common Expenses. Limited Common Expenses may include, but not be limited to, the expenses of maintenance, operation, repair, replacement, rehabilitation, restoration, renovation, and betterment of the Limited Common Elements; and expenses declared to be Limited Common Expenses by the provisions of the Condominium Documents, as the same may be amended, from time to time, in accordance with the provisions thereof.

(s) **"Member" or "Members"** shall mean the Members of the Association and shall consist of all record Owners of the Units in the Condominium.

(t) **"Mortgage"** shall mean a first lien Mortgage on one or more Units.

(u) **"Mortgagee"** shall mean a holder of a Mortgage or Deed of Trust who has given notice in writing to the Association that it is the holder of a Mortgage affecting any part of the Condominium Property as hereinafter provided.

(v) **"Occupant"** shall mean a person or persons in possession of a Unit including family members, tenants, invitees or guests, regardless of whether that person is the Unit Owner. Each Unit Owner shall be responsible for the acts or omissions of any Occupant of such Owner's Unit.

(w) **"Owner" or "Unit Owner"** shall mean and refer to every person or entity who is a record Owner of a Unit.

(x) **"Plan" or "Plat"** shall mean the survey and Plan showing the Units, the Common Elements and Limited Common Elements of the Condominium

Property, a copy of which is attached hereto as Exhibit "C," and made a part hereof for all purposes, as such Plan may from time to time be amended.

(y) **"Property"** or **"Condominium Property"** shall mean the Land, the Common Elements, Limited Common Elements, the Unit and all Improvements and structures erected, constructed or contained therein or thereon, including all buildings and all easements, rights and appurtenances belonging thereto submitted to the provisions of the Law under this Declaration, as it may be amended from time to time.

(z) **"Rules and Regulations"** shall mean those Rules and Regulations adopted from time to time by the Board of Directors of the Association that are deemed necessary for the enjoyment of the Condominium Property, provided they are not in conflict with the Law or the Condominium Documents.

(aa) **"Successor Developer"** shall mean an entity other than an Owner, who shall receive by assignment from the said Developer all, or a portion of its rights hereunder as such Developer, by an instrument expressly assigning such rights as Developer to such assignee. A Successor Developer shall simultaneously with the transfer of its rights receive at least one Unit from the original Developer by Condominium Deed or other transfer of an interest in real property.

(bb) **"Unit"; "Land Unit", or "Condominium Unit"** shall mean that portion of the Condominium Property designated as a Unit on the Plan or Plat. The Unit shall be considered the ground area where construction is allowed for the improvement(s), subject to applicable state and local ordinances. Each Owner shall be allowed to construct one (1) dwelling per Unit.

## ARTICLE II

### **PROPERTY SUBJECT TO THIS DECLARATION**

**Section 2.01 Description of Improvements and Identification of Units.** The Condominium Property shall initially consist of eighteen (18) Units, and certain Common Elements, each of which shall include the perimetrical boundaries described on the survey and Plat and simultaneously filed in Plat Cabinet C at Slide \_\_\_ in the Office of the Chancery Clerk of Lafayette County, Mississippi. Each Unit shall have the right to construct one (1) dwelling on each Unit. Each Unit shall include all Improvements constructed thereon, and all electrical, gas, and water lines, the sanitary and storm sewer facilities, and all lines, pipes, ducts, flues, chutes, conduits, cables, wires and all other apparatus and installations in connection therewith, located within and servicing such Unit. A plat of the

Condominium Property and a graphic description, identifying each Unit by number so that no Unit bears the same designation as any other Unit, all in sufficient detail to identify the Common Elements, Limited Common Elements, if any, and each Unit and their relative locations and approximate dimensions, are set forth in the Plan attached hereto as Exhibit "C."

**Section 2.02 Amendment of Condominium Plan.**

Developer reserves the right to alter the boundaries of the Units and to increase or decrease the number of Units so long as the Developer owns the Units so altered. Developer further reserves the right to add Common Element improvements to the Condominium Property. Changes in the boundaries of the Units and the addition of Common Element improvements, as hereinbefore provided, shall be reflected by an amendment to the Plan, and if necessary, an amendment to this Declaration. An amendment to the Plan or the Declaration reflecting an alteration of the boundaries of the Units owned by Developer or the addition of Common Element improvements need be signed and acknowledged only by the Developer and need not be approved by the Owners and Mortgagees, whether or not such approval may elsewhere be required herein; provided, however, that any change which shall result in a change in the undivided interest in Common Elements or a change in the share of Common Expenses with respect to Owners of Units other than Developer at the time of such change may not be made without an amendment of this Declaration approved by the Owners and Mortgagees in the manner elsewhere required herein.

**Section 2.03 Additional Property.** Developer further reserves the right to add all or any portion of the Additional Property depicted on Exhibit "B" attached hereto, together with any improvements constructed thereon, which may eventually consist of as many as three hundred fifty (350) additional Units to the Condominium Property within twenty (20) years from the conveyance of the first Unit in the Condominium in one or more additional phases. The future phases of the development may include amenities and recreational facilities as well as additional Common Element and Limited Common Element improvements. Any additional phase shall blend aesthetically with the other Condominium Property, but said style and size of buildings, improvements and Units shall be within Developer's sole discretion. Any additional improvements to be constructed on the real property described on Exhibit "B" shall be of substantially the same quality as the improvements in the initial phase of the Condominium. The submission of the Additional Property may be accomplished in one or more phases within the twenty (20) year period, by filing an amendment to the Declaration, which amendment only needs to be signed by the Developer. If all or any portion of the real property described on Exhibit "B" is later submitted to the condominium form of ownership by amendment to this Declaration, the Additional Property may

only be added if developed in conjunction with the allocation of percentage ownership of the Common Elements, the sharing of Common Expenses and the allocation of voting rights as set forth on Exhibit "F" attached hereto. Nothing contained herein shall obligate the Developer to submit the Additional Property to the Condominium; however, the Developer may submit all, part or none of the land described in Exhibit "B". Any part of the Additional Property described on Exhibit "B" not submitted to the Condominium Property may be developed or used by the Developer in any manner it deems proper, including the development of another condominium project, in which the Developer hereby reserves the same easements contemplated for the current Condominium for a separate and distinct new condominium project on the Additional Property.

**Section 2.04 Parking Spaces.** Each Unit Owner will be entitled to no less than two (2) parking spaces per Unit to be located on the Unit. Use of the parking spaces shall be in accordance with the Rules and Regulations of the Association.

**Section 2.05 Balconies, Patios and Yards.** The Board of Directors shall have the right to limit and to remove any item of furniture, personalty, plant or decorative item that is not in keeping with the Rules and Regulations of the Association, it being recognized that the balconies, patios and yards are visible from surrounding Units and properties and that there is a need for subtlety and uniformity of items placed on the balconies, patios, and yards.

**Section 2.06 Easements and Restrictions.** The Units, Common Elements, and Limited Common Elements shall be, and the same are hereby declared to be, subject to the restrictions, easements, conditions, and covenants prescribed and established in the Condominium Documents governing the use of said Units, Common Elements, and Limited Common Elements in setting forth the obligations and responsibilities incident to ownership of each Unit and its appurtenant undivided interest in the Common Elements. Said Units and Common Elements are further declared to be subject to the restrictions, easements, conditions, and limitations now of record affecting the Condominium Property. Additional easements established hereunder include the following:

(a) **Utility Easements.** Utility easements are reserved throughout the whole of the Property, including Units, as may be required for utility services (including, without limitation, water, sewer, electricity, telephone and cable television) in order to adequately serve the Condominium Property.

(b) **Utility Equipment.** There may be utility equipment and meters which are appurtenant to the Units, but which are located on the Common Elements or on other Units. An easement is hereby reserved in favor of each Unit

for the purpose of placement, maintenance, repair and replacement of said utility equipment by Developer and the Owners of the Unit; provided that no utility equipment shall be placed on any part of the Common Elements or Units other than the present location unless the written approval of the Association shall have been first obtained.

(c) Easements for Ingress and Egress. The Common Elements shall be, and the same are hereby declared to be, subject to a perpetual nonexclusive easement of way over all roads, parking areas, walkways and other Common Elements in favor of all Owners for all proper and normal purposes and for the furnishing of services and facilities for which the same are reasonably intended for the enjoyment of said Owners, subject to all restrictions in the Condominium Documents.

(d) Easement for Use of Leased or Acquired Property. Each Unit Owner shall have a nonexclusive easement for use of any property hereafter acquired by the Association for the common benefit of the Owners by purchase, lease, or otherwise for all normal and proper purposes for which the same are reasonably intended, subject to all restrictions in the Condominium Documents and the Rules and Regulations.

(e) Easements for Encroachments. To the extent that any Improvement on a Unit or Common Element encroaches on any other Unit or Common Element or any Improvement constructed on the Unit encroaches on another Unit or the Common Elements whether by reason of any deviation from the Plan in the original construction, repair, renovation, restoration or replacement of any improvement, or by reason of the settling or shifting of any land or improvement, a valid easement shall exist for the encroachment and/or the maintenance of the same, so long as the encroaching improvement on the Unit or Common Element stands. This easement, however, shall not relieve an Owner of liability for his or his agent's negligence, intentional acts or willful and intentional misconduct in causing the encroachment. In the event any Improvement on a Unit, any adjoining Improvement on a Unit, or any adjoining Common Elements shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then constructed, reconstructed or repaired, encroachment of parts of the Common Elements upon any Unit, or encroachment of any Improvement upon any other Units or Common Elements resulting from such construction, reconstruction or repair shall be permitted, and valid easements for such encroachment and the maintenance thereof shall exist so long as the encroaching improvements shall stand.

(f) Easement for Maintenance. To the extent a Unit Owner fails to maintain the exterior of any portion of an Improvement on their respective Unit, then the Association shall have a perpetual easement for the maintenance of the

exterior of the Improvements located on the Unit, the yards, and the landscaping located on the Units. However, nothing herein shall be interpreted to the require the Association to maintain the Unit or any Improvements located on a Unit.

(g) Easement of Support. To the extent any Unit needs support, each Unit and the Common Elements and Limited Common Elements shall have an easement of support from other Units, Improvement on a Unit, Common Elements, or Limited Common Elements which provide such support.

(h) Easement for Use of Limited Common Elements. Each Owner shall have an easement for the repair, maintenance and upkeep of the Limited Common Elements assigned to his Unit, if any, and for ingress and egress to and from the Limited Common Elements for so long as the Limited Common Elements exist. The aforesaid easement shall be for the benefit of each Unit Owner to which the Limited Common Element is appurtenant.

(i) Easements Reserved for Developer. Notwithstanding anything to the contrary contained in this Declaration, Developer and its duly authorized agents, representatives, employees and customers shall have the following easements until six (6) months after the date Developer no longer owns a Unit primarily for the purpose of sale to maintain a sales trailer, sales offices, rental offices, model units, a construction trailer, portable potties and construction offices on the Property; to go on and over the Common Elements to conduct sales, rental and construction activities, and to construct and maintain signs and structures in connection therewith; and for sales, storage and maintenance activities; and to park vehicles on the Common Elements. Also, Developer and its duly authorized agents, representatives, customers and employees shall have a perpetual non-exclusive easement over the Common Elements for the construction and completion of improvements, for making repairs on the Property, for parking of vehicles in connection therewith, or for any other legitimate business purpose.

(j) Easements in Favor of Additional Property. There shall be a perpetual non-exclusive easement for vehicular and pedestrian ingress and egress and utilities over the Common Elements of the Property for the benefit of the Developer and the future owners of the Additional Property for all purposes incident to the development of the Additional Property. It is the intent that the Developer and any future owners of Additional Property and their guests and invitees have these easements across and over the Common Elements of any of the Condominium Property. Notwithstanding anything to the contrary contained in this Declaration, Developer and its duly authorized agents, representatives, employees and customers shall have the following easements and right to convey easements as described herein until six (6) months after the date Developer no longer owns a Unit primarily for the purpose of sale. Developer hereby reserves the right, and by acceptance of the Deed to any Unit, an Owner consents to Developer

having the unilateral right to convey easements to itself, its successor and/or assigns and third parties, including, but not limited to utility companies, Governing Authorities, adjoining and unaffiliated property owners, as necessary for the furtherance of the Project or otherwise as determined in the sole discretion of the Developer.

(k) Easements Appurtenant to Units. The easements and other rights created herein for the Unit Owners shall be appurtenant to the Unit of that Owner and all conveyances of title to the Unit shall include a conveyance of the easements and rights as are herein provided even though no specific reference to such easements and rights appear in such instrument. The Owners do hereby designate the Developer and/or the Association as their lawful attorney-in-fact to execute any and all instruments on their behalf for the purpose of creating all such easements as are contemplated by the provisions hereof.

(l) Easement for Services and Emergencies. There shall be non-exclusive easements for all police, firemen, ambulance operators, mailmen, delivery men, garbage men, and all similar persons, and to the local governmental authorities and the Association, but not the public in general, to enter upon the Common Elements in the performance of their duties, subject to reasonable rules and regulations as the Board may establish from time to time.

**Section 2.07 Ownership of Common Elements.** Each Owner shall own an undivided interest in the Common Elements with all other Owners, and, except as otherwise limited in this Declaration, shall have the right to use the Common Elements for all purposes incident to the use and occupancy of the Improvement on the Unit as herein provided, without hindering or encroaching upon the lawful rights of the other Owners, which rights shall be appurtenant to and run along with the Units. The extent or amount of such ownership shall be expressed by a fraction relating to each Unit as set forth on Exhibit "D" attached hereto, and shall remain constant, unless changed in accordance with the provisions of Section 2.02, or Article III hereof or by the unanimous approval of all Owners and Mortgagees affected thereby. The percentage ownership in the Common Elements relating to each Unit as set forth on Exhibit "D" attached hereto was calculated roughly by dividing one (1) by the total number of Units in the Condominium from time to time. Developer shall transfer and convey governance of the Common Elements and amenities to the Association once the Association is established in conformity with this Declaration and the Law.

**Section 2.08 Rights in or to Limited Common Elements.** Upon receipt of a Certificate of Occupancy on any Improvement on the Unit, then all remaining areas outside of the Improvement, but within the perimeters shown on the Plat and Plan as the Unit boundary shall be

exclusive to the Unit Owner, subject to the rights and obligations herein, to other Unit Owners. It is the intention that the Unit Owner, subject to this Declaration, shall have the exclusive rights to the exclusion of the other Unit Owners on the areas within his Unit and outside of the Improvements. The Limited Common Elements appurtenant to the Unit, if any, shall be as shown on the Plan. The description shall be expressed by identifying the type of Limited Common Elements which are appurtenant to the Unit, if any, and the Owners of such Units shall have the exclusive right to use such Limited Common Elements so designated or described unless changed by the Developer as permitted in Section 2.02 hereof or by the unanimous approval of the Owners of the Units to which Limited Common Elements are appurtenant and their respective Mortgagees. Each Owner of a Unit to which the Limited Common Element is appurtenant shall have the right to use the Limited Common Element for all purposes incident to the use and occupancy of his Unit as herein provided without hindering or encroaching upon the lawful rights of the other Owners, which rights shall be appurtenant to and run along with the Units to which the Limited Common Elements are attached.

### **ARTICLE III**

#### **DEVELOPMENT RIGHTS**

##### **Section 3.01 Reservation of Development Rights.**

Developer hereby expressly retains and reserves the right to add additional Common Element and Limited Common Element improvements to the Condominium Property, or to amend the Plan to show future Common Elements and Limited Common Elements.

**Section 3.02 Exercise of Development Rights.** Except as otherwise specifically set forth in this Declaration, there shall be no limitations on the development right to add property to the Condominium, to develop Additional Property separate from the Condominium or the exercise thereof.

**Section 3.03 Expiration of Development Rights.** The development rights set forth herein may be exercised by Developer at any time and from time to time for a period of twenty (20) years from the date of conveyance of the first Unit by Developer to an unrelated third party in an arm's length transaction. Upon the expiration of said twenty (20) year period, to the extent not exercised or previously terminated by Developer by express amendment to this Declaration, the right shall expire and terminate; provided, however, that Developer may extend said period for the exercise of the development right with the consent of the Unit Owners of Units to which two-thirds (2/3) of the votes in the Association appertain, exclusive of any vote or votes appurtenant to any Unit or Units then owned by Developer, within one

(1) year prior to the date upon which the development right would otherwise have expired.

## **ARTICLE IV**

### **ORGANIZATION AND MANAGEMENT**

**Section 4.01 Management of the Condominium Property.** Operation and administration of the Condominium Property shall be performed by the Developer, its successors and/or assigns, until that time that the Old Oaks of Oxford Condominium Owner's Association, Inc., a Mississippi nonprofit corporation takes over the management. The Developer shall transfer control of the management to the Association no later than the latest of the following: 1) 120 days after the date by which 75 percent of the units have been conveyed to the unit purchasers; or 2) three years after completion of the project evidenced by the first conveyance to a unit purchaser. Neither the Association nor Board of Directors shall be formed until that time which: 1) the Developer is desirous of conveying a Unit to a third party, and 2) either the Mortgagee or any future Mortgagee has been paid in full, or has consented to the filing of the Article of Incorporation for Old Oaks of Oxford Condominium Owner's Association, Inc., a Mississippi nonprofit corporation and formed a Board of Directors. Until such time, any references to the Association or Board, herein, shall mean the Developer, its successors and/or assigns. The powers and duties of the Association shall include those set forth in the Law, this Declaration, the Articles of Incorporation and the Bylaws.

**Section 4.02 Members.** The Members of the Association shall consist of all record Unit Owners of the Units. Change of membership in the Association shall be established by recording in the public records of Lafayette County, Mississippi, the deed or other instrument establishing record title to a Unit in the Condominium Property, and the delivery to the Association of a certified copy of such instrument, the Owner designated by such instrument thereby becoming a record Unit Owner and a Member of the Association. Membership of the prior Owner shall thereby be terminated. All present and future Owners and Occupants of the Units shall be subject to and shall comply with the provisions of the Declaration, the Bylaws, and the Rules and Regulations, as the same may be amended from time to time. The votes for a Unit shall be cast by the record Unit Owner thereof or the duly authorized proxy of the record Unit Owner in the manner provided in the Bylaws. Each Unit Owner is entitled to the number of votes for each Unit owned by him as set forth in Exhibit "D" attached hereto.

**Section 4.03 Bylaws.** The Bylaws of the Association shall be in the form attached as Exhibit "B" to this Declaration and may be amended from time to time as set forth therein.

**Section 4.04 Architectural Control.** The Board of Directors may, in its discretion, appoint an Architectural Review Committee ("ARC") consisting of not less than one (1) and no more than three (3) members to review and approve plans and specifications for dwellings and Improvements to be constructed on the Units or any additions, modifications or alterations thereto. Further, the ARC shall meet as often as is necessary to review and approve the plans and specifications. A majority of the members of the ARC shall constitute a quorum of the ARC and any submitted plans must be approved by at least a majority of the members present of the ARC. If the Board of Directors does not appoint an ARC, the Board shall act as the ARC. Nothing herein, shall limit the Developer's right to design and construct Improvements, including the architectural elements, plans, specifications, size, scope and structures as the Developer determines in its sole discretion.

If a Unit Owner other than the Developer will be responsible for building Improvements on the Unit, within one hundred eighty (180) days of the closing of the Unit the Unit Owner is required to submit plans and specifications for the dwelling and other Improvements to the ARC for review. Within one hundred eighty (180) days of the approval of the plans and specifications by the ARC, the Unit Owner is required to enter into a construction contract with a contractor approved by the ARC for the construction of the Improvements which will be built on the Unit. Once construction of the Improvements has commenced, the Improvements must be completed within twelve (12) months of commencement as evidenced by the issuance of a Letter of Substantial Compliance from the ARC unless a variance is granted. Failure to complete the Improvements on the Unit within said time period will result in a fine of \$1,000.00 per month to be levied by the ARC on behalf of the Developer for damages caused by the failure to timely construct the Improvements, it being recognized that the failure to construct the Improvements on the Unit would result in an adverse impact to surrounding Units.

**Section 4.05 Architectural Standards.** The ARC is hereby authorized to promulgate and amend or modify from time to time written rules and regulations governing policies, guidelines and minimum requirements to be satisfied with respect to the construction, location, landscaping and design of all Improvements on any Unit, the content and manner in which plans and specifications and other documentation and information concerning the construction of any dwelling or other Improvements on a Unit are to be submitted to and approved by the ARC, and any other matters affecting the construction, alteration, repair or maintenance of any Improvements on any

Unit. The rules and regulations adopted by the ARC shall be in addition to the provisions and requirements set forth in this Declaration and shall be binding upon and enforceable against all Unit Owners.

**Section 4.06 Approval of Plans and Specifications.**

(a) In order to preserve the architectural and aesthetic appearance and the natural setting and beauty of the condominium, to establish and preserve a harmonious design for the condominium and to protect and promote the value of the condominium, the units and all improvements thereon, no improvements of any nature shall be commenced, erected, installed, placed, moved onto, altered, replaced, relocated, permitted to remain on or maintained on any unit by any owner, other than Developer, which affect the exterior appearance of any improvements on the Unit unless plans and specifications therefor have been submitted to and approved by the ARC in accordance with the terms and provisions of section 4.06(b) below. Without limiting the foregoing, the construction and installation of any further improvements on the unit shall not be undertaken, nor shall any exterior addition or change or alteration be made (including, without limitation, painting or staining of any exterior surface) to any improvements, unless the plans and specifications for the same have been submitted to and approved by the ARC in accordance with the terms and provisions of section 4.06(b) below.

(b) The ARC is hereby authorized and empowered to approve all plans and specifications and the construction or alteration of all Improvements on any part of the Condominium. Prior to the commencement of construction of any Improvements on any Unit, the Owner thereof shall submit to the ARC plans and specification and related data for all such Improvements, which shall include two copies of each of the following, if applicable:

- (i) Plans and specifications;
- (ii) Color samples and specifications of all exterior materials and finishes or proposed changes to exterior materials and finishes;
- (iii) Site development plan prepared by a licensed surveyor if different from the site location shown on the Plan; and
- (iv) Such other plans, specifications or other information or documentation as may be required by the rules and regulations of the ARC.

(c) The ARC shall, in its sole discretion, determine whether the plans and specifications and other data submitted by any Owner for approval are acceptable. One copy of all plans, specifications and related data so submitted to the ARC shall be retained in the records of the ARC and the other copy shall be

returned to the Owner submitting the same marked "approved," "approved as noted" or "rejected." The ARC will charge a fee, initially in the amount of \$250.00, to be paid by each Owner who submits plans and specifications to the ARC for approval, which fee shall be sufficient to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys retained in order to approve such plans and specifications and to monitor and otherwise enforce the terms hereof. The ARC may increase the fee from time to time as needed. Notwithstanding anything provided herein to the contrary, an Owner may, without the necessity or requirement that ARC approval or consent be obtained, make interior improvements or alterations within his dwelling that do not affect exterior appearance of the dwelling or Improvement in any way.

(d) The ARC shall have the right to disapprove any plans and specifications upon any ground which is consistent with the objectives and purposes of this Declaration, including purely aesthetic considerations, any failure to comply with any of the provisions of this Declaration or the rules and regulations of the ARC, failure to provide requested information, objection to exterior design, appearance or materials, objection on the ground of incompatibility of any such proposed Improvement or alteration with the scheme of development proposed for the Condominium, objection to the location of any proposed Improvements on any such Unit, objection to the landscaping plan for such Unit, objection to the color scheme, finish, proportions, style of architecture, height, bulk or appropriateness of any Improvement or any other matter which, in the sole judgment of the ARC, would render the proposed Improvement inharmonious with the general plan of development contemplated for the Condominium. The ARC shall have the right to approve any submitted plans and specifications with conditions or stipulations by which the Owner of such Unit shall be obligated to comply and must be incorporated into the plans and specifications for such Improvements. Approval of plans and specifications by the ARC for Improvements to one particular Unit shall not be deemed an approval or otherwise obligate the ARC to approve similar plans and specifications or any of the features or elements for the Improvements for any other Unit within the Condominium.

(e) The ARC shall have forty-five (45) days after the physical receipt of the plans and specifications and other required materials to "approve," "approve as noted" or "reject" the request. In the event the ARC fails to approve, or "approve as noted," in writing any such proposed plans and specifications within forty-five (45) days after such plans and specifications have been submitted, then the plans and specifications so submitted will be deemed to have been disapproved.

(f) Any revisions, modifications or changes to any plans and specifications previously approved by the ARC must be approved by the ARC in the same manner specified above.

(g) If construction of any approved Improvement has not substantially commenced (by clearing and grading, pouring of footing and otherwise commencing framing and other related construction work) within one (1) year of approval by the ARC of the plans and specifications for such Improvements, then no construction may be commenced (or continued) on such Unit and the Owner of such Unit shall be required to resubmit all plans and specifications for any such Improvements to the ARC for approval in the same manner specified above.

(h) Any approval of plans and specifications by the ARC pursuant to this Section 4.06 shall not be construed in any respect as a representation or warranty of the ARC, the Developer, or the Association that such plans are in conformity with any applicable rules, regulations, and requirements of any governmental authorities or that any such plan or the dwelling based thereon is architecturally sound or meets any standards of engineering compliance or is properly designed but is rather for aesthetics concerns only. It shall be the responsibility of each Owner who submits any such plans to the ARC to satisfy himself as to such conformity with all other requirements and proper design.

(i) Before any construction of the Improvements to be constructed on the Unit in the Condominium, other than those by the Developer, begins, a \$2,500.00 road repair deposit must be paid to the Association. If the road shoulders and roads have not been damaged during construction, in the sole opinion of the ARC, the deposit, or a portion thereof, will be refunded.

(j) All construction or alterations of Improvements, once begun, must be completed within twelve (12) months.

**Section 4.07 Construction Without Approval.** If (a) any Improvements, other than those constructed by the Developer, are initiated, installed, maintained, altered, replaced or relocated on any Unit without ARC approval of the plans and specifications for the same, or (b) the ARC shall determine that any approved plans and specifications for any Improvements or the approved landscaping plans for any Unit are not being complied with, then, in either event, the Owner of such Unit shall be deemed to have violated this Declaration and the ARC shall have the right to exercise any of the rights and remedies set forth in Section 4.10 below.

**Section 4.08 Inspection.** The ARC, the Association, or any agent, employee or representative thereof may at any reasonable time and from time to time enter upon and inspect any Unit or any Improvements being constructed thereon in order to determine whether the approved plans and specifications therefor are being complied with. Any such entry shall not be deemed to be a trespass or any other wrongful act by the ARC.

**Section 4.09 Limitation of Liability.** Notwithstanding anything provided herein to the contrary, neither Developer, the ARC, the Association, nor any agent, employee, representative, member, shareholder, partner, joint venturer, officer or director thereof, shall have any liability of any nature whatsoever for any damage, loss or prejudice suffered which may be claimed, paid or incurred by any Owner or any other person on account of (a) any defects in any plans and specifications submitted, reviewed or approved in accordance with the provisions of this Article IV, (b) any defects, structural or otherwise, in any work done according to such plans and specifications, (c) any failure to approve or disapprove any plans, drawings, specifications or other data submitted by any Owner for approval pursuant to the provisions of this Article IV, (d) any construction or performance of any work related to such plans, drawings and specifications, (e) any bodily injuries (including death) to any Owner, Occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of any such Owner or Occupant, or any damage to any Improvements or the personal property of any Owner, Occupant or his family members, guests, employees, servants, agents, invitees or licensees of such Owner or Occupant, which may be caused by, or arise as a result of any defect, structural or otherwise, in any Improvements or the plans and specifications therefore or any past, present or future soil and/or subsurface conditions, known or unknown (including, without limitation, underground mines, tunnels or other geological formations or conditions on or under any Unit) and (f) any other loss, claim, damage, liability or expense, including court costs and attorneys' fees, suffered, paid or incurred by any Owner or Occupant arising out of or in connection with the use and occupancy of any Unit or any Improvements situated thereon.

**Section 4.10 Enforcement and Remedies.** In the event any of the provisions of this Article IV are breached or are not otherwise being complied with in all respects by any Owner or Occupant or his family members, guest, invitees, agents, employees or contractors of any Owner or Occupant, then the ARC and the Association shall each have the right, but not the obligation, at their option to (a) enjoin any further construction on any Unit and require the removal or correction of any work in place which does not comply with the plans and specifications approved by the ARC for such Improvements, and/or (b) through their designated agents, employees, representatives and independent contractors, enter upon such Unit and take all action necessary to extinguish such violation or breach. All costs and expenses incurred by the ARC or the Association in enforcing any of the provisions of this Article IV, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved in the correction of nonconforming work, the completion of uncompleted work or in any judicial proceeding, together with any other costs or expenses incurred by the ARC or the Association in causing

any Owner or such Owner's contractors, agents or invitees to comply with the terms and provision of this Article IV, shall be paid by such Owner, shall constitute an individual Assessment to such Owner and, if the same is not paid when due, shall become a lien on the Unit as provided for in Article V below and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the ARC and the Association set forth herein shall not be deemed exclusive of any other rights and remedies which the ARC or the Association may exercise at law or in equity or hereunder.

**Section 4.11 Voting Requirements.** Notwithstanding anything contained herein to the contrary, unless a specific voting requirement in excess of a simple majority is required for either a vote of the Board of Directors, the ARC, or a vote of Members, any such voting requirements shall be construed to require only a simple majority vote.

## **ARTICLE V**

### **ASSESSMENTS**

**Section 5.01 Liability, Lien and Enforcement.** The Association is given the authority to administer the operation and the management of the Condominium Property, it being recognized that the delegation of such duties to one entity is in the best interest of the Owners of all Units. To provide the funds necessary for such proper operation, the Association is hereby granted the right to make, levy, and collect annual assessments against the Owners of all Units to pay Common Expenses, Limited Common Expenses, and such other expenses which the Association is authorized to incur under the terms and conditions of this Declaration. During the time in which the Developer owns all the Units then the Association shall be run entirely by the Developer. Additionally, any assessments which would be typically be paid to the Association may, at the Developer's election, be paid directly by the Developer or Developer's Lender through its reserve account. The Association is also authorized to make, collect, and levy assessments against Unit Owners for reimbursement of expenses the Association is caused to incur by reason of any act of the Unit Owner, Occupant, family members, guests, invitees or tenants for damages of any nature and for penalties for rules violations. In furtherance of said grant of authority to the Association to make, levy and collect assessments to pay the costs and expenses for the operation and management of the Condominium Property, the following provisions shall be effective and binding upon the Owners of all Units.

## **Section 5.02 Assessments.**

**The Developer reserves the right to pay all assessments or Common Expenses Areas directly until the Developer has conveyed a Unit to an unrelated third party in an arm's length transaction.**

(a) All assessments for the payment of Common Expenses shall be levied annually against the Owners of all Units, and unless specifically otherwise provided for in this Declaration, each Owner of a Unit and his Unit shall bear the same percentage share of such assessment as the percentage share of ownership for the undivided interest in the Common Elements appurtenant to said Unit; provided, however, the Association shall have the right to elect not to make an assessment for Common Expenses or require reserves for such initial periods of time as described in Section 13.03(c) below. The assessments for Common Expenses shall be payable over the course of the year in advance monthly installments commencing on the date of purchase of a Unit or in such other installments and at such times as may be determined by the Board of Directors of the Association.

(b) Assessments for the payment of Limited Common Expenses and improvements on the Limited Common Elements may be levied against the Owners of those Units to which the Limited Common Elements are appurtenant if the Board of Directors determines that it is the most equitable method of assessment for Limited Common Expenses. The Limited Common Expenses may also be included in Common Expenses and assessed in the same proportion as Common Expenses if the Board of Directors chooses this method of assessment. The assessments for Limited Common Expenses, if any, shall be payable in such installments and at such times as may be determined by the Board of Directors of the Association.

(c) The Association may assess the Owners of Units for the repair and maintenance of various components of the Common Elements or Limited Common Elements based on the usage of any component of the Common Elements or Limited Common Elements if the same can be measured with a degree of accuracy. Such assessments shall not be included in the assessment for Common Expenses but shall be payable in such manner and at such times as may be determined by the Board of Directors of the Association.

**Section 5.03 Required Reserve Funds and Working Capital Fund.** Assessments levied by the Board of Directors of the Association shall include an adequate reserve fund of at least ten percent (10%) for maintenance, repair and replacement of those Common Elements that must be replaced or repaired on a periodic basis and shall be payable in regular installments rather than by special assessments. Special assessments may be

levied by the Board in the event that there is insufficient money in the reserve fund for the maintenance, repair or replacement of any designated portion of the Common Elements.

A working capital fund shall be established, and each Unit Owner purchasing a Unit from the Developer shall pay a one-time assessment equal to two (2) months' assessment at the time of closing of the purchase of the Unit to be used by the Association as working capital or held in reserves as the Board shall determine. The Developer is prohibited from using the working capital funds to defray any of its expenses, assessments, or construction costs, however, the Developer may be reimbursed for Association startup expenses and items paid for by Developer, such as prepaid insurance, deposits and service contracts.

**Section 5.04 Annual Budget.** Within sixty (60) days prior to the beginning of each calendar year, the Board of Directors of the Association shall adopt a proposed annual budget for such calendar year, and such budget shall project the amount of funds for the forthcoming year which may be required for the proper operation, management and maintenance of the Condominium Property, including reasonable allowances for contingencies and reserves therefor, in accordance with the Law and this Declaration. Said budget shall take into account any projected anticipated income which is to be applied in reduction of the amounts required to be collected as an assessment each year. Copies of said budget shall be made available to each Unit Owner upon request.. Unless a majority of the Unit Owners present in person or by proxy at a meeting reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the budget for the last year shall continue in effect until such time as a new budget is ratified. If the budget is ratified the assessment for said year shall be established based upon such budget.

Should the Board of Directors at any time determine, in the sole discretion of said Board of Directors, that the assessments levied are or may prove to be insufficient for any reason, including emergencies and non-payment of any Owner's assessment, the Board of Directors shall have authority to levy such additional assessments as it shall deem necessary in accordance with the applicable provisions of the Condominium Documents and the Law.

**Section 5.05 Omission of Assessment.** The omission by the Association, before the expiration of any year, to fix the assessments for that or the next year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay assessments or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

**Section 5.06 Detailed Records.** The Association shall keep detailed, accurate records in chronological order of the receipts and expenditures affecting the Common Elements, specifying and itemizing the maintenance and repair expenses of the Common Elements and any other expenses incurred. Records and vouchers authorizing the payments involved shall be available for examination by any Unit Owner or his representative, or by holders, insurers and guarantors of Mortgages secured by Units during regular business hours in a location designated by the Board of Directors in the county where the management company is located or in the County where the Condominium is located.

**Section 5.07 Payment of Common Expenses by Unit Owners.** All Unit Owners shall be obligated to pay any assessment for Common Expenses adopted by the Board of Directors pursuant to the terms of this Article V. No Unit Owner may exempt himself from liability for his contribution toward Common Expenses by waiver of the use or enjoyment of any of the Common Elements, or by abandonment of his Unit. No Unit Owner shall be liable for the payment of any part of the Common Expenses assessed against his Unit subsequent to a sale or other conveyance by him of such Unit. The purchaser of a Unit shall be jointly and severally liable with the selling Unit Owner for all unpaid assessments against the latter up to the time of conveyance without prejudice to the purchaser's right to recover from the selling Unit Owner the amounts paid by the purchaser therefor. Whenever any Unit may be sold or mortgaged by the Owner thereof, which sale shall be concluded only upon compliance with the other provisions of this Declaration, the Association, upon written request of the Owner of such Unit, any person having executed a contract for the Unit, or a lender considering the loan of funds to be secured by the Unit shall furnish to the requesting party (within any time period prescribed by the Law) a statement verifying the status of the payment of any assessment which shall be due and payable to the Association by the Owner of such Unit and any other information required by the Law. Any purchaser or proposed Mortgagee may rely upon such statement in concluding the proposed lease, purchase or mortgage transaction and the Association shall be bound by such statement. In the event that a Unit is to be sold or mortgaged when any assessment is outstanding against the Owner of such Unit and such assessment due the Association is in default, the purchase or mortgage proceeds shall first be paid by purchaser or mortgagee to the payment of any delinquent assessment or installment due the Association before the payment of the proceeds to or on behalf of the selling Unit Owner.

**Section 5.08 Default in Payment of Assessments.**

(a) The obligation to pay any assessment or installment thereof due the Association shall be in default if such assessment or any installment thereof is not

paid to the Association on or before the due date for such payment. When in default, the delinquent assessment or delinquent installment due the Association shall bear interest at the rate established by the Board of Directors not to exceed the maximum legal rate on judgments allowed by law or 8%, whichever is greater, until such delinquent assessment or installment and all interest due thereon has been paid in full. The Association shall have a lien against Units for delinquent assessments. Said lien shall secure and does secure the monies due for all assessments then or thereafter levied against the Unit, and such lien shall also secure interest, if any, which may be due on the amount of any delinquent assessment owing the Association. Said lien shall also secure all costs and expenses, including late penalties, interest, and reasonable attorneys' fees incurred by the Association in collecting delinquent assessments and enforcing the lien upon said Unit and its appurtenant undivided interest in the Common Elements. The lien granted to the Association may be foreclosed in the same manner as real estate mortgages in the State of Mississippi. The lien granted to the Association shall further secure such advances for taxes and payment on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association in order to protect and preserve its lien, and the Association shall further be entitled to interest at the maximum legal rate on judgments allowed by law or 8% whichever is greater, on any such advance made for such purpose. All persons, firms, or corporations who shall acquire, by whatever means, any interest in the ownership of any Unit or who may be given or acquire a mortgage, lien, or other encumbrance thereon are hereby placed on notice of the lien rights granted to the Association and shall acquire such interest in any Unit expressly subject to the lien.

(b) The lien herein granted to the Association shall be effective from and after the time of recording in the Office of the Chancery Clerk of Lafayette County, Mississippi, a notice of assessment which notice shall include the amount of such assessment, such other charges as may be permitted by the Law and/or the Condominium Documents, a description of the Unit against which the lien has been recorded, and the name of the record owner of the Unit. Such lien shall include only assessments which are due and payable when the action to enforce the lien is commenced plus late penalties and penalties imposed by the Association for Rules and Regulations violations, interest, costs, reasonable attorneys' fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided.

**Section 5.09 Election of Remedies.** Institution of a suit at law to collect payment of any delinquent assessments shall not be deemed to be an election by the Association which shall prevent its thereafter seeking enforcement of the collection by foreclosure of any sums remaining owing to it; nor shall proceeding by foreclosure to effect such collection be deemed to be an election precluding the institution of a suit at law to collect any sum then

remaining owing to the Association. The Association shall be entitled to bid at any sale held in connection with the foreclosure of the assessment lien and may apply as a cash credit against its bid all sums secured by the lien enforced.

## **ARTICLE VI**

### **MAINTENANCE AND OPERATION OF THE CONDOMINIUM**

#### **PROPERTY**

##### **Section 6.01 The Association's Obligation to Repair.**

The Association, acting through the Board of Directors, shall be responsible for the maintenance, repair, and replacement of the following, the cost of which shall be charged to all Unit Owners as either a Common Expense or to the Unit Owner for whose Unit the cost was incurred as a Limited Common Expense:

- (i) The Common Elements;
- (ii) Incidental damage caused to Improvements located on a Unit by any work done by the Association;
- (iii) All underground storm, drainage, sewer, water, detention or other lines or systems underneath the Property (plans of which are on file with the City of Oxford, MS and Lafayette County, MS Planning Departments); and
- (iv) Any other portion of the Condominium Property that the Board of Directors determines should be maintained by the Association, for which the Board may make a special assessment against the Unit being maintained.

This Section 6.01 shall not relieve a Unit Owner of liability for damage to the Common Elements or the Improvements located on a Unit of another person, adjacent property, or any other property caused by the Unit Owner, Occupant, or family members, guests, invitees, lessees or licensees as a consequence of an accident or the negligence, recklessness or willful misconduct of such person. The cost of repair for any damage so caused by the Unit Owner, Occupant, family members, guests, invitees, lessees or licensees, shall be a special assessment against the Unit Owner.

##### **Section 6.02 Each Owner's Obligation to Repair.**

- (a) Except for those portions of the Condominium Property which the Association is required to maintain and repair, each Owner shall, at such Owner's expense, maintain such Owner's Unit, any Improvements located on the Unit, and any Limited Common Elements in good tenantable condition and repair, and shall

be responsible for the repair, maintenance, and replacement, of all Improvements constructed on the Unit, including electrical, gas and water lines and sanitary and storm water facilities located within the boundary of and serving only his, her, or its Unit. Each Unit Owner's responsibilities include:

(i) The Limited Common Elements assigned to his Unit, if any;

(ii) The entirety of the dwelling and any other Improvements located or built on the Unit or Limited Common Elements not maintained by the Association, including, but not to be limited to the foundation systems, exterior windows and doors, brick, brickwork, siding, shingles, roofing systems, drainage systems, adjacent patios and balconies within the shown footprint and the airspace so encompassed, as well as all interior finishes, including, but not limited to the plumbing, heating, air conditioning and electrical systems serving only that Unit or the buildings and Improvements whether located within or without the boundary of that Unit, including the fuse boxes, wiring, flues, and all other plumbing, electrical, or mechanical systems.

(b) Each Unit Owner agrees as follows:

(i) To perform all maintenance, repairs, and replacements which are his obligations under subparagraph (a) of this Section 6.02;

(ii) To pay all utilities as herein provided and all taxes levied against his Unit;

(iii) Not to make, or cause to be made, repairs to any plumbing, heating, ventilation, or air conditioning systems required to be maintained by him under subparagraph 6.02(a)(ii) except by licensed plumbers, electricians, or heating and air conditioning professionals;

(iv) Not to make any addition or alteration to the Unit or to the Common Elements or not to do any act that would impair the structural soundness, safety, or overall design scheme of any part of the Condominium Property or that would impair any easement or right of a Unit Owner without the prior written consent of the Association and all Unit Owners affected thereby;

(v) Not to make any alteration, addition, improvement, decoration, repair, replacement, or change to the Common Elements, or to any outside or exterior portion of the Improvements located on a Unit without the prior written consent of the Association and the ARC; provided that if such consent is granted, the Unit Owner shall use only a licensed and insured contractor approved by the Association, who shall comply with all

Rules and Regulations with respect to the work which may be adopted by the Association, and the Unit Owner shall be liable for all damages to another Unit or to the Common Elements caused by any contractor employed by such Unit Owner or by the subcontractors or employees of such contractor, whether said damages are caused by negligence, accident, or otherwise; and

(vi) To promptly report to the Association any defects or needed repairs for which the Association is responsible. The Association shall have no responsibility whatsoever for any maintenance issue for which the Association has not received notice.

(vii) Not to make any alteration, addition, or improvement to a Unit that would decrease the square footage allowed on another Unit, encroach on another Unit or the Limited Common Element of another Unit. Each Unit owner agrees to have all plans, dimensions, locations, size, and square footage approved by the City of Oxford's requisite building, planning and development departments prior to the construction of any improvements.

(c) The Association or the ARC shall be obligated to answer any request by a Unit Owner for any required approval of a proposed addition, alteration or Improvement (by painting or otherwise) within forty-five (45) days after such request, but its failure to do so within the stipulated time shall not constitute a consent of the Association to the proposed addition, alteration or improvement. Any application to any governmental authority for a permit to make an addition, alteration or improvement in or to any Unit shall be executed by the Association, without, however, it incurring any liability on the part of the Board of Directors or any of them or the Association to any contractor, subcontractor or materialman on account of such addition, alteration or improvement, or to any person having any claim of injury to a person or damage to property arising therefrom. The review by the Association under this Section 6.02 shall in no way make the Association liable for any alterations, additions, or improvements by any Unit Owner. Rather, such review is for purposes of aesthetics and control only. The provisions of this Section 6.02 shall not apply to Units owned by the Developer until a deed for such Unit has been delivered to a purchaser other than Developer.

(d) The Association has the irrevocable right of reasonable access to each Unit whenever necessary for maintaining the Common Elements, for making emergency repairs necessary to prevent damage to the Common Elements or to another Unit and for servicing and reading utility lines, valves, conduits and meters, the cost of which shall be levied as a special assessment against the Unit.

**Section 6.03 Alterations, Additions, and Improvements by the Association.** Except in the case of loss or damage

to the Common Elements as contemplated by Article IX of this Declaration, the Association shall not make any material structural alterations, capital additions, or capital improvements to the Common Elements (other than for the purpose of replacing, restoring or rehabilitating portions of the Common Elements which is in accordance with the Declaration and which does not require expenditures of more than \$10,000, over and above any funds used from the reserve fund for that purpose) unless the same is authorized by the Board of Directors of the Association and ratified by the affirmative vote of the voting Members casting not less than seventy-five percent (75%) of the total votes of the Members of the Association present at any regular or special meeting of the Unit Owners called for that purpose at which a quorum is present and approved by a majority of the Mortgagees eligible to vote therefor. The cost of the foregoing shall be assessed against the Owners of Units as provided in Article V hereof, except as otherwise provided in this Section 6.03. Where any alterations or additions as aforesaid are exclusively or substantially exclusively for the benefit of the Unit Owners requesting the same, then the cost of such alterations or additions shall be assessed against and collected solely from the Unit Owners exclusively, or substantially exclusively, benefiting therefrom, and the assessment shall be levied in such proportions as may be determined to be fair and equitable by the Board of Directors of the Association. Where such alterations or additions exclusively, or substantially exclusively, benefit Unit Owners requesting the same, said alterations and additions shall be made only when authorized by the Board of Directors and ratified by not less than seventy-five (75%) of the total votes of the Unit Owners exclusively, or substantially exclusively, benefiting therefrom. Alterations, improvements or repairs of an emergency nature may be made upon authorization by a vote of the majority of the Directors available for consultation if the same is necessary and in the best interest of the Unit Owners. Nothing in this Section 6.03 shall relieve the Association from its obligation to maintain, repair, and replace the Common Elements of the Condominium Property as set forth in this Declaration and the Articles of Incorporation.

**Section 6.04 Utilities.** Each Unit Owner shall be required to pay all charges for utilities serving that Unit or Improvements on the Unit, including electricity, cable television, and telephone service, used or consumed in an Owner's Unit. The Association may enter into agreements with the utility providers or utility monitoring companies to effect cost savings such as meter averaging, utility use measuring or use of a utility billing service. The utilities serving the Common Elements only shall be separately metered and paid by the Association as a Common Expense. The Association shall have authority, however, with regard to any utility, to use a common meter, or to pay the cost of such utilities used or consumed in the Units and have the costs thereof apportioned among the Units based upon the Common Expense liability, a

measurement of the use of the utility in each Unit, or any other formula the Board may deem appropriate.

**Section 6.05 Dedication of Private Roads to Governing Authority.** Consistent with the voting procedures and percentages outlines in Section 6.03, herein, the Developer and the Association may elect to make the Private Roads and streets public should either the City of Oxford or Lafayette County, as the case may be at the time, agree to accept maintenance and repair of said roads.

## ARTICLE VII

### **RESTRICTIONS ON USE OF UNITS, COMMON ELEMENTS**

**Section 7.01 Rules and Regulations of the Association.** The Association is authorized to promulgate, amend, and enforce Rules and Regulations concerning the operation and use of the Condominium; provided that such Rules and Regulations are not contrary to, or inconsistent with, the Law and the Condominium Documents. A copy of the Rules and Regulations shall be furnished by the Board of Directors to each Unit Owner prior to the time they become effective. All present and future Unit Owners or Occupants or tenants and any person who uses any part of the Condominium Property in any manner, are subject to, and shall comply with the provisions of the Condominium Documents and the Rules and Regulations. The acquisition, rental or occupancy of a Unit or the use of any part of the Condominium Property by any person shall constitute his agreement to be subject to and bound by the provisions of the Condominium Documents and the Rules and Regulations, and such provisions shall be deemed to be enforceable as equitable servitudes and covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated in full in each and every deed of conveyance or lease thereof. The Association may promulgate enforcement provisions for violation of any Rule or Regulation by a Unit Owner, Occupant, family members, guests, invitees, lessees or renters, including the payment of penalties for such violations.

**Section 7.02 Restrictions on Use.** The use of the Condominium Property is subject to the following restrictions:

- (a) There shall be no obstruction of the Common Elements or Limited Common Elements, nor shall anything be kept or stored in the Common Elements or Limited Common Elements (except outdoor furniture appropriate to the character and appearance of the Condominium which may be utilized by Owners and Occupants on balconies and terraces, in the courtyards, and/or on the

sidewalks appurtenant to the Unit), nor shall anything be constructed on or planted in or removed from the Common Elements or Limited Common Elements, nor shall the Common Elements or Limited Common Elements in any other way be altered without the prior written consent of the Association.

(b) No immoral, improper, offensive, or unlawful use shall be made of any Unit, Improvements on a Unit, Common Elements, or any part thereof, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction over the Condominium Property shall be observed.

(c) No Owner shall permit anything to be done or kept on his Unit or in the Common Elements or Limited Common Elements which will result in any increase of fire or hazard insurance premiums or the cancellation of insurance on any part of the Condominium Property, or which would be in violation of any law. No waste shall be committed to the Common Elements or Limited Common Elements.

(d) No sign of any kind shall be displayed to the public view on or from any part of the Condominium Property, without the prior written consent of the Board of Directors of the Association, except signs temporarily used by an Owner or the Developer in the selling of the Units. No more than one (1) sign shall be allowed per Unit at any time for more than seventy-two (72) hours without the prior written approval of the Board of Directors of the Association.

(e) No noxious or offensive activities shall be carried on, nor shall any outside lighting or sound speakers or other sound producing devices be used, nor shall anything be done, on any part of the Condominium Property which in the judgment of the Board of Directors of the Association, may be or become an unreasonable annoyance or nuisance to the other Owners.

(f) No Owner shall cause or permit anything to be placed on the Common Elements immediately surrounding the Unit, without the prior written consent of the ARC or Board of Directors of the Association.

(g) No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed from or on any part of the Common Elements or Limited Common Elements. The Common Elements and Limited Common Elements shall be kept clear of rubbish, debris and other unsightly materials.

(h) No Owner or Occupant of a Unit may conduct any business, trade, garage sale, moving sale, rummage sale, or similar activity at or about the Condominium, whether within a Unit or otherwise, except that an Owner or Occupant may conduct business activities within the Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (ii) the business activity conforms to

all zoning and other legal requirements for the Condominium; (iii) the business activity does not, in the Board's reasonable judgment, generate any vehicular or pedestrian traffic or increase the number of vehicles being parked on the Condominium; (iv) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Condominium, as may be determined in the sole discretion of the Board and complies with applicable ordinances of the City of Oxford. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of compensation.

(i) No animal or pet shall be kept for commercial purposes nor be allowed to create or cause any disturbance or nuisance of any kind, and if an animal or pet does cause or create a nuisance or an unreasonable disturbance, said animal or pet shall be permanently removed from the Condominium Property within seven (7) days from the date the owner of the pet receives written notice from the Board of Directors to remove such animal or pet. The owner of any pet or animal shall be liable for any and all damage caused by such animal or pet to any part of the Condominium Property. Notwithstanding the foregoing, no pot bellied pigs, venomous snakes, or animals deemed vicious or dangerous by the Board may be brought onto or kept on the Condominium Property at any time.

(j) No structure of a temporary character, trailer, tent, shack, carport, garage, barn or other outbuilding shall be erected by any Owner, other than the Developer, on any portion of the Condominium Property, at any time, either temporarily or permanently, without the prior written approval of the ARC or the Board.

(k) The display or discharge of firearms or fireworks on the Condominium Property is prohibited; provided, however, that the display of lawful firearms on the Common Elements is permitted by law enforcement officers and also is permitted for the limited purpose of transferring firearms across the Common Elements to or from an Owner's dwelling so long as the firearm is not loaded and not carried in a threatening manner. The term "firearms" includes "B-B" guns, pellet guns and other firearms of all types, regardless of size.

(l) There shall be no mobile homes, motor homes, recreational vehicles, boats, trailers, campers, four-wheelers, or ATVs used, stored or maintained on the Condominium Property unless stored within a garage. Further, all equipment such as lawnmowers, tractors, tools, construction machinery and equipment of any nature must be kept from plane view of any street within the Property.

(m) Any vehicle which is inoperable shall be immediately removed from the Condominium Property. No Owner or Occupant shall repair or restore any vehicle, machinery or equipment of any kind upon or within any Unit or on any portion of the Common Elements, except for emergency repairs and then only to the extent necessary to enable the immediate movement thereof to a proper repair facility located outside of the Condominium.

(n) Each Unit shall be allowed one dwelling used for a single family residential purposes only and no trade or business of any kind may be carried on in or from Improvements constructed thereon. No Unit may be divided or subdivided into a smaller Unit without the prior written consent of the ARC and/or the Association; provided however that Developer reserves the right to alter the boundaries between Units and to increase or decrease the number of Units so long as the Developer owns the Units so altered. Any change in the boundaries between the Units shall be reflected by recording an amendment to this Declaration and a revision to the condominium plat.

**Section 7.03 Size and Height Restrictions and Limitations.** No a dwelling to be built on any Unit shall be less than 1,000 square feet of heated living area. The height of all Improvements shall be compatible with all other Improvements adjacent to such Unit. No dwelling shall exceed two and one-half (2 1/2) stories in height, as measured from the finished grade of the dwelling facing the Common Drive. Only one (1) dwelling may be built on each Unit and there shall be not detached garages or other similar structures on a unit.

**Section 7.04 Landscaping and Decorations.**

(a) Each Owner shall be responsible for the cost of installation and replacement of all landscaping in all yards of the Unit, but the Association may maintain all yards and installed landscaping at its discretion. The landscaping plan shall be submitted to the ARC for approval prior to installing or changing the plant materials.

(b) If the Association does not maintain the yards, no Owner shall allow the lawn grass on his or her Unit to grow to a height where it looks unkempt, in the sole discretion of the Association.

(c) Seasonal or holiday decorations (*e.g.*, Christmas trees, pumpkins, Easter decorations) shall be promptly removed from each Unit within fifteen days after such holiday.

(d) No more than two (2) potted plants, trees or shrubs shall be allowed on the front porch of any Improvement

**Section 7.05 Exterior Lighting.** All exterior lighting for Improvements, including, without limitation, free standing lighting and utility (e.g., flood) lights attached to a dwelling, must be of a design and in a location approved by the Board or if the Board shall so designate then the ARC.

**Section 7.06 Exterior Materials and Finishes.** No exterior materials and finishes may be changed except with approval of the Board or if the Board shall so designate the ARC. All wood surfaces utilized on the exterior of any dwelling or Improvement, including windows and doors, shall be painted or stained at all times. Prohibited exterior finish materials shall include particle board, plywood, vertical siding, simulated brick and any other materials as the ARC may from time to time determine.

**Section 7.07 Fences.** Except for fences installed by the Developer, there shall be no type of fence permitted on the Units or within the Property unless approved in writing by the ARC and/or the Board. In no event will a wood, "dog eared" type fence be allowed on the Property. No fences shall be used which are made from plastic, composite nor which exceed five (5) feet in height.

**Section 7.08 Windows, Window Treatments and Doors.**

(a) Reflective glass shall not be permitted on any portion of any dwelling or Improvement. No foil or other reflective materials shall be installed on any windows or used for sun screens, blinds, shades or other purposes.

(b) The ARC may adopt guidelines for the types of windows and materials from which windows may be allowed on any dwelling. Burglar bars or doors (including wrought iron doors) are not permitted. No aluminum or metal doors with glass fronts (e.g., storm doors) shall be allowed on any dwelling or Improvement. Appropriate window treatments shall be used on all windows. Sheets, bed linens, blankets, foil and paper or plastic bags are not appropriate window treatments.

(c) All window coverings, including but not limited to shades, curtains, sheers, drapes, blinds, etc., which are visible when looking at the exterior of the building shall be approved by the Board of Governors or if the Board shall so designate the ARC or an authority delegated by the Board. Notwithstanding the foregoing, any 2" white wood or faux wood blind may be used without prior approval. The Unit owner may use any other window covering for a window which is not in a "line of sight" a public road. The Board may alter the restrictions on window treatments through the Association Rules and Regulations.

**Section 7.09 Mailboxes.** Each Mailbox shall be in the style and design as approved by the Board or this ARC if so authorized by the Board. Each Unit Owner will be responsible for any replacement of its Mailbox.

**Section 7.10 Satellite Dishes and Antennae.** No satellite dishes shall be allowed on any Unit more than two (2) feet in diameter or projecting higher than five (5) feet above the roof line of the Improvements on the Unit. The satellite dish must not be visible from any private street within the Condominium or public street adjacent to the Condominium, and the location of such satellite dish must be approved by the Board or the ARC if so authorized by the Board. No radio antenna, radio receiver or other similar device or aerial shall be attached to or installed on any Common Element. No radio or television signals or other form of electromagnetic radiation or transmission shall be permitted to originate from any Unit or Improvement which may interfere with the reception of radio or television signals within the Condominium or any other real property situated in close proximity to the Condominium.

**Section 7.11 Driveways.** Driveways and sidewalks on a Unit shall be constructed in accordance with plans submitted to the ARC. Any driveway or sidewalk shall be considered a Limited Common Element for that Unit with the Unit Owner being responsible for the installation, maintenance, and repair of the driveways and sidewalks located on the Unit. However, in the case where two (2) or more Unit Owners share a driveway, parking area or sidewalk, then those Unit Owners shall be jointly and severally responsible for the installation, maintenance and repair of any common driveway, parking area or sidewalk.

**Section 7.12 Outdoor Furniture, Recreational Facilities and Clotheslines.**

(a) No furniture shall be placed, kept, installed, maintained or located in or on any portion of the Unit except on the porches.

(b) Only one (1) swing shall be allowed on a front porch.

(c) Only wood and composite tables and chair are allowed on front porches. No plastic, canvas, collapsible, folding, and/or temporary type of chair or table will be allowed on any front porches.

(d) Basketball backboards and goals are not allowed on any Improvements to a Unit, but may be located on a driveway or parking area so long as it does not encroach onto the Common Elements.

**Section 7.13 Construction of Improvements.**

(a) During the construction of any Improvements, the Units subject to such construction shall be maintained in a clean condition, free of debris and waste material, all unused construction materials shall be stored, to the extent practicable, out of view from any road. All construction trash, debris and rubbish on each Unit shall be properly disposed of outside the Condominium at least weekly, and any temporary or portable toilet will be placed out of view from any road. Used construction materials shall not be burned on-site. In no event shall any used construction materials be buried on or beneath any Unit or any other portion of the Condominium.

(b) During the construction of any Improvements, construction equipment and the vehicles of all contractors, subcontractors, laborers, materialmen and suppliers shall utilize off-street parking only, and enter the Unit on which such Improvements are being constructed from the driveway for such Unit.

(c) A maximum of one (1) sign, not exceeding 4 square feet in size and, may be posted on a Unit upon a single sign slab approved by the ARC, at a height not to exceed two (2) feet from the ground level advertising the Unit for sale, or during the construction of such dwelling, containing information identifying the builder of such dwelling. No other signage, banners, flags, or advertising posters shall be allowed without obtaining Board or ARC approval. The location of such signage shall be established by the Board or ARC but in no event shall any signage authorized by this section or which may be approved by the Board or ARC be attached, nailed or otherwise adhered to any tree or other plant life on a Unit.

(d) No construction trucks, equipment or machinery, including any trailers used for the transportation of construction equipment or machinery, shall be parked on any roads within the Condominium. Upon completion of construction of any Improvements, any construction machinery, tools and equipment, all unused construction materials and all trash, debris and rubbish shall be immediately removed from the Unit and such Unit shall be kept and maintained in a clean and uncluttered condition.

(e) All Improvements shall be constructed in compliance with any rules established by the Board or ARC, all applicable federal, state, county and local laws, ordinances, rules, regulations, and zoning and building code requirements. Each Owner shall be solely responsible for obtaining from the appropriate governmental authorities all necessary permits and licenses and otherwise paying all required fees for the construction of any Improvements on such Owner's Unit. Each Owner shall also be responsible for strict compliance with any rules established by the Board or ARC and all applicable watershed protection, soil erosion and other governmental requirements, both during and after completion of construction of any Improvements on such Owner's Unit.

(f) When any Owner submits to the ARC plans and specifications for construction of Improvements in accordance with Article IV above, the name of the building contractor selected by such Owner for construction of such Improvement shall also then be submitted to the ARC; however, if the identity of the building contractor is not known at that time, then the name of the building contractor will be submitted when determined prior to construction. The ARC shall have the right, in its sole discretion, to approve or disapprove of any building contractor so selected by such Owner. Each building contractor approved by the ARC in accordance with this section will be required to remit to the ARC damage/clean up deposit (the "Deposit") in an amount established by the Board or the ARC. Should such building contractor damage or fail to properly clean up the Condominium or Common Elements as required herein, or any supplemental rules or regulations promulgated by the Board or ARC, the Board or ARC may, in its sole discretion, initiate appropriate action to remediate any such condition at such building contractor's expense. The cost of any such remediation shall be deducted from the deposit and any amount expended by the Board or ARC in excess of the deposit in remediating such condition shall be billed to such building contractor. Within thirty (30) days of the completion of such Improvement (as evidenced by the issuance of the Certificate of Occupancy), the Board or ARC shall refund to such building contractor any unexpended portion of the deposit.

(g) The foregoing provisions contained in this Section 7.13 shall not apply to the Developer.

**Section 7.14 Swimming Pools.** Swimming pools exceeding 20,000 gallons will not be allowed. Outdoor hot tubs, reflecting ponds, saunas, whirlpools, lap pools and tennis courts may not be constructed, installed, and maintained on any Unit, Common Element, or Limited Common Element unless and to the extent the ARC gives its prior written approval of the plans for the same. Above-ground pools shall not be permitted in any circumstance.

**Section 7.15 Traffic Regulations.** All vehicular traffic on the roads in the Condominium shall be subject to the applicable provisions of the laws of the State of Mississippi and any city or county having jurisdiction thereof concerning operation of motor vehicles on public streets even though the road is private. The Association is hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including adopting reasonable safety measures and speed limits for any of the roads within any portion of the Condominium to the extent not inconsistent with the laws of the local government. The Association shall be entitled to enforce such Rules and Regulations by establishing such enforcement procedures as it deems appropriate, including levying fines for the violation thereof. In the event of any conflict between the provisions of the laws

of the State of Mississippi and the traffic rules and regulations promulgated by the Association, the more restrictive shall govern.

**Section 7.16 Compliance With Governmental Regulations.** Each Owner and Occupant shall at all times comply with all applicable laws, ordinances, statutes, rules, regulations, requirements and code provisions of the governmental authorities.

**Section 7.17 Variances.** The ARC, in its sole and absolute discretion, shall have the exclusive right to grant variances and exceptions with respect to the provisions of this Declaration with respect to any Unit. Any request for a variance or exception submitted to the ARC shall be in writing and, upon approval of the same by the ARC, shall be evidenced by a written document executed by either the chairman or vice chairman of the ARC. The provisions of Article IV above concerning meetings, a quorum of members, and the number of votes necessary to approve action taken by the ARC shall be binding upon the ARC in any matters regarding the granting of variances.

**Section 7.18 Lease of Units.** Entire Units may be leased by the Unit Owners; provided, however, that any such lease and the rights of any tenant thereunder are hereby made expressly subject to Condominium Documents in effect before and during the lease term and the power of the Association to prescribe reasonable rules and regulations relating to the lease and rental of Units and to enforce the same directly against such tenant or other Occupant by the exercise of such remedies as the Board deems appropriate; provided, however, that no restrictions shall be imposed which shall have the individual or cumulative effect of prohibiting or materially impairing the rental or lease of Units. This restriction on use shall be a covenant running with each Unit, creating a burden on each single Unit and Unit Owner for the benefit of every other Unit and Unit Owner. Notwithstanding anything contained in this Section to the contrary, each Owner shall be responsible for the actions of his Occupants and tenants and nothing herein or in any such lease shall relieve an Owner of his obligations under the Condominium Documents. Each Unit Owner who has or who shall lease his Unit irrevocably empowers and authorizes the Association or its managing agent to enforce the Rules and Regulations of the Association and to terminate the lease of and evict any tenant who fails to comply with said Rules and Regulations or who provides other sufficient cause for termination of the lease and eviction in accordance with the laws of the State of Mississippi, the Condominium Documents, or any contract for lease. The Association, the Board or its Managing Agent shall not become liable to any Unit Owner or tenant or other party for any loss of rents or other damages resulting from the reasonable exercise of the provisions of this Section. The provisions of this Section shall not be applicable to the Developer who is irrevocably empowered without any limitation at all times,

whether for permanent or temporary occupancy to sell, lease or rent Units for any period and under any terms to any lessees or purchasers or transferees with the right to take any action necessary to consummate the sale or rental of said Units, including, but not limited to, the right to maintain model Units, post signs, use the Common Elements and show Units to prospective Occupants. Sales and rental office signs and all items pertaining to the rental or sale of Units by the Developer shall not be considered Common Elements and shall remain the property of the Developer. The Association may request and receive a copy of any sublease or rental agreement. The Association may request the name(s) of all tenants including the tenants' family members who will occupy the unit. No lease of a Unit shall be for an initial term less than 30 days, and the Association may establish a maximum allowable lease term. The Association may not require that a prospective tenant be approved by the Association and/or its agent(s), including but not limited to meeting creditworthiness standards.

**Section 7.19 Right of Access.** Each Unit Owner grants a right of access to his Unit to the Association, and any other person authorized by the Association for the purpose of making inspections and for the purpose of correcting any condition originating on his Unit and threatening other Units or Common Elements or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other Common Elements within his Unit, if any, or to correct any condition which violates the provisions of any Mortgage covering another Unit, or to enforce any provision of the Condominium Documents, provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Unit Owner. In case of an emergency, such right of entry shall be immediate whether the Unit Owner is present at the time or not. To the extent that damages inflicted on the Common Elements or any Unit through which access is taken, the Unit Owner or the Association, if it caused the same, shall be liable for the prompt repair thereof. Notwithstanding anything herein, a Unit Owner does not have any right of access inside a dwelling, building or the Improvements of another Unit Owner without the Unit Owner's express written permission.

**Section 7.20 Limitation of Liability.** The Association shall not be liable for any failure of water or power supply, telephone, security, fire protection or other service to be obtained by the Association or paid for out of the Common Expense funds, for problems resulting from the operation or lack of operation of sewer lines servicing the Condominium Property, or for injury or damage to a person or property caused by the natural elements or resulting from electricity, water, snow or ice which may leak or flow from any portion of the Common Elements or from any wire, pipe, drain, conduit, appliance or equipment, however, this provision does not relieve the

Association from maintenance responsibility or for damage to the Units arising from or related to water intrusion from the Common Elements on account of maintenance or lack thereof. The Association shall not be liable to the Owner of any Unit for loss or damage, by theft or otherwise, of articles which may be stored upon any of the Common Elements. No diminution or abatement of the Common Expense assessments, as herein elsewhere provided, shall be claimed or allowed for any reason, specifically including, for inconvenience or discomfort arising from the making of repairs or improvements to the Common Elements or to any Unit, or from any action taken by the Association to comply with any law or ordinance or with the order or directive of any municipal or other governmental or judicial authority or for the dispossession of the Unit Owner by reason of fire or other casualty, except to the extent covered by insurance.

**Section 7.21 Abatement of Violations.** The violation of any Rule or Regulation adopted by the Board of Directors of the Association or breach of the provisions of the Condominium Documents, shall give the Developer, the Association or any Unit Owner the right, in addition to any other right or remedy elsewhere available, to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach. All expenses of such actions or proceedings against a defaulting Unit Owner, including court costs, attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the highest lawful rate on judgments until paid, shall be charged to and assessed against such defaulting Owner, and the Association shall have a lien for all of the same upon the Unit of such defaulting Owner, upon all of his additions and improvements thereto and a security interest under the Mississippi Uniform Commercial Code upon all of his personal property in his Unit or located elsewhere on the Condominium Property. Nothing herein contained shall prevent an Owner from maintaining such an action or proceeding against the Association and the expense of any action to remedy a default of the Association shall be a Common Expense if a court of competent jurisdiction finds the Association to be in default as alleged in such action or proceeding.

**Section 7.22 Failure of the Association to Insist on Strict Performance; No Waiver.** Failure of the Association to insist in any one or more instances upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment from the future performance of such term, covenant, condition or restriction, but such term, covenant, condition or restriction shall remain in full force and effect. The receipt by the Association of any assessment from an Owner with knowledge of the breach of any covenant hereof shall not be deemed to be a waiver of such breach, and no

waiver by the Association of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board of Directors of the Association.

**Section 7.23 Development Rights to Use by Developer.**

Subject to the rights of the Mortgagees hereunder, neither the Owners nor the Board of Directors of the Association nor their use of the Condominium Property or application of this Declaration shall interfere with the Developers' completion of the contemplated improvements or sales of the Units in the Condominium. Subject to the rights of the Mortgagees hereunder, the Developer may make such use of the unsold Units and the Common Elements as may facilitate such completion and sale, including, but not limited to, maintenance of a sales office, management office and model Units, the showing of the Condominium Property and the Units therein, the display of signs, advertising materials, balloons and other promotional items thereon and therein. These special developer rights exist so long as Developer holds any Unit in the Condominium for sale in the ordinary course of business. The Developer expressly reserves the right to lease the Improvements on any Unit which it may own in the Condominium Property on such terms as it may deem proper and desirable and may transfer Units subject to such lease.

**ARTICLE VIII**

**RIGHTS OF MORTGAGEES**

**Section 8.01 Notification of Mortgagees Required.** Any Mortgagee who properly notifies the Association in accordance with Section 8.04 below, shall have the right to be given written notification by the Association of (a) any sixty (60) day default by the Owner of the Unit covered by the Mortgage in the payment of assessments or in any other provision of the Condominium Documents; (b) any loss to or taking of the Common Elements if such loss or taking exceeds \$10,000; (c) damage to a Unit covered by the Mortgage if the amount of such damage exceeds \$5,000; (d) any condemnation of all or a portion of the Condominium Property; (e) a lapse or cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and (f) any proposed action that requires the consent of a specified percentage of Mortgagees.

**Section 8.02 Right of Inspection.** Mortgagees shall have the right to examine the books and records of the Association or the Condominium Property and to receive annual reports, other financial data, and, upon written request, an annual audited statement, within one hundred and twenty (120) days following the end of any fiscal year of the Association.

### **Section 8.03 Priority of Mortgagees.**

(a) Any lien which is or may be created hereunder upon any Unit, including, but not limited to, the lien created for assessments under Section 5.08 hereof and the right to foreclose the same is and shall be subject and subordinate to and shall not affect the rights of the holder of the indebtedness secured by any Mortgage upon such interest made in good faith and for value and recorded prior to the creation of the lien hereunder, provided that after the foreclosure of any such Mortgage there may be a lien created pursuant to Section 5.08 hereof on the interest of the purchaser as an Owner after the date of such foreclosure sale to secure all assessments hereunder. After the date of such foreclosure sale, said lien, if any, shall be claimed and shall have the same effect and be enforced in the same manner provided herein.

(b) No provision of this Declaration, the Articles, the Bylaws or the Rules and Regulations shall be construed to grant to any Unit Owner, or to any other party any priority over any rights of the Mortgagees of the Units pursuant to their Mortgages in the case of distribution to Unit Owners of the insurance proceeds or condemnation awards for losses or a taking of Units or the Common Elements or any portion thereof.

(c) As may be provided in the Law, all assessments, property taxes and other charges imposed by any taxing authority which may become liens prior to a Mortgage, shall be separately assessed against and collected on each Unit as a single parcel, and not on the Condominium Property as a whole.

(d) No breach of the covenants, conditions or restrictions herein contained shall defeat or render invalid the lien of any Mortgage made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or otherwise.

### **Section 8.04 Request for Protection by Mortgagees.**

Whenever the holder of any Mortgage desires the benefit of the provisions of this Article VIII to be applicable to it, it shall serve written notice of such fact upon the Association, by registered or certified mail, return receipt requested, identifying the Unit upon which it holds a Mortgage or identifying any Units owned by it, together with sufficient pertinent facts to identify any Mortgage which may be held by it. Said notice shall designate the place to which the notices are to be given by the Association to such Mortgagee. Should the Association send notice of any action requiring the affirmative vote of the Mortgagee, and the Mortgagee shall not respond within sixty (60) days from notice of such right, the Mortgagee shall be deemed to have given its implied consent to such action.

## ARTICLE IX

### CASUALTY LOSS AND INSURANCE

The insurance, other than title insurance, if any that shall be carried upon the Condominium Property shall be governed by the following provisions:

#### **Section 9.01 Responsibility of Owners; Separate Insurance Coverage.**

**IT IS THE INTENT THAT EACH UNIT OWNER PROVIDE ITS OWN INSURANCE FOR LIABILITY AND PROPERTY/CASUALTY JUST AS IF SUCH OWNER WERE INSURING A HOUSE BUILT ON A SUBDIVISION LOT. THE ASSOCIATION WILL NOT INSURE ANY OF THE OWNER'S IMPROVEMENTS OR PERSONAL PROPERTY.**

Each owner shall be responsible for maintaining, at the Owners expense, insurance coverage for loss or damage to the Improvements constructed on the Unit and all furnishings and personal property stored on the Unit, as well as insurance coverage against personal liability for injury to the person or property of another while on the Owner's Unit.

(a) The Owner of each Unit shall obtain an insurance policy, multi-peril type hazard insurance, including, but not limited to insurance for liability and property and casualty damage which may be caused by any Unit Owner or Occupant of the Unit or for any condition that may arise from the Unit in an amount not less than \$1,000,000. Proof of such insurance shall be provided to the Association at Closing of the Unit and thereafter at least annually, upon the request of the Association, which amount may be changed from time to time. Further, the Owner of each Unit may, at his expense, obtain insurance coverage for loss of or damage to any furniture, furnishings, personal effects, and other property belonging to such Owner. Risk of loss of or damage to any furniture, furnishings and personal property belonging to or carried on the person of the Owner, or which may be stored in any Unit, or in or upon Common Elements shall be borne by the Owner of each Unit. All furniture, furnishings and personal property constituting a portion of the Common Elements and held for the joint use and benefit of all Owners of Units shall be covered by such insurance as shall be maintained in force and effect by the Association as hereinafter provided. All insurance obtained by the Owner of each Unit shall, whenever such provisions shall be available, provide that the insurer waives its right of subrogation as to any claims against other Owners, the Association or Developer, and their respective Occupants, servants, agents, employees and guests.

(b) Any Owner who obtains an individual insurance policy covering any portion of the Condominium Property other than the Unit, any Improvements

located on the Unit, and personal property belonging to such Owner shall be required to file a copy of such individual policy or policies with the Association within thirty (30) days after the purchase of such insurance. In the event casualty insurance maintained by an Owner causes a decrease in the amount of the insurance coverage maintained by the Association for the benefit of all Owners on a casualty loss to the Condominium Property by reason of pro ration or otherwise, the Owner so maintaining such insurance shall be deemed to have assigned to the Association the proceeds collected on such policy for loss or damage to the Condominium Property and such proceeds shall be paid directly to the Association by the insurer. Any such insurance proceeds shall be applied and distributed by the Association in accordance with this Article IX.

**Section 9.02 Insurance to be Maintained by the Association.**

All insurance policies upon the Condominium Property shall be purchased by the Association from a fiscally responsible company authorized to do business in the State of Mississippi and shall have a minimum term of one year. The named insured shall be the Association individually and as agent for the Owners, without naming them, and as agent for their Mortgagees. Such policies shall provide that payments by the insurer for losses shall be made to the Association or the Insurance Trustee designated below, and all policies and their endorsements shall be deposited with the Association or the Insurance Trustee. Such policies shall also include a "condominium endorsement" which shall provide for recognition on any insurance trust agreement, waiver of the right of subrogation against Owners individually, that the insurance is not prejudiced by the act or neglect of individual Owners which is not in the control of such Owners collectively and that the policy is primary in the event the Owners have other insurance covering the same loss.

(a) Public Liability and Property Damage Insurance. The Association shall obtain and maintain at all times a comprehensive policy or policies of public liability and property damage insurance in such amount to be determined by the Association (but not less than \$1,000,000) and in such form as shall be required by the Association to protect said Association and the Owners of all Units which provide coverage for bodily injury and property damage resulting from the operation, maintenance or use of the Common Elements and for legal liability resulting from employment contracts to which the Association is a party. Any policy shall contain betterment coverage to insure improvements that may be made to any insured property or Improvement.

(b) Workmen's Compensation Insurance. The Association shall obtain and maintain at all times a policy or policies of workmen's compensation insurance to meet the requirements of the laws of the State of Mississippi.

(c) Fidelity Bonds. The Association shall obtain and maintain fidelity bonds for any person who either handles or is responsible for funds held or administered by the Association naming the Association as the obligee. The amount of the fidelity bond should cover the maximum funds that will be in the custody of the Association, but not less than the sum of three (3) months' assessments on all Units, plus the reserve funds of the Association.

(d) Directors and Officers Liability Insurance. The Association shall maintain Directors and Officers liability insurance in an amount to be determined by the Board of Directors.

(e) Other Insurance. The Association shall obtain and maintain such other insurance coverage as the Board of Directors of the Association, in its sole discretion, may determine from time to time to be in the best interest of the Association and the Owners of all Units.

**Section 9.03 Governing Provisions**. All insurance obtained and maintained by the Association as provided in Section 9.02 above shall be governed by the following provisions:

(a) All policies shall (i) comply with the hazard and casualty insurance requirements of the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association as they shall apply to condominium loans; and (ii) be written with a company licensed to do business in the State of Mississippi and holding a financial rating of Class V or better and a general policyholders rating of "A" or better by Best's Insurance Reports or other then comparable rating. To the extent that the provisions of this Declaration with respect to the maintenance of insurance shall conflict with the hazard and casualty insurance requirements of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, then the requirements of the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association shall control and such requirements shall be complied with by the Association.

(b) Exclusive authority to adjust all claims under the policies hereafter in force on the Condominium Property shall be vested in the Association or its authorized representatives.

(c) In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with the insurance purchased by the individual Owners or their Mortgagees.

(d) The Association shall be required to make every effort to secure insurance policies that will provide for the following:

(i) A waiver of subrogation by the insurer as to any claims against the Association, the Board of Directors, the Developer or the Owners;

(ii) An agreement by the insurer that the insurance coverage cannot be terminated or materially changed without thirty (30) days' prior written notice to the Association and the Mortgagee of each Unit;

(iii) The insurance coverage of any portion of a Unit, if any, will be secondary to that of the Unit Owner which has other insurance that covers the same loss; and

(iv) No act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery under the policy.

**Section 9.04 Premiums and Deductibles.** Premiums for insurance policies purchased by the Association shall be paid by the Association as a Common Expense; except that the amount of increase over the usual premium occasioned by the use, misuse, occupancy or abandonment of a Unit or its appurtenances or of the Common Elements by an Owner shall be assessed against that Owner. Any deductible incurred by reason of a loss or claim under any insurance policy purchased under this Article IX shall be paid by the Association, unless such loss or claim was caused by any Unit Owner, lessee or guest or invitee thereof or resulted from the use, misuse, occupancy, negligence or abandonment of a Unit or any portion thereof. In such event the Unit Owner from whose Unit the cause originated, will be responsible for the deductible under the Association's insurance policy.

**Section 9.05 Insurance Trustee.** The Association may engage the services of a bank or trust company authorized to do trust business in the State of Mississippi and having a capital and surplus of not less than \$50,000,000 to act on its behalf as an insurance trustee ("Insurance Trustee") and to receive and disburse the insurance proceeds in accordance with the provisions of this Declaration. In the event the lowest of two bids from reputable contractors for making all repairs required by any such loss shall exceed \$50,000, the Association, upon written demand of the Mortgagee of any Unit, shall engage the services of a bank or trust company to act as Insurance Trustee as aforesaid. The Association, as a Common Expense, shall pay a reasonable fee to said Insurance Trustee for its services rendered hereunder, and shall pay such costs and expenses as said Insurance Trustee may incur in the performance of any duties and obligations imposed upon it hereunder. Said Insurance Trustee shall be liable only for its willful misconduct, bad faith or gross negligence, and then for only such money which comes into the possession of said Insurance Trustee. Whenever the Insurance Trustee may be required to make distribution of insurance proceeds to Owners of Units and

their Mortgagees, as their respective interests may appear, or to any other party for repair, replacement or reconstruction of property, the Insurance Trustee may rely upon a certificate of the President and Secretary of the Association, executed under oath, which certificate will be provided to said Insurance Trustee upon request made to the Association. Such certificate is to certify unto said Insurance Trustee the name of the Owner of each Unit, the name of the Mortgagee who may hold a Mortgage encumbering each Unit, and the respective percentages of any distribution which may be required to be made to the Owner of any Unit, and his respective Mortgagee, as their respective interests may appear, or to certify the name of the party to whom payments are to be made for repair, replacement or reconstruction of all or a portion of the Condominium Property. The rights of the Mortgagee of any Unit under any standard mortgage clause endorsement to such policy shall, notwithstanding anything to the contrary therein or in any Mortgage contained, at all times be subject to the provisions hereof with respect to the application of insurance proceeds to reconstruction of the damaged Condominium Property; provided, however, that if the Association or the Insurance Trustee fails to perform all the conditions precedent required by the policy or policies of insurance, and fails to collect the amount of the loss within the time required by law, and the Mortgagee or Mortgagees are required to avail themselves of their rights under the standard mortgage clause to collect the proceeds of the policy or policies of insurance, any amount so collected through the efforts of said Mortgagee or Mortgagees shall be applied as directed by said Mortgagee or Mortgagees. No provision hereof shall entitle an Owner or any other party to any priority over a Mortgagee with respect to the distribution of any insurance proceeds with respect to such Unit.

**Section 9.06 Loss to Common Elements Only.** In the event of the loss of or damage to only Common Elements, real or personal, by reason of fire or other casualties, which loss or damage is covered by fire and casualty insurance, the proceeds paid to the Association or the Insurance Trustee, as the case may be, to cover such loss or damage shall be applied to the repair, replacement or reconstruction of such loss or damage. If the insurance proceeds are in excess of the cost of the repair, replacement or reconstruction of such Common Elements, then such excess insurance proceeds shall be paid by the Association or Insurance Trustee to the Owners of all Units, the distribution to be separately made to the Owner of each Unit and his respective Mortgagee, as their interests may appear, in such proportion that the share of such excess insurance proceeds paid to the Owner of each Unit and his Mortgagee shall bear the same ratio to the total excess insurance proceeds as the undivided interest in the Common Elements appurtenant to each Unit bears to the total undivided interest in the Common Elements appurtenant to all Units. If there is no insurance coverage for such loss or damage, or if it appears that the insurance proceeds covering the fire or casualty loss or damage

payable to the Association or the Insurance Trustee are not sufficient to pay for the repair, replacement or reconstruction of the loss or damage, or that the insurance proceeds when collected will not be so sufficient, then the Association shall pay, or shall deposit with the Insurance Trustee, as the case may be, a sum, which together with the insurance proceeds received or to be received, if any, will enable said Insurance Trustee to completely pay for the repair, replacement or reconstruction of any loss or damage, as the case may be. The monies to be so paid, or deposited by the Association with the Insurance Trustee, may be paid by the Association out of its reserve for replacement fund and if the amount in such reserve for replacement fund is not sufficient, or if the Board of Directors determines not to use such fund for said purpose, then the Association shall levy and collect an assessment against the Owners of all Units in an amount which shall provide the funds required to pay for said repair, replacement or reconstruction.

**Section 9.07 Loss to Common Elements and/or Improvements Located on the Units.** In the event of loss of or damage to Common Elements and/or any Improvements located on the Units by reason of fire or other casualty, which loss or damage is covered by the Association's blanket fire and casualty insurance, the proceeds paid to the Association or Insurance Trustee, as the case may be, to cover such loss or damage, shall be first applied to the repair, replacement or reconstruction of the Common Elements and any remaining insurance proceeds shall be applied to the repair, replacement or reconstruction of any Improvements on any Unit which may have sustained any loss or damage so covered. If the insurance proceeds are in excess of the cost of the repair, replacement or reconstruction of the Common Elements and the Units sustaining any loss or damage, then such excess insurance proceeds shall be paid and distributed by the Insurance Trustee to the Owners of all Units, and to their Mortgagees, as their respective interests may appear. Such distributions are to be made in the manner and in the proportions as are provided for the distribution of insurance proceeds under Section 9.06 above. If there is no insurance coverage for such loss or damage, or if it appears that the insurance proceeds covering the fire and casualty loss or damage payable to the Association or the Insurance Trustee, as the case may be, are not sufficient to pay for the repair, replacement or reconstruction of the loss or damage, or that the insurance proceeds when collected will not be sufficient, then the Board of Directors of the Association shall, based on reliable and detailed estimates obtained by it from competent and qualified parties, determine and allocate the cost of repair, replacement or reconstruction among the Common Elements and the Units sustaining any loss or damage. If the proceeds of said fire or casualty insurance, if any, are sufficient to pay for the repair, replacement or reconstruction of any loss of or damage to the Common Elements but are not sufficient to repair, replace or reconstruct any loss of or damage Units sustaining damage, then the Association shall levy and collect an

assessment from the respective Owners of the Units sustaining any loss or damage, and the assessment so collected from said Owners shall be deposited with the Insurance Trustee, so that the sum on deposit with said Insurance Trustee shall be sufficient to completely pay for the repair, replacement or reconstruction of all Common Elements and Units. In said latter event, the assessment to be levied and collected from the Owners of the Units shall be apportioned among such Owners in such manner that the assessment levied against each Owner of a Unit shall bear the same proportion to the total assessment levied against all of said Owners of Units sustaining loss or damage as the cost of repair, replacement or reconstruction of each Owner's Unit bears to the cost applicable to all of said Units sustaining loss or damage. If the fire or casualty insurance proceeds, if any, payable to the Association or the Insurance Trustee are not an amount which will pay for the complete repair, replacement or reconstruction of the Common Elements it being recognized that such insurance proceeds are to be first applied to the payment for repair, replacement or reconstruction of said Common Elements before being applied to the repair, replacement or reconstruction of any Unit sustaining loss or damage, then the cost to repair, replace, or reconstruct said Common Elements in excess of available fire and casualty insurance proceeds shall be levied and collected as an assessment from the Owners of all Units in the same manner as would be levied and collected had the loss or damage sustained been solely to the Common Elements and the fire or casualty insurance proceeds had been insufficient to cover the cost of repair, replacement or reconstruction. The cost of repair, replacement or reconstruction of each Unit sustaining loss or damage shall then be levied and collected by assessment against the Owners of the Units sustaining the loss or damage in the same manner as is above provided for the apportionment of such assessment between Owners of Units sustaining loss or damage.

**Section 9.08 Estimates of Repair; Plans and Specifications; Payment of Assessments.** In the event of loss or damage to Condominium Property, the Association shall, within sixty (60) days after any such occurrence, obtain reliable and detailed estimates of the cost of restoring damaged property to a condition as good as that which prevailed before such loss or damage. The estimate of repair shall be based upon the plans and specifications of the original Improvements, as reflected on Exhibit "C" to this Declaration as the same may from time to time be amended, or such other plans and specifications as may be approved by the Board of Directors of the Association, by all of the Owners of the damaged Units, and by not less than seventy-five percent (75%) of the Owners of all Units and their respective Mortgagees including the Owners of damaged Units. The Association shall be appointed as attorney-in-fact for each Unit Owner for the purpose of representing the Unit Owners in any proceeding, negotiation, settlement, or agreement arising from any loss or damage to the Condominium

Property. Such estimates are to contain and include the cost of any professional fees and premiums for such bonds as the Board of Directors of the Association may deem to be in the best interest of the membership of said Association. Whenever it shall appear that the insurance proceeds payable for such loss or damage will not be sufficient to defray the cost of repair, replacement or reconstruction thereof, the additional money required to completely pay for such repair, replacement or reconstruction of said loss or damage whether to be paid by all of the Owners of Units or only by the Owners of Units sustaining loss or damage, or both, as herein provided, shall be paid to the Association and deposited with the Insurance Trustee, if any, not later than thirty (30) days from the date on which the Association or the Insurance Trustee, as the case may be, shall receive the monies payable from the policies of fire and casualty insurance, unless otherwise delayed by the Board.

## **ARTICLE X**

### **CONDEMNATION**

**Section 10.01 Condemnation Considered a Casualty Loss.** The taking of a portion of a Unit or the Common Elements by eminent domain shall be deemed to be a casualty loss, and except as otherwise provided in Section 10.02 below, the awards for such taking shall be deemed to be proceeds from insurance on account of the casualty and shall be applied and distributed by the Association in accordance with the provisions of Article IX. Even though the awards may be payable to the Owners, the Owners shall deposit the awards with the Association or Insurance Trustee, as the case may be; and in the event of failure to do so, in the discretion of the Board of Directors of the Association, a special assessment shall be made against a defaulting Owner in the amount of his award, or the amount of such award shall be set off against the sums hereinafter made payable to such Owner. If any Unit or portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Mortgagee of such Unit shall be entitled to timely written notice of any such proceeding or proposed acquisition as provided in Section 8.01, and no provision hereof shall entitle the Owner of such Unit or other party to priority over such Mortgagee with respect to the distribution of any award or settlement to the Owner of the Unit.

**Section 10.02 Partial Condemnation.** In the event that the Condominium Property is not to be terminated and one or more Units are taken in part, the taking shall have the following effects:

- (a) If the taking reduces the size of a Unit and the remaining portion of that Unit can be made tenantable, the award for the taking for a portion of the Unit

shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium Property:

(i) The Unit shall be made tenantable and if the cost of such work exceeds the amount of the award, the additional funds shall be assessed against the Owner of the Unit.

(ii) The balance of the award, if any, shall be distributed to the Owner of the Unit and the Mortgagee of the Unit, as their respective interests may appear.

(iii) If there is a balance of the award distributed to the Owner and the Mortgagee, the share of the Common Elements appurtenant to the Unit shall be equitably reduced. This shall be done by reducing such share by the proportion which the balance of the award so distributed bears to the market value of the Unit immediately prior to the taking, and then recomputing the shares of all Owners in the Common Elements as percentages of the total of their shares as reduced by the taking.

(b) If the taking destroys or so reduces the size of a Unit so that it may not be made tenantable, the award for the taking of the Unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium Property:

(i) The market value of such Unit immediately prior to the taking, shall be paid to the Owner of the Unit and to each Mortgagee of the Unit, as their respective interests may appear.

(ii) The remaining portion of such Unit, if any, shall become a part of the Common Elements and shall be placed in condition for use by all of the Owners, in the manner approved by the Board of Directors of the Association; provided, however, that if the cost of such work shall exceed the balance of the fund from the award for the taking, such work shall be approved in the manner required for further improvement of the Common Elements under Section 6.03 above.

(iii) The shares in the Common Elements appurtenant to the Units which continue as a part of the Condominium Property shall be equitably adjusted to distribute the ownership of the remaining Common Elements among the reduced number of Owners. This shall be done by recomputing the shares of such continuing Owners in the Common Elements as percentages of the total of the shares of such Owners as they exist prior to the adjustment.

(iv) If the amount of the award for taking is not sufficient to pay the market value of the condemned Unit to the Owner and to restore the remaining portion of the Unit in condition for use as a part of the Common Elements, the additional funds required for such purposes shall be raised by assessments against all of the Owners who will continue as Owners of the Units after the changes in the Condominium Property affected by the taking. Such assessment shall be made in proportion to the share of such Owners in the Common Elements after the changes affected by the taking.

(c) If the market value of a Unit prior to the taking cannot be determined by agreement between the Owner and the Mortgagee and the Association within thirty (30) days after notice by any such party that agreement cannot be reached, such value shall be determined by three independent qualified appraisers with one appraiser to be selected by the Association, one (1) appraiser to be selected by the Owner and Mortgagee, and the third appraiser to be selected by the two (2) appraisers so appointed, and the fair market value of the Unit shall be deemed to be the average of the two appraisals of the fair market value of the Unit made by said appraisers having the least difference in amount. The cost of such appraisal shall be assessed against all Owners in the shares of the Owners in the Common Elements as they existed prior to the changes affected by the taking.

(d) Changes in the Units, in the ownership of the Common Elements and in the share of liability for Common Expenses which are affected by eminent domain, shall be evidenced by an amendment of this Declaration which needs be approved only by a majority of the Board of Directors of the Association.

**Section 10.03 Association Appointed As Attorney-In-Fact for Unit Owners.** The Association shall be appointed as attorney-in-fact for each Unit Owner for the purpose of representing such Unit Owners in any proceeding, negotiation, settlement or agreement arising from the condemnation or taking by eminent domain of the Condominium Property.

## **ARTICLE XI**

### **TERMINATION**

**Section 11.01 Termination by Consent.** Except in the event of a condemnation of all Units by eminent domain, this Declaration and plan of condominium ownership established herein may only otherwise be terminated by the consent of the Owners of Units to which at least seventy-five (75%) of the votes in the Association are allocated and seventy-five percent (75%) of the votes of all Mortgagees, in which event the termination of the Condominium Property shall be by such plans as may be then adopted by at

least seventy-five (75%) percent of the votes in the Association and seventy-five (75%) percent of the Mortgagees. Such election to terminate this Declaration and the plan of condominium ownership established herein shall be evidenced by a termination agreement executed in writing by all of the aforesaid parties in recordable form, and such instrument shall be recorded in the Office of the Chancery Clerk of Lafayette County, Mississippi. Any termination agreement and the ownership of the property which constituted the Condominium Property and all other assets of the Association shall be subject to the terms and provisions of § 35-8A-218 of the Law.

**Section 11.02 The Association Appointed as Attorney-In-Fact for Unit Owners.** The Association shall be appointed as attorney-in-fact for each Unit Owner for the purpose of representing such Unit Owners in any proceeding, negotiation, settlement or agreement arising from the termination of this Declaration and plan of condominium ownership established herein.

## **ARTICLE XII**

### **AMENDMENT**

**Section 12.01 Amendments by Developer.** Without limiting the rights of the Developer to amend the Plans and Declaration as described in Section 2.02 above or to exercise development rights as set forth in Articles II and III above, and notwithstanding any other provision herein contained, the following provisions shall be deemed to be in full force and effect.

(a) The Developer reserves the right to amend the Articles and Bylaws of the Association until such time as Developer relinquishes control of the Association as provided in Section 13.01 below.

(b) The Developer reserves the right to amend this Declaration and the Condominium Documents so long as there is no Unit Owner other than the Developer.

(c) The Developer reserves the right at any time to amend this Declaration without the consent of other Owners if required by any Mortgagee as a condition of making a loan secured by an interest in a Unit in order to meet the requirements of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association; provided that any such changes or amendments requested by a Mortgagee shall not materially affect the rights of the Unit Owners or the value of the Condominium Unit or the undivided interest in the Common Elements if any, attributable to each Unit Owner.

(d) The Developer reserves the right to amend the Declaration to exercise any and all development rights set forth in this Declaration, to correct any scrivener's error in the Declaration and to assign or reassign Common Elements and Limited Common Elements.

**Section 12.02 Amendments by Unit Owners.** At such time as there is a Unit Owner other than the Developer, then, in addition to the amendments permitted under Section 12.01 above, the Declaration may be amended in the following manner:

(a) A proposal to amend this Declaration may be considered at any meeting of the Members of the Association called for that purpose in accordance with the provisions of the Bylaws; provided that the Association provides prior written notice of such meeting to the Mortgagees as provided in Section 8.01 above. The proposal to amend the Declaration must be approved by the affirmative vote of the members representing not less than seventy-five percent (75%) of the total allocated votes of the Association and by the affirmative vote of the Mortgagees representing at least seventy-five percent (75%) of the total allocated votes of the Units subject to Mortgages.

(b) Notwithstanding the foregoing, no amendment to the Declaration under this Article XII shall:

(i) change a Unit, including the ownership in Common Elements, responsibility for Common Expenses and voting rights, without the prior written approval of the Unit Owner or Unit Owners so affected and prior written approval of the holders of record of any mortgage or other liens on the Unit or Units so affected; or

(ii) change, impair or prejudice the rights of Developer or change the provisions of this Declaration with respect to the Developer's rights hereunder without Developer's prior written approval.

**Section 12.03 Effectiveness of Amendments.** A copy of each amendment so adopted shall be certified by the President or a Vice President and Secretary or Assistant Secretary of the Association as having been duly adopted, and shall be effective when recorded in the Office of the Chancery Clerk of Lafayette County, Mississippi.

## ARTICLE XIII

### **CONTROL OF THE ASSOCIATION**

**Section 13.01 Election of Board of Directors.** The Developer, its successors and assigns, may control by appointing and removing

officers and members of the Board until the earlier of (a) sixty (60) days have elapsed since seventy-five percent (75%) of the Units which may ever be created in the Condominium have been conveyed to purchasers of Units other than the Developer, (b) two (2) years have elapsed since Developer has ceased offering Units that may have been created in the Condominium for sale in the ordinary course of business, or (c) two (2) years have lapsed since Developer last exercised a development right to add new Units to the Condominium, or (d) the Developer elects, at its option, to terminate control of the Association, whichever first occurs. Not later than ninety (90) days after conveyance of twenty-five percent (25%) of the Units which may be created to Unit Owners other than the Developer, the Unit Owners other than Developer shall be entitled to elect at least one member or twenty-five percent (25%) of the members of the Board. Not later than ninety (90) days after conveyance of fifty percent (50%) of the Units which may be created to Unit Owners other than Developer, not less than thirty-three and one-third percent (33 $\frac{1}{3}$ %) of the members of the Board may be elected by the Unit Owners. The Developer shall be entitled to elect at least one (1) member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business at least one (1) Unit. Within sixty (60) days before the date of termination of control of the Association by the Developer, the Board of Directors shall call and give not less than ten (10), nor more than thirty (30), days' notice of a special meeting of the membership for the purpose of electing the members of the Board of Directors.

**Section 13.02 Notice of Meeting.** Within sixty (60) days before the date of termination of control of the Association by the Developer, the Association shall call a meeting of the Unit Owners for the purpose of electing the members of the Board of Directors of the Association. Such meeting shall be called and the notice given in accordance with the Bylaws.

**Section 13.03 Status of Unsold Units.**

(a) Developer shall be deemed to be the Owner of each Unit which has not been conveyed to a person other than the Developer. Unless otherwise provided in the Condominium Documents, the Developer shall be entitled to all rights and privileges available to, and shall be subject to any and all obligations and duties imposed upon, the Owner of any such Unit under the Condominium Documents.

(b) Any person having a first mortgage lien against any Unit which has not been conveyed to a person other than Developer, whether under a blanket mortgage affecting the Condominium Property generally or under a mortgage on one or more specific Units, shall be deemed to be a Mortgagee with respect to any such Unit, and shall be entitled to all rights and privileges available to a Mortgagee

of any such Unit under the Condominium Documents so long as the Mortgagee has give notice to the Association that it is a Mortgagee.

(c) During the first year of operation of the Association, the Association may modify the initial operating budget to account for items under warranty, less than full occupancy and all other start up cost savings. The amount equal to two (2) months' assessments paid into the working capital fund or reserve fund shall be based on the amount allocated to the Units under the estimated operating budget, however. Notwithstanding the provisions of Sections 5.02 and 13.03(a) above, no assessments shall be imposed by the Association against the Developer as the Owner of unsold Units until sixty (60) days after the conveyance of the first Unit. During such period, Developer shall be responsible for the proportionate share of the Common Expenses of the Condominium Property related to the unsold Units, except that the Developer shall be entitled to use and apply to the payment of such Common Expenses a pro rata share of any and all assessments made against the Unit Owners other than Developer and collected by the Association for Common Expenses. The Developer shall be solely responsible for the maintenance, repair and operation of the unsold Units.

**Section 13.04 Professional Management and Other Contracts.** Prior to the passage of control of the Association from the Developer pursuant to Section 13.01 above, any management contract, employment contract, lease of parking facilities or lease between the Association and the Developer or an affiliate of the Developer shall provide the following:

(a) The Association shall have the right of termination which is exercisable without penalty any time upon not more than ninety (90) days' written notice to the other party thereto; and

(b) The Association shall have a right of termination for cause which is exercisable without penalty at any time upon not more than thirty (30) days' written notice to the other party thereto.

## **ARTICLE XIV**

### **DISPUTE RESOLUTION**

**Section 14.01 Agreement to Resolve Disputes Without Litigation.**

(a) The Developer, the Association and its officers, directors, and committee members, all Unit Owners, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Party"), agree that it is in the best interest of all

concerned to resolve disputes involving the Condominium, the Association and/or the Owners without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim (hereinafter defined), and to submit such Claim to the alternative dispute resolution procedures set forth in Section 14.02 in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "Claim" shall refer to any claim, grievance or dispute arising out of or relating to:

(i) the interpretation, application, or enforcement of the Condominium Documents; or

(ii) the rights, obligations and duties of any Bound Party under the Condominium Documents or related agreement;

except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 14.02:

(i) any suit by the Association to collect assessments or other amounts due from any Owner or any suit enforce the terms of the Declaration against an Owner or the Association;

(iii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of this Declaration;

(iv) any suit between Owners, which does not include Developer or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Condominium Documents;

(v) any suit in which any indispensable party is not a Bound Party, except the construction contractor or subcontractors, sales agent or broker or the condominium architect or engineer; or

(vi) any suit as to which any applicable statute of limitations would expire within one hundred eighty (180) days of giving the Notice required by Section 14.02(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

**Section 14.02 Dispute Resolution Procedures.**

(a) Notice. The Bound Party asserting a Claim (“Claimant”) against another Bound Party (“Respondent”) shall give written notice (“Notice”) to each Respondent and to the Board stating plainly and concisely:

(i) the nature of the Claim, including the persons involved and the Respondent’s role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the Claimant’s proposed resolution or remedy; and

(iv) the Claimant’s desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) Mediation. If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the Notice described in Section 14.02(a) (or within such other period as the parties may agree upon), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency or individual providing dispute resolution services in the State of Mississippi selected by both sides if the Association is a party. If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim. If the parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be required to initiate arbitration proceedings on the Claim, as set forth in Section 14.02(e) below. Each party shall bear its own costs of the mediation, including attorneys’ fees, and each party shall share equally all fees charged by the mediator.

(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without

the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

(e) **Arbitration; No Trial by Jury.** All Claims, Disputes or other matters in question arising out of, or relating in any way to the Condominium or the breach of contract between the Bound Parties that are not resolved by negotiation or mediation shall be resolved by binding arbitration by a single arbitrator in Oxford, Mississippi in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect.

**EACH PARTY ACKNOWLEDGES THAT HE OR SHE IS KNOWINGLY WAIVING THE RIGHT TO A TRIAL BY JURY RELATING TO ALL CLAIMS.**

All disputes concerning the arbitrability of any Claim or the enforceability or scope of this provision shall be subject to the same binding arbitration. The parties shall bear equally the cost of the arbitrator, and each party shall otherwise bear their own costs; provided, the arbitrator shall have the authority to award costs as a part of this award to the extent authorized by applicable law. The arbitrator shall follow the law applicable to any Claim and shall be empowered to award any damages or other relief which would be available under the law applicable to any such Claim. The determination of the arbitrator shall be final, binding on the parties, and non-appealable and may be entered in any court of competent jurisdiction to enforce it. The parties acknowledge and agree that the transactions contemplated by, and relating to, the Condominium, which may include the use of materials and components which are obtained from out-of-state and which otherwise include the use of interstate mails, roadways and commerce, involve interstate commerce, as that term is defined in the Federal Arbitration Act, 9 U.S.C. § 2.

**Section 14.03 Initiation of Litigation by Association.** In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceedings unless first approved by a vote of the Members entitled to cast seventy-five percent (75%) of the votes in the Association, except that no such approval shall be required for actions or proceedings:

(a) initiated during the period that the Developer controls the Association;

(b) initiated to enforce the provisions of this Declaration, including, but not limited to, collection of assessments and foreclosure of liens;

(c) initiated to challenge property taxation or condemnation proceedings;

(d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or

(e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section 14.03 shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

#### **Section 14.04 Developer's Right to Cure Alleged**

**Defects.** Due to the complex nature of construction and the subjectivity involved in evaluating quality of construction, disputes may arise as to whether a defect exists and the Developer's responsibility therefor. It is the Developer's intent to resolve all disputes and claims regarding any Alleged Defect (as defined below) amicably, and without the necessity of time-consuming and costly litigation. Accordingly, the Association and all Unit Owners shall be bound by the following claim resolution procedure with respect to Alleged Defects:

(a) **Developer's Right to Cure.** In the event that the Association, Board or any Unit Owner or Unit Owners (a "Complaining Party") claim, contend or allege that any portion of the Condominium, including, without limitation, the Common Elements, any Unit, and/or any Improvements constructed on the Condominium Property, are defective or that the Developer or its agents, consultants, contractors or subcontractors (collectively, the "Developer's Agents") were negligent in the planning, design, engineering, grading, construction or other development thereof (collectively an "Alleged Defect"), the Developer hereby reserves the right to inspect, repair and/or replace such Alleged Defect as set forth herein.

(b) **Notice to Developer.** In the event that a Complaining Party discovers any Alleged Defect, such Complaining Party shall, within a reasonable time after discovery, notify the Developer, in writing, at such address as the Developer may from time to time provide to the Association, or such other address at which the Developer maintains its principal place of business, of the specific nature of such Alleged Defect ("Notice of Alleged Defect").

(c) Right to Enter, Inspect, Repair and/or Replace. Within a reasonable time after the receipt by Developer of a Notice of Alleged Defect or the independent discovery of any Alleged Defect by the Developer, the Developer shall have the right, upon reasonable notice to the Complaining Party and during normal business hours, to enter onto or into, as applicable, the Common Elements, any Unit, and/or any Improvements or other portion of the Condominium Property for the purposes of inspecting and, if deemed necessary by the Developer, repairing and/or replacing such Alleged Defect. In conducting such inspection, repairs and/or replacement, the Developer shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

(d) Legal Actions. No Complaining Party shall initiate legal action or dispute resolution procedures as set forth above against the Developer alleging damages (1) for the costs of repairing or the replacement of any Alleged Defect, (2) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (3) for any consequential damages resulting from such Alleged Defect, unless and until the Complaining Party has (i) delivered to the Developer a Notice of Alleged Defect and (ii) the Developer has, within ninety (90) days after its receipt of such Notice of Alleged Defect, either (a) failed to repair or replace such Alleged Defect or (b) if such Alleged Defect cannot reasonably be repaired or replaced within such ninety (90) day period, failed to commence such repair or replacement of the Alleged Defect and, thereafter, failed to pursue diligently such repair or replacement to completion.

(e) No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in this Paragraph 14.04 shall be construed to impose any obligation on the Developer to inspect, repair, or replace or pay for any item or Alleged Defect for which the Developer is not otherwise obligated to do under applicable law, the Limited Warranty, or other agreement to which the Developer is a party. The right of the Developer to enter, inspect, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and recorded by the Developer in the Office of the Chancery Clerk of Lafayette County, Mississippi. This provision does not create any warranties, express or implied, on the part of the Developer or the Association.

(f) Arbitration. **Any disagreement between an Owner, Owners, the Board, and/or the Association, on the one hand, and the Developer on the other, concerning Developer's efforts to remedy or repair any Alleged Defect (a "Dispute"), after compliance with the foregoing provisions of this Section 14.04, shall be resolved by binding arbitration by a single arbitrator conducted in Oxford, Mississippi in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. EACH PARTY**

**ACKNOWLEDGES THAT HE OR SHE IS KNOWINGLY WAIVING THE RIGHT TO A TRIAL BY JURY RELATING TO ALL CLAIMS.** Without limiting the foregoing, it is expressly agreed that this agreement to arbitrate also covers any and all claims that the Unit Owner may assert against the construction contractor(s) and/or design-builder(s) for the Condominium, and its/their subcontractors, sub-consultants and affiliates (sometimes herein referred to as “Contractor Parties”) or the Developer. At the option of the Developer, any other person or entity with whom or which the Developer has an agreement for binding arbitration may be joined in an arbitration proceeding hereunder. The award rendered by the arbitrators shall be a reasoned award and shall be final and binding upon the parties to the arbitration, and judgment upon the award may be entered in any court having jurisdiction over any of the parties thereto. Arbitration proceedings pertaining to a Dispute shall be transcribed verbatim by a competent court reporting company selected by the American Arbitration Association. The initial fee of the American Arbitration Association shall be borne by the party initiating the Dispute, and all other costs of the arbitration, including the costs and fees of the arbitrators, and the expense of transcription, shall be borne in equal shares by (a) the Owner or Owners and/or Association, (b) Developer, and (c) any Contractor Parties and/or other parties to the arbitration joined. Notwithstanding anything herein to the contrary, the respective parties to the arbitration shall each be responsible for their own costs incurred in the arbitration with respect to third party expenses, including but not limited to, costs of discovery, attorneys’ fees, accountants’ fees, investigation expenses, and experts’ fees.

## ARTICLE XV

### MISCELLANEOUS

**Section 15.01 Rights and Powers of Successors and Assignees.** The rights and powers reserved to or exercisable by the Developer under the Condominium Documents or the Law may be exercised by any successor or assignee of the Developer (i) who acquires title from the Developer by foreclosure or other judicial sale or deed in lieu of foreclosure, or (ii) to whom the Developer specifically assigns such rights and powers.

**Section 15.02 Headings.** The captions herein are used solely as a matter of convenience and shall not define, limit or expand any term or provision of this Declaration.

**Section 15.03 Mold and Mildew.** Mold and/or mildew can grow in any portion of the Condominium that is exposed to elevated levels of moisture. Each Unit Owner covenants and agrees to: (1) regularly inspect the parts of the Condominium that the Unit Owners maintain; and which are visible and accessible without having to first conduct invasive testing, for the existence of mold, mildew, and/or water intrusion and/or damage; (2) upon discovery, immediately repair in a good and workmanlike condition the source of any water intrusion in the parts of the Condominium that he maintains; (3) remediate or replace any building material located in the parts of the Condominium that he maintains that has absorbed water or moisture as a result of water intrusion; and (4) promptly and regularly remediate all mold and/or mildew discovered in the parts of the Condominium that he maintains in accordance with current industry-accepted methods. In addition, each Unit Owner shall immediately notify the Association of the discovery of mold, mildew, and/or water intrusion and/or damage in his Unit, and shall provide the Association access to his Unit to evaluate the same.

**Section 15.04 Gender/Number.** Whenever the context so permits, the use of the plural shall include the singular, the singular shall include the plural, and any gender shall be deemed to include all genders.

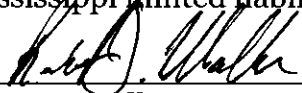
**Section 15.05 Exhibits.** All exhibits "A", "B", "C", "D", "E", "F", and "G" attached to this Declaration are an integral part of this Declaration.

**Section 15.06 Invalidity and Severability.** It is the intention of the Developer that the provisions of this Declaration are severable so that if any provision is invalid or void under any applicable federal, state or local law or ordinance, decree, order, judgment or otherwise, the remainder shall be unaffected thereby.

**Section 15.07 Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a condominium project. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

**IN WITNESS WHEREOF**, the Developer has hereunto set its signature and seal on the day and year first above written.

**OLD OAKS OXFORD, LLC,**  
a Mississippi limited liability company

By:   
Robert D. Walker  
Its: Manager

STATE OF MISSISSIPPI )  
LAFAYETTE COUNTY )

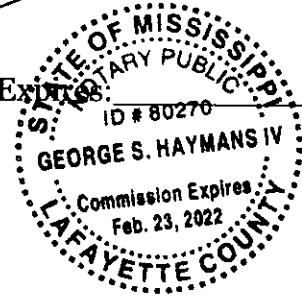
I, the undersigned, a Notary Public in and for said County in said State, hereby certify that ROBERT D. WALKER, whose name as MANAGER of **OLD OAKS OXFORD, LLC**, a Mississippi limited liability company, is signed to the foregoing Declaration of Condominium, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing Declaration of Condominium, he, as such officer and with full authority, executed the same voluntarily on the date the same bears date.

Given under my hand and official seal of office this 1<sup>st</sup> day of October, 2018.

  
Notary Public

My Commission Expires

[NOTARIAL SEAL]



CONSENT BY SECURED PARTY:

The undersigned, BancorpSouth Bank, as **MORTGAGEE** under the Mortgage encumbering the real property identified in the foregoing Declaration of Condominium of Old Oaks of Oxford, a Condominium, joins in the execution of the foregoing Declaration of Condominium of Old Oaks of Oxford, a Condominium, for the sole purpose of consenting to the filing of the Declaration of Condominium of Old Oaks of Oxford, a Condominium, as required by MISS. CODE ANN. §§ 89-9-1, *et seq.* The undersigned is not the Developer, and does not assume any obligation whatsoever under the terms, covenants and conditions of the foregoing Declaration of Condominium, and the execution hereof does not in any way subordinate or make the said Mortgage inferior to the said Declaration of Condominium.

BancorpSouth Bank

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

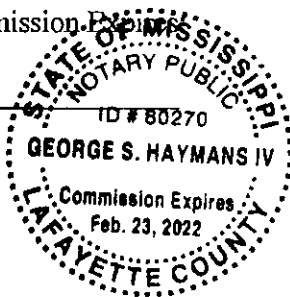
*[Signature]*  
*Darick Biglane*  
*Sr. Vice President*

STATE OF MISSISSIPPI  
COUNTY OF LAFAYETTE

Personally appeared before me, the undersigned authority in and for the said county and state, on this 15<sup>th</sup> day of October, 2018, within my jurisdiction, the within named Darick Biglane, who acknowledged that he is the Sr. Vice President of BancorpSouth Bank, and that for and on behalf of said Bank and as its act and deed he signed, executed and delivered the above and foregoing instrument, after first having been duly authorized by said Bank so to do.

NOTARY PUBLIC \_\_\_\_\_

My Commission Expires \_\_\_\_\_



## EXHIBIT A

### LEGAL DESCRIPTION OF CONDOMINIUM PROPERTY

#### DESCRIPTION OF PHASE 1a

This Description Is Based On The Mississippi State Planes Coordinate System, East Zone, NAD 83 Grid Values, U.S. Survey Feet, Using A Scale Factor Of 0.999990461 And A Convergence Angle Of -00° 21' 06" Calculated At The Point Of Commencement Of This Survey.

A Fraction Of The Northeast Quarter Of Section 25, Township 8 South, Range 3 West, Lafayette County, Mississippi And Containing 5.456 Acres. This Description Being In More Details As Follows:

Commencing At An Existing 3/4" Iron Pipe Found Accepted As Being The Northeast Corner Of Section 25, Township 8 South, Range 3 West, Lafayette County, MS, Run Thence N 89° 13' 14" W A Distance Of 2189.04 Ft To A Point At The POINT OF BEGINNING; Run Thence S 03° 24' 58" W A Distance Of 284.24 Ft To A Point, Thence S 45° 23' 25" W A Distance Of 85.70 Ft To A Point, Thence S 20° 54' 10" W A Distance Of 315.61 Ft To A Point, Thence S 69° 24' 56" W A Distance Of 301.93 Ft To A Point, Thence N 00° 46' 28" W A Distance Of 237.75 Ft To A Point, Thence N 18° 13' 31" E A Distance Of 131.22 Ft To A Point, Thence N 16° 42' 15" E A Distance Of 34.97 Ft To A Point, Thence N 14° 09' 00" E A Distance Of 48.64 Ft To A Point, Thence N 14° 09' 00" E A Distance Of 84.83 Ft To A Point, Thence N 13° 44' 43" E A Distance Of 102.45 Ft To A Point, Thence N 16° 32' 46" E A Distance Of 115.89 Ft To A Point, Thence N 26° 12' 02" E A Distance Of 15.04 Ft To A Point, Thence S 89° 13' 14" E A Distance Of 328.74 Ft To The POINT OF BEGINNING Of This Description.

And also:

#### DESCRIPTION OF PHASE 2

This Description Is Based On The Mississippi State Planes Coordinate System, East Zone, NAD 83 Grid Values, U.S. Survey Feet, Using A Scale Factor Of 0.999990461 And A Convergence Angle Of -00° 21' 06" Calculated At The Point Of Commencement Of This Survey.

A Fraction Of The Northeast Quarter Of Section 25, Township 8 South, Range 3 West, Lafayette County, Mississippi And Containing 3.625 Acres. This Description Being In More Details As Follows:

Commencing At An Existing 3/4" Iron Pipe Found Accepted As Being The Northeast Corner Of Section 25, Township 8 South, Range 3 West, Lafayette County, MS, Run Thence N 89° 13' 14" W A Distance Of 1578.10 Ft To A Point, Thence Due South A Distance Of 721.94 Ft To A Point At The POINT OF BEGINNING; Run Thence S 03° 44' 55" W A Distance Of 90.14 Ft A Point,

Thence S 72° 34' 07" W A Distance Of 173.29 Ft A Point, Thence S 13° 31' 26" W A Distance Of 123.23 Ft A Point, Thence With A Curve To The Left Having A Radius Of 486.00 Ft, An Arc Length Of 247.40 Ft, A Chord Bearing Of S 88° 56' 26" W, And A Chord Length Of 244.74 Ft To A Point, Thence S 74° 21' 26" W A Distance Of 426.15 Ft A Point, Thence With A Curve To The Right Having A Radius Of 214.00 Ft, An Arc Length Of 45.94 Ft, A Chord Bearing Of S 80° 30' 24" W, And A Chord Length Of 45.85 Ft To A Point, Thence S 86° 39' 21" W A Distance Of 178.87 Ft A Point, Thence N 00° 46' 28" W A Distance Of 50.74 Ft A Point, Thence N 86° 18' 40" E A Distance Of 190.56 Ft A Point, Thence N 74° 30' 53" E A Distance Of 379.98 Ft A Point, Thence N 01° 57' 44" E A Distance Of 267.43 Ft A Point, Thence N 73° 16' 43" E A Distance Of 222.50 Ft A Point, Thence S 54° 23' 01" E A Distance Of 165.94 Ft A Point, Thence N 90° 00' 00" E A Distance Of 166.09 Ft To The POINT OF BEGINNING Of This Description.

## **EXHIBIT "B"**

### **Legal Description of Additional Property**

A fraction of the Northeast Quarter of Section 25, Township 8 South, Range 3 West, Lafayette County, Mississippi and being described in more detail in the following tract descriptions:

Beginning at an existing ¾" iron pipe accepted as the Northeast corner of said Section 25, run thence South 0 degrees 00 minutes 11 seconds East a distance of 2715.12 feet to an existing ¾" iron pipe at a fence corner; thence North 88 degrees 55 minutes 52 seconds West along a fence line a distance of 1354.64 feet to an existing ¾" iron pipe at a fence corner; thence North 89 degrees 11 minutes 35 seconds West leaving said fence a distance of 621.20 feet to an iron rod; thence North 0 degrees 46 minutes 28 seconds West a distance of 1267.61 feet to an iron rod; thence South 89 degrees 13 minutes 32 seconds West a distance of 660.00 feet to an existing ¾" iron pipe; thence North 0 degrees 46 minutes 28 seconds West a distance of 945.22 feet to an iron rod on the East right of way line of County Road No. 217; thence North 18 degrees 13 minutes 31 seconds East along said right of way line a distance of 131.20 feet to a point; thence North 16 degrees 42 minutes 15 seconds East along said right of way line a distance of 34.97 feet to a point; thence North 14 degrees 09 minutes 00 seconds East along said right of way line a distance of 133.46 feet to a point; thence North 13 degrees 44 minutes 43 seconds East along said right of way line a distance of 102.45 feet to a point; thence North 16 degrees 32 minutes 46 seconds East along said right of way line a distance of 115.89 feet to a point; thence North 26 degrees 12 minutes 02 seconds East along said right of way line a distance of 15.04 feet to an iron rod; thence South 89 degrees 13 minutes 14 seconds East leaving said right of way line a distance of 2517.78 feet to the iron pipe marking the point of beginning of this description. Tract I contains 145.11 acres, more or less. This property is subject to a prescriptive easement for County Road No. 238.

#### **Less and Except:**

The Property described in Phase 1a and 2 of the Old Oaks of Oxford, a Condominium Plan and Declaration.

## **EXHIBIT C**

### **By-Laws of**

### **Old Oaks of Oxford Condominium Owner's Association, Inc.**

#### **PREAMBLE**

Old Oaks Oxford, LLC named in the Declaration of Condominium of Old Oaks of Oxford, a Condominium (“Declaration”), and hereinafter referred to as “Developer”, being the sole owner of the Property submitted in accordance with the provisions of the Mississippi Condominium Law, Chapter 9, Section 89-9-1, et seq., Mississippi Code Annotated (1972), as amended, (hereinafter called “Law”) for the establishment of a Condominium to be known as Old Oaks of Oxford, a Condominium, defined, described and provided for in said attached Declaration, which shall be represented by Old Oaks of Oxford Condominium Owner's Association, Inc., a Mississippi nonprofit corporation, (“Association”) does hereby adopt the following By-Laws (“Bylaws”) that shall govern administration of such the Old Oaks of Oxford Condominium Owner's Association, Inc., as provided for in compliance with said Law.

All present or future Owners, tenants, future tenants or their guest, occupants, invitees, employees, or any other person who might use the facilities of this residential Condominium Property, in any manner, are subject to the regulations set forth in these By-Laws. The mere acquisition, occupancy or partial rental (subject to the provisions contained in the Declaration) of any said Units of the Property will signify and constitute a ratification and acceptance of these By-Laws by any such Owner or person.

This Association established under attached Declaration shall be known as the “Old Oaks of Oxford Condominium Owner's Association, Inc.,” a Mississippi nonprofit

corporation.” **Owner** shall mean and refer to every person or entity who is a record Owner of a Unit (as defined in the Declaration). “Property” shall be defined as the term is defined in the Declaration.

2. **Members**

(A) Members shall be the Owners of the Units and said persons shall be entitled to one vote for each Unit owned. The annual members’ meeting shall be held at the stated office of the Association at 8:00 o’clock P.M., Central Standard Time, on the third (3<sup>rd</sup>) Monday of January of each year for the purpose of electing officers, directors and of transacting any other business authorized to be transacted by the members; provided however, if that day is a legal holiday, the meeting shall be held at the same hour on the next succeeding day. The Association may change the date, time, or location of any future annual members’ meeting upon a vote of at least 67% of those Members present at a duly called meeting in which a quorum is present.

(B) Special members’ meeting shall be held whenever called by the President or Vice President or by a majority of the Board of Directors of the Association (“Board”), and must be called by such officers upon receipt of a written request from one-half (1/2) of the entire membership.

(C) Notice of all members’ meetings stating the time and place and the objects to which the meeting is called shall be given by the Secretary or his agent unless waived in writing. Such notice shall be in writing to each member at his mailing or email address as it appears on the books of the Association and shall be (e)mailed not less than ten (10) days prior to the date of the meeting. Proof of such (e)mailing shall be given by the affidavit of the person giving the notice. Notice of any meeting may be waived before

or after the particular meeting, in each instance. In addition to providing notice by mail or email, notice may also be provided by other means reasonably calculated to reach the recipient including, by way of illustration and not limitation, text message or a social networking platform such as Nextdoor.®

(D) A quorum at members' meetings shall consist of persons entitled to cast a majority of the vote of the entire membership, including proxy votes. The joinder of a member in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such member for the purpose of determining a quorum. No member not in good standing may participate in the meeting or other Association business, nor shall such member be counted toward the quorum. The Association may limit or entirely prohibit the attendance of any non-member or member not in good standing at any meeting.

(E) The vote of the Owners owned by more than one person or by a corporation or other entity shall be cast by the person named in a certificate signed by all of the Owners, and filed with the Secretary of the Association. Such certificate shall be valid until revoked by a subsequent certificate. If such a certificate is not on file the vote of such Owners shall not be considered in determining the requirement for a quorum nor for any other person.

(F) Proxies: Votes may be cast in person or by proxy. Proxies shall be valid only for the particular meeting, and must be signed by the individual who has the right to vote.

(G) Adjourned meeting: If any meeting of members cannot be organized because a quorum has not attended, the members who are present, either in person or by

proxy, may adjourn the meeting to a time and date certain, with notice of the adjourned meeting to be provided to all members in the same manner as an originally called meeting. At said adjourned meeting those members in attendance shall constitute a quorum, regardless of their number, and may transact business.

(H) The order of business at annual members' meetings, and, as far as practical at all other meetings, shall be:

- (a) Election of chairman of the meeting.
- (b) Calling of the roll and certifying of proxies.
- (c) Proof of notice of meeting or waiver of notice.
- (d) Reading and disposal of any unapproved minutes.
- (e) Reports of officers.
- (f) Election of inspectors of election.
- (g) Election of directors.
- (h) Unfinished business.
- (I) New Business.
- (j) Adjournment.

(I) The affirmative vote of the members having at least sixty-seven percent (67%) percent of the total number of votes represented at the meeting, in person or by proxy, shall be necessary to decide any question properly brought before the meeting, unless the question properly brought before the meeting be one as to which, by provision of law, or the Charter, or the Declaration, or these By-Laws, a different vote is required, in which case such provision of law, or the Charter, or the Declaration, or these By-Laws shall govern and control.

3. **Directors**

(A) The Board shall consist of **not less than three (3) nor more than five (5)** directors as is determined from time to time by the members. Each member of the Board shall either be the Owner, have an interest therein or in the event of a corporate ownership, any officer or designated agent thereof.

(B) Election of directors shall be conducted in the following manner:

(i) Directors shall be elected by a plurality of the votes cast at the annual meeting of the members of the Association.

(ii) Vacancies in the Board may be filled until the date of the next annual meeting by the remaining directors.

(C) The term of each director's service shall extend until the next annual meeting of the members and thereafter until his successor is duly elected and qualified or until he is removed in the manner elsewhere provided.

(D) The organizational meeting of a newly elected Board shall be held within ten (10) days of their election at such place and time as shall be fixed by the directors at the meeting at which they are elected, and no further notice of the organization meeting shall be necessary providing a quorum shall be present.

(E) Regular meetings of the Board may be held at such time and place as shall be determined from time to time, by the majority of the directors. Notice of regular meetings shall be given to each Director, personally or in the mail, telephone or telegraph at least three (3) days prior to the day named for such meetings unless such notice is waived.

(F) Special meetings of the directors may be called by the President and must be called by the Secretary at the written request of one-third (1/3) of the votes of the Board. Not less than three (3) days notice of the meeting shall be given personally or by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting.

(G) Waiver of notice: Any Director may waive notice of a meeting before or after the meeting and such waiver shall be deemed equivalent to the giving of notice.

(H) A quorum at directors' meetings shall consist of the director entitled to cast a majority of the votes of the entire board. The acts of the board approved by a majority of votes present at a meeting at which a quorum is present shall constitute the acts of the board as specifically or otherwise provided in the Declaration. If at any meeting of the Board there be less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At an adjourned meeting any business that might have been transacted at the meeting as originally called may be transacted without further notice. The joinder of a Director in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such director for the purpose of determining a quorum.

(I) The presiding officer of directors' meetings shall be the chairman of the board if such officer has been elected; and if none, then the President shall preside. In the absence of the presiding officer the directors present shall designate one of their numbers to preside.

(J) Director's fees, if any, shall be determined by the members of the Association.

4. **Powers and duties of the Board of Director**

All of the powers and duties of the Association shall be exercised by the Board, including those existing under the Mississippi common law and statutes, the Articles of Incorporation of the Association, and the documents establishing the Association and the condominium. Such powers and duties of the directors shall be exercised in accordance with provisions of the Declaration which govern the use of the land, and shall include but shall not be limited to the following:

(A) To make and collect assessments against members to defray the costs of the Project.

(B) To use the proceeds of assessments in the exercise of its powers and duties.

(C) To maintain, repair, replace, and operate the Property.

(D) To reconstruct improvements after casualty and further improve the Property.

(E) To make and amend regulations respecting the use of the Property.

(F) To enforce by legal means the provisions of the Condominium Documents, the Articles of Incorporation and the By-Laws of the Association and the Rules and Regulations of the Association for the use of the Property.

(G) To contract for management of the Property and to delegate to such contractor all powers and duties of the Association except such as are specifically required by the Condominium Documents to have approval of the Board or the membership of the Association. Any contracts for management of the Association shall be in writing and terminable for cause upon 30 days notice and will have a term of not less than one (1) year

nor more than three (3) years in duration and be renewable by agreement of the Association and the other party. No contract for management of services required for proper administration of the purposes of the Association negotiated by the Developer will exceed one (1) year in term, commencing from the date the first Unit is conveyed.

(H) To carry insurance for the protection of Owners and the Association against casualty and liabilities.

(I) To pay the costs of all power, water, sewer, and other utility services required for proper administration of the purposes of the Association.

(J) To employ personnel for reasonable compensation to perform the services required for proper administration of the purposes of the Association.

5. **Officers**

(A) The executive officer of the Association shall be a President, and Vice-President both of whom shall be directors; a Secretary and an Treasurer. The Secretary and/or Treasurer do not have to be owners or directors if so agreed by a majority of the Board. The Board shall from time to time elect such other officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Association. The Board may elect itself as Officers due to the size of the project. The Board may also combine the rolls of Secretary and Treasurer.

(B) The President shall be the chief executive officer of the Association. He shall have all of the powers and duties that are usually vested in the office of the President of an association, including, but not limited to, the power to appoint committees from among the members from time to time, as he may in his discretion determine appropriate, to assist in the conduct of the affairs of the association.

(C) The Vice President shall in the absence or disability of the President exercise the powers and perform the duties of the President. He shall also generally assist the President and exercise such other duties as shall be prescribed by the directors.

(D) The Secretary shall keep the minutes of all proceedings of the Board and the members. He shall attend to the giving and serving of all notices to the members and directors and other notices required by law. He shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of Secretary of an association and as may be required by the Board or the President. The Assistant Secretary shall perform the duties of the Secretary when the Secretary is absent.

(E) The Treasurer shall have custody of all property of the Association, including funds, securities and evidence of indebtedness. He shall keep the assessment rolls and accounts of the members. He shall keep the books of the Association in accordance with good accounting practices. He shall perform all other duties incident of the office of the Treasurer.

6. **Removal of Directors and Officers**

(A) **Removal of Directors.** At regular meetings, or special meetings duly called for such purpose, any Director may be removed with or without cause by the affirmative vote of the majority of the Owners of record and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been presented shall be given an opportunity to be heard at the meeting. The term of any Director who becomes more than sixty (60) days delinquent in payment of any

assessment or related charges due the Association shall be automatically terminated and the remaining directors shall appoint his successor.

(B) **Removal of Officers.** Upon an affirmative vote of a majority of the members of the Board, any officer may be removed with or without cause, and his successor elected at any regular meeting of the Board, or at any special meeting of the Board called for such purpose.

7. **Fiscal Management**

The provisions for fiscal management of the Association set forth in the Declaration shall be supplemented by the following provisions:

(A) **Assessment Roll:** The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each Unit. Such as account shall designate the name and address of the Owner or Owners, the amount of each assessment against the Owners, the dates and amounts in which the assessments come due, the amount paid upon the account and the balance due upon assessment.

(B) Budget:

(a) The Board shall adopt a budget for each calendar year that shall contain estimates of the cost of performing the functions of the Association, including, but not limited to, the following items:

(1) Common Expense Budget:

(i) Maintenance and operation of Common Elements;

Landscaping

Lawn Maintenance

Street and walkways

Stormwater, sewer, detention and other  
underground Systems

Elevators, Fire and Security

(ii) Utility services

(iii) Casualty insurance

(iv) Liability insurance

(v) Administration

(vi) All taxes for common property (other than each  
unit)

(vii) Water/sewer bills

(2) Proposed assessment against each member.

(b) Copies of the proposed budget and proposed assessments shall be transmitted to each member on or before January 1<sup>st</sup> of the year for which the budget is made. If the budget is subsequently amended before the assessments are made, a copy of the amended budget shall be furnished to each member concerned.

(C) **Deposits/Accounts.** The depository of the Association shall be such bank or banks as shall be designated from time to time by the directors and in which the monies of the Association shall be deposited. Withdrawal of monies from such accounts shall be only by checks signed by such persons as are authorized by the directors, but in no event less than two signatories.

(D) An audit of the accounts of the Association shall be made annually by a certified public accountant, and a copy of the report be furnished to each member not later than April 1 of the year for which the report is made.

(E) Fidelity bonds shall be required by the Board of the Association for all officers and employees of the Association funds. The amount of such bonds shall be determined by the directors, but shall be at least 150 percent of the amount of the total annual operating expenses, including reserves. The fidelity bonds shall be paid by the Association.

#### **8. Parliamentary Rules**

Roberts Rules of Order (latest edition) shall govern the conduct of Association proceedings when not in conflict with Articles of Incorporation and By-Laws of the Association or with the statutes of the State of Mississippi.

#### **9. Amendments**

Amendments to the By-Laws shall be proposed and adopted in the following manner:

(A) Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.

(B) A resolution adopting a proposed amendment must receive approval of two-thirds of the votes of the entire membership of the Association. Directors of the Board and members not present at the meeting considering the amendment may express their approval in writing.

(C) Initiation: An amendment may be proposed by either the Board by the membership of the Association, and after being proposed and approved by one of such bodies, it must be approved by the other.

(D) Effective date: An amendment when adopted shall become effective only after being recorded in the Office of the Chancery Clerk of Lafayette County, Mississippi.

(E) In the event of any conflict with the provisions of these By-Laws and the provisions of the Declaration, the provisions of the Declaration shall control.

IN WITNESS WHEREOF, THE DEVELOPER OF OLD OAKS OF OXFORD, a CONDOMINIUM HAS EXECUTED THESE BY-LAWS ON BEHALF of Old Oaks of Oxford Condominium Owner's Association, Inc., a Mississippi nonprofit corporation this the 15<sup>th</sup> day of October, 2018.

**DEVELOPER/INCORPORATOR:**

**Old Oaks Oxford, LLC**



By: **Robert D. Walker**

Its: **Manager**

**Exhibit "D"**

**AS-BUILT SURVEY (Plat) AND**  
**PLAN OF THE CONDOMINIUM**



**- DESCRIPTION OF PHASE 1A -**

THIS DESCRIPTION IS BASED ON THE MISSISSIPPI STATE PLACES COORDINATE SYSTEM, EAST ZONE, NAD 83 GRID VALUES. U.S. SURVEY FEET, USING A SCALE FACTOR OF 0.999990461 AND A CONVERGENCE ANGLE OF -00° 21' 06" CALCULATED AT THE POINT OF COMMENCEMENT OF THIS SURVEY.

A FRACTION OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 8 SOUTH, RANGE 3 WEST, LAFALETTE COUNTY, MISSISSIPPI AND CONTAINING 5.658 ACRES THIS DESCRIPTION BEING IN MORE DETAILS AS FOLLOWS:

COMMENCING AT AN EXISTING 3/4" IRON PIPE FOUND ACCEPTED AS BEING THE NORTHEAST CORNER OF SECTION 25, TOWNSHIP 8 SOUTH, RANGE 3 WEST, LAFALETTE COUNTY, MS. RUN THENCE N 88° 13' 14" W A DISTANCE OF 2189.04 FT TO A POINT, THENCE S 45° 23' 25" W A DISTANCE OF 85.70 FT TO A POINT, THENCE S 20° 54' 10" W A DISTANCE OF 315.61 FT TO A POINT, THENCE S 68° 24' 56" W A DISTANCE OF 301.93 FT TO A POINT, THENCE N 00° 46' 28" W A DISTANCE OF 237.75 FT TO A POINT, THENCE N 18° 13' 31" E A DISTANCE OF 131.22 FT TO A POINT, THENCE S 68° 42' 15" E A DISTANCE OF 34.97 FT TO A POINT, THENCE N 14° 09' 00" E A DISTANCE OF 46.00 FT TO A POINT, THENCE N 13° 41' 02" E A DISTANCE OF 84.83 FT TO A POINT, THENCE N 13° 41' 02" E A DISTANCE OF 102.45 FT TO A POINT, THENCE N 16° 32' 46" E A DISTANCE OF 115.94 FT TO A POINT, THENCE N 28° 12' 02" E A DISTANCE OF 15.04 FT TO A POINT, THENCE S 89° 13' 14" E A DISTANCE OF 328.74 FT TO THE POINT OF BEGINNING OF THIS DESCRIPTION.

**- DESCRIPTION OF PHASE 2 -**

THIS DESCRIPTION IS BASED ON THE MISSISSIPPI STATE PLACES COORDINATE SYSTEM, EAST ZONE, NAD 83 GRID VALUES. U.S. SURVEY FEET, USING A SCALE FACTOR OF 0.999990461 AND A CONVERGENCE ANGLE OF -00° 21' 06" CALCULATED AT THE POINT OF COMMENCEMENT OF THIS SURVEY.

A FRACTION OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 8 SOUTH, RANGE 3 WEST, LAFALETTE COUNTY, MISSISSIPPI AND CONTAINING 3.525 ACRES. THIS DESCRIPTION BEING IN MORE DETAILS AS FOLLOWS:

COMMENCING AT AN EXISTING 3/4" IRON PIPE FOUND ACCEPTED AS BEING THE NORTHEAST CORNER OF SECTION 25, TOWNSHIP 8 SOUTH, RANGE 3 WEST, LAFALETTE COUNTY, MS. RUN THENCE N 89° 13' 14" W A DISTANCE OF 1578.10 FT TO A POINT, THENCE S 00° 00' 00" E A DISTANCE OF 721.94 FT TO A POINT AT THE POINT OF BEGINNING. RUN THENCE S 03° 44' 55" W A DISTANCE OF 90.14 FT A POINT, THENCE S 72° 34' 07" W A DISTANCE OF 173.29 FT A POINT, THENCE S 13° 31' 26" W A DISTANCE OF 132.23 FT A POINT, THENCE WITH A CURVE TO THE LEFT HAVING A RADIUS OF 488.00 FT, AN ARC LENGTH OF 247.40 FT, A CHORD BEARING OF S 88° 56' 28" E AND A CHORD LENGTH OF 244.74 FT TO A POINT, THENCE S 74° 21' 25" W A DISTANCE OF 42.12 FT A POINT, THENCE WITH A CURVE TO THE RIGHT HAVING A RADIUS OF 374.00 FT, AN ARC LENGTH OF 42.93 FT, A CHORD BEARING OF S 89° 30' 24" W AND A CHORD LENGTH OF 42.85 FT TO A POINT, THENCE S 86° 58' 21" W A DISTANCE OF 178.87 FT A POINT, THENCE N 00° 46' 28" W A DISTANCE OF 90.74 FT A POINT, THENCE N 88° 18' 40" E A DISTANCE OF 190.56 FT A POINT, THENCE N 74° 30' 53" E A DISTANCE OF 379.98 FT A POINT, THENCE N 01° 57' 44" E A DISTANCE OF 267.43 FT A POINT, THENCE N 75° 16' 43" E A DISTANCE OF 222.50 FT A POINT, THENCE S 54° 23' 01" E A DISTANCE OF 169.94 FT A POINT, THENCE N 90° 00' 00" E A DISTANCE OF 168.09 FT TO THE POINT OF BEGINNING OF THIS DESCRIPTION.

**- SURVEYOR'S CERTIFICATE -**

I CERTIFY THAT WITHIN THIS PLAT OF OLD OAKS OF OXFORD, PHASE 1A & 2, A CONDOMINIUM, IN LAFALETTE COUNTY, MISSISSIPPI, IS A TRUE AND CORRECT REPRESENTATION OF THE SAID SUBDIVISION AND THAT I SIGNED AND DELIVERED IT AS MY OWN ACT AND DEED.

WITNESS MY HAND AND SIGNATURE THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

IRINA TITANI E. ADAMS  
MISSISSIPPI PK. #2379

**- STATE OF MISSISSIPPI -  
- COUNTY OF LAFALETTE -**

APPROVED AND RECOMMENDED FOR ACCEPTANCE BY THE LAFALETTE COUNTY BOARD OF SUPERVISORS, THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

\_\_\_\_\_  
JERRY BERRY  
PRESIDENT, LAFALETTE COUNTY BOARD OF SUPERVISORS

**- STATE OF MISSISSIPPI -  
- COUNTY OF LAFALETTE -**

APPROVED AND RECOMMENDED FOR ACCEPTANCE BY THE LAFALETTE COUNTY PLANNING COMMISSION, THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

\_\_\_\_\_  
T. J. RAY  
LAFALETTE COUNTY PLANNING COMMISSION

**- STATE OF MISSISSIPPI -  
- LAFALETTE COUNTY -**

I, SHERRY WALL, CHANCERY CLERK IN AND FOR SAID COUNTY AND STATE, HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD IN MY OFFICE AT \_\_\_\_\_ O'CLOCK ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018, AND WAS DULY RECORDED IN PLAT CABINET \_\_\_\_\_ SUITE \_\_\_\_\_.

WITNESS MY HAND AND OFFICIAL SEAL THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

\_\_\_\_\_  
SHERRY WALL  
CHANCERY CLERK

**- PLAN OF CONDOMINIUM &  
- CONDITIONS & RESTRICTIONS -**

RECORDED IN INSTRUMENT NUMBER \_\_\_\_\_ OF THE LAND RECORDS IN THE CHANCERY CLERK'S OFFICE OF LAFALETTE COUNTY, MISSISSIPPI.

**- GENERAL NOTES -**

1. THIS PLAT IS FILED PURSUANT TO THE MISSISSIPPI CONDOMINIUM LAW AND SHALL NOT BE CONSIDERED VALID UNLESS THE STREETS, DRIVES OR ANY OTHER IMPROVEMENTS SHOWN HEREON OR ON ANY MAP, PLAN OR INSTRUMENT FORMING A PART OF OLD OAKS OF OXFORD, A CONDOMINIUM.
2. EACH AND EVERY PART OF THE PROPERTY WITHIN THE CONDOMINIUM DESCRIBED AND SHOWN HEREON SHALL BE SUBJECT TO THE COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, SERVITUDES, CHARGES, ASSESSMENTS, AND LIENS DECLARED BY THE OWNER OF THE PROPERTY IN THAT CERTAIN INSTRUMENT ENTITLED "PLAN OF CONDOMINIUM AND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR OLD OAKS OF OXFORD, A CONDOMINIUM" FILED FOR RECORD IN THE OFFICE OF THE CHANCERY CLERK OF LAFALETTE COUNTY, MISSISSIPPI, IN INSTRUMENT NUMBER \_\_\_\_\_.
3. ALL OR ANY PART OF THE PROPERTY WITHIN THE CONDOMINIUM DESCRIBED AND SHOWN HEREON WHICH NOT LOCATED WITHIN THE BOUNDARIES OF A BUILDING HAVE BEEN AND/OR MAY HEREAFTER BE SUBJECT TO EASEMENT RIGHTS FOR THE INSTALLATION, OPERATION AND MAINTENANCE OF WATER, LANDSCAPING, IRRIGATION, SANITARY SEWER, STORM DRAINAGE, ELECTRICAL, DISTRIBUTION, TELECOMMUNICATIONS, AND/OR OTHER UTILITIES, AND/OR FOR THE INSTALLATION, OPERATION AND MAINTENANCE PURPOSES OF INSURING AND MAINTAINING PROPER DRAINAGE SUCH EASEMENT RIGHTS MAY HAVE BEEN GRANTED BY THE DECLARANT, MAY BE BEING GRANTED IN SAID PLAN BY THE DECLARANT, OR MAY HEREAFTER BE GRANTED BY THE OLD OAKS OF OXFORD CONDOMINIUM ASSOCIATION, TO, SEVERALLY, THE DECLARANT, THE CITY OF OXFORD, AND/OR THE OLD OAKS OF OXFORD CONDOMINIUM ASSOCIATION. THE CITY OF OXFORD SHALL BE RESPONSIBLE FOR THE UTILITY SERVICE FOR THE BENEFIT OF THE OWNERS OF UNITS HEREIN SUCH UNITS, WITH SUCH BENEFITS AND PERMISSIONS AND UNDER SUCH RESTRICTIONS AND CONDITIONS AS THE ASSOCIATION MAY FROM TIME TO TIME RESOLVE.
4. THIS PROPERTY IS ZONED R2, RESIDENTIAL, MEDIUM DENSITY DISTRICT, AND MINIMUM SETBACKS ARE AS FOLLOWS: FRONT - 20.0', SIDE - 5.0', AND REAR - 20.0'.
5. THIS PROPERTY IS LOCATED IN ZONE X ACCORDING TO FLOOD HAZARD BOUNDARY MAP NO. 222-C PREPARED BY THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, FEDERAL EMERGENCY MANAGEMENT AGENCY, ADMINISTRATION, FOR COMADUNIT NO. 28071C 0232 C DATED NOVEMBER 28, 2010.
6. THE STREETS AND DRIVES WITHIN THE PROPERTY ARE PRIVATE STREETS AND ARE NOT TO BE USED FOR THE USE, BENEFIT AND ENJOYMENT OF THE DECLARANT OR THE ASSOCIATION AND THE LOCATION OF THE OLD OAKS OF OXFORD, A CONDOMINIUM, PHASE 1A & 2, THE DESIGNATION OF SAID STREETS AND DRIVES ON THIS PLAT SHALL NOT MEAN OR IMPLY THAT THE PUBLIC AT LARGE ACQUIRES ANY EASEMENT OF USE OR RIGHT OF ENTRY WITH RESPECT HERETO.
7. ALL WORDS USED IN THE ABOVE NOTES, UNLESS A DIFFERENT MEANING IS APPARENT FROM THE CONTEXT, SHALL HAVE THE MEANING SET FORTH IN SAID "PLAN OF CONDOMINIUM AND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR OLD OAKS, A CONDOMINIUM, PHASE 1A & 2."

**- DECLARANT'S CERTIFICATE -  
- STATE OF MISSISSIPPI -  
- COUNTY OF LAFALETTE -**

I, ROBERT D. WALKER, AS MANAGER OF OLD OAKS OXFORD, LLC, A MISSISSIPPI LIMITED LIABILITY COMPANY, DO HEREBY CERTIFY THAT OLD OAKS OXFORD, LLC IS THE OWNER OF THE PARCEL OF LAND SHOWN ON THIS PLAT AND DESCRIBED IN THE SURVEYOR'S CERTIFICATE OF JOYNTAN E. ADAMS, WHICH APPEARS HEREON. THAT SAID OWNER HAS CAUSED THIS PARCEL TO BE SURVEYED AND PLATTED AS SHOWN HEREON AND HAS CAUSED THIS PARCEL TO BE SUBJECT TO THE COVENANTS, CONDITIONS AND RESTRICTIONS SET FORTH IN SAID "PLAN OF CONDOMINIUM AND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR OLD OAKS OF OXFORD, A CONDOMINIUM, PHASE 1A & 2." THE OWNER HEREBY CONSENTS TO THE RECORPATION OF THIS PLAT AND THE PLAN OF CONDOMINIUM AND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR OLD OAKS OF OXFORD, A CONDOMINIUM, PHASE 1A & 2, FILED CONCURRENTLY HERewith.

\_\_\_\_\_  
OLD OAKS OXFORD, LLC  
A MISSISSIPPI LIMITED LIABILITY COMPANY

**- STATE OF MISSISSIPPI -  
- COUNTY OF LAFALETTE -**

PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED AUTHORITY IN AND FOR THE SAID COUNTY AND STATE ON THIS DAY OF \_\_\_\_\_, 2018, WITHIN MY JURISDICTION, THE WITHIN NAMED ROBERT D. WALKER, WHO ACKNOWLEDGED TO ME THAT HE IS THE MANAGER OF OLD OAKS OXFORD, LLC, A MISSISSIPPI LIMITED LIABILITY COMPANY, AND THAT HE HAS CAUSED THIS PARCEL TO BE SURVEYED AND PLATTED AS SHOWN HEREON AND HAS CAUSED THIS PARCEL TO BE SUBJECT TO THE COVENANTS, CONDITIONS AND RESTRICTIONS SET FORTH IN SAID "PLAN OF CONDOMINIUM AND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR OLD OAKS OF OXFORD, A CONDOMINIUM, PHASE 1A & 2." THE OWNER HEREBY CONSENTS TO THE RECORPATION OF THIS PLAT AND THE PLAN OF CONDOMINIUM AND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR OLD OAKS OF OXFORD, A CONDOMINIUM, PHASE 1A & 2, FILED CONCURRENTLY HERewith.

MY COMMISSION EXPIRES: \_\_\_\_\_ NOTARY PUBLIC



**CERTIFICATE SHEET**  
FOR  
**OLD OAKS OF OXFORD,**  
A CONDOMINIUM  
PHASES 1A & 2  
A WALKER & WALKER ENTERPRISES, LLC DEVELOPMENT

NO.	DATE	REVISIONS:
01	01/18/18	ISSUE
02	01/18/18	REVISION
03	01/18/18	REVISION
04	01/18/18	REVISION
05	01/18/18	REVISION
06	01/18/18	REVISION
07	01/18/18	REVISION
08	01/18/18	REVISION
09	01/18/18	REVISION
10	01/18/18	REVISION

NO.	DATE	REVISIONS:
01	01/18/18	ISSUE
02	01/18/18	REVISION
03	01/18/18	REVISION
04	01/18/18	REVISION
05	01/18/18	REVISION
06	01/18/18	REVISION
07	01/18/18	REVISION
08	01/18/18	REVISION
09	01/18/18	REVISION
10	01/18/18	REVISION

**EXHIBIT "E"**

**ALLOCATED INTERESTS AND VOTES**

<b>UNIT #</b>	<b>% OF OWNERSHIP OF COMMON ELEMENTS AND COMMON EXPENSE LIABILITY</b>	<b>VOTE</b>
1	1/18	1
2	1/18	1
3	1/18	1
4	1/18	1
5	1/18	1
6	1/18	1
7	1/18	1
8	1/18	1
9	1/18	1
10	1/18	1
31	1/18	1
32	1/18	1

UNIT #	% OF OWNERSHIP OF COMMON ELEMENTS AND COMMON EXPENSE LIABILITY	VOTE
33	1/18	1
34	1/18	1
35	1/18	1
36	1/18	1
37	1/18	1
38	1/18	1
Total	18	18

## **Exhibit "F"**

### **Allocation of Interests Upon Addition of Additional Property**

Upon Addition of Additional Property to the Condominium, the Allocated Interests assigned to the Additional Units shall be calculated by dividing the total number of Units into the number One (1). The Allocated Interest of all previously-existing Units in the Condominium will likewise be reduced by dividing the total number of Units into the number One (1).

The Votes for each of the Additional Units added to the Condominium shall be the comparable number of votes assigned to Units previously existing in the Condominium.

For example, if there are 18 units in Phase 1a and 2, then each unit will have one (1) out of eighteen (18) votes and each Unit, regardless of the amount of bedrooms in said Unit, will own an undivided  $1/18^{\text{th}}$  of the Common Area. If the next phase, adds an additional five (5) units, then each unit will have one (1) out of twenty three (23) votes and each Unit, regardless of the amount of bedrooms in said Unit, will own an undivided  $1/23^{\text{rd}}$  of all the Common Area, including the additional phase, and so on.

**Exhibit “G”**

**Storm Water Management, Inspection and Maintenance Plan and  
Information**

## **Storm Water Management, Inspection and Maintenance Plan Old Oaks of Oxford, A Condominium**

The Storm Water Management, Inspection and Maintenance Plan has been prepared to ensure that the storm water conveyances, retention/detention structures and treatment systems (where applicable) are properly inspected and maintained so that they meet and continue to function according to their designed functions. The long-term operation and maintenance of a storm water management system is as critical to its performance as its design and construction. Proper operation and maintenance ensures that the best management practice (BMP) will continue to remove pollutants effectively over the long-term; decreases the risk of re-suspending sediment; and therefore, improves water quality. Without proper maintenance, BMPs are likely to fail and no longer provide the necessary storm water treatment.

In general, the following is an outline of typical inspection and maintenance activities that the Owner shall employ in order to maintain the development's storm water infrastructure. There is also a table that follows that provides this information in tabular form with frequencies for the inspections and maintenance of the items.

- **VEGETATED AREAS**

- Inspect all slopes and embankments and replant areas of bare soil or with sparse growth. Armor rill erosion areas with riprap or divert the runoff to a stable area. Inspect and repair down-slope of all spreaders and turnouts for erosion. Mow vegetation as specified for the area.

- **DITCHES, SWALES AND OPEN STORM WATER CHANNELS**

- Remove obstructions, sediments or debris from ditches, swales and other open channels. Repair any erosion of the lining. Mow vegetated ditches. Remove woody vegetation growing through riprap. Repair any slumping of side slopes. Repair riprap where underlying filter fabric or gravel is showing or if stones have dislodged.

- **CULVERTS**

- Remove accumulated sediments and debris at the inlet, outlet, or within the conduit. Remove any obstruction to flow. Repair any erosion damage at the culvert's inlet and outlet.

- **CATCH BASINS OR CURB INLETS**

- Remove sediments and debris from the bottom of the basin and inlet grates. Remove floating debris and oils (using oil absorptive pads) from any trap.

- **ROADWAYS AND PARKING AREAS**

- Clear and remove accumulated winter sand in parking lots and along roadways. Sweep pavement to remove sediment. Grade road shoulders and remove accumulated winter sand. Grade gravel roads and gravel shoulders. Clean out

the sediment within water bars or trench drains. Ensure that storm water runoff is not impeded by false ditches of sediment in the shoulder.

- **BUFFERS OR RESTRICTED AREAS**

Inspect buffers for evidence of erosion, concentrated flow, or encroachment by the Development. Manage the buffer's vegetation with the requirements in any deed restrictions. Repair any sign of erosion within a buffer. Inspect and repair down-slope of all spreaders and turn-outs for erosion. Install more level spreaders, or ditch turn-outs if needed for a better distribution of flow. Clean out any accumulation of sediment within the spreader bays or turnout pools. Mow non-wooded buffers no shorter than six inches and no less than three times per year.

- **WET PONDS AND DETENTION BASINS**

Inspect the embankments for settlement, slope erosion, piping, and slumping. Mow the embankment to control woody vegetation. Inspect the outlet structure for broken seals, leaking joints, obstructed orifices, and plugged trash racks. Remove and dispose of sediments and debris within the control structure. Repair any damage to trash racks or debris guards. Replace any dislodged stone in riprap spillways. Remove and dispose of accumulated sediments within the impoundment and forebay.

- **FILTRATION AND INFILTRATION BASINS**

Clean the basin of debris, sediment and hydrocarbons. Provide for the removal and disposal of accumulated sediments within the basin. Renew the basin media if it fails to drain within 72 hours after a one inch rainfall event. Till, seed and mulch the basin if vegetation is sparse. Repair riprap where underlying filter fabric or gravel is showing or where stones have dislodged.

- **PROPRIETARY DEVICES**

Contract with a third-party for inspection and maintenance. Follow the manufacturer's plan for cleaning of devices.

It is understood that maintenance of the storm water facilities is included in the condominium documents for this development and covered by the provision of the condominium association "To maintain, repair, replace and operate the condominium property".

In addition to the routine inspections and maintenance of the storm water infrastructure indicated above, the OLD OAKS of OXFORD development has two (2) impoundments that are permitted through the Mississippi Department of Environmental Quality (MDEQ) Dam Safety Division. Both of these impoundments serve as the developments storm water detention facilities. The Dam Safety Regulations (11 Miss. Admin. Code Pt. 7, Ch. 3) require that owners of high hazard and significant hazard dams have their dams inspected by an engineer familiar with design and inspection of dams who is registered with the State of Mississippi Board of

Licensure for Professional Engineers and Surveyors. These inspections must be done at intervals specified by the Commission using the Mississippi Dam Safety Program's forms and guidelines. A copy of the guidelines for inspections of dams as provided by MDEQ Dam Safety Division is attached hereto for reference as designated as "Attachment A".

The required maintenance interval for storm water BMPs are often dependent upon the degree of pollutant loading from a particular drainage basin. BMP maintenance can best be broken into three categories: inspection, routine maintenance, and major maintenance. Though each BMP type has its own unique characteristics, inspections will generally consist of an assessment to assure its functionality and the general condition. Routine maintenance will generally consist of trash and vegetation removal, unclogging of drains, minor sediment removal and exchange of filter media where applicable. Major maintenance will be completed as required from inspections and generally consists of significant reconstruction due to failures in the BMP. Examples of Major Maintenance include dredging, excavation, removal of existing media, replacing fabric, replacing the under-drain, and reestablishment of vegetation. The following schedule is offered as a guideline for performing Inspection and routine maintenance for a range of BMP categories.

## INSPECTION AND MAINTENANCE PLAN FOR STORMWATER MANAGEMENT STRUCTURES (BMPs)

	INSPECTION SCHEDULE	CORRECTIVE ACTIONS
<b>VEGETATED AREAS</b>	Annually early spring and after heavy rains	Inspect all slopes and embankments and replant areas of bare soil or with sparse growth. Armor rill erosion areas with riprap or divert the runoff to a stable area. Inspect and repair down-slope of all spreaders and turnouts for erosion. Mow vegetation as specified for the area.
<b>DITCHES, SWALES AND OPEN STORM WATER CHANNELS</b>	Annually spring and late fall and after heavy rains	Remove obstructions, sediments or debris from ditches, swales and other open channels. Repair any erosion of the lining. Mow vegetated ditches. Remove woody vegetation growing through riprap. Repair any slumping of side slopes. Repair riprap where underlying filter fabric or gravel is showing or if stones have dislodged.
<b>CULVERTS</b>	Spring and late fall and after heavy rains	Remove accumulated sediments and debris at the inlet, outlet, or within the conduit. Remove any obstruction to flow. Repair any erosion damage at the culvert's inlet and outlet.
<b>CATCH BASINS OR CURB INLETS</b>	Annually in the spring	Remove sediments and debris from the bottom of the basin and inlet grates. Remove floating debris and oils (using oil absorptive pads) from any trap.
<b>ROADWAYS AND PARKING AREAS</b>	Annually in the spring or as needed	Clear and remove accumulated winter sand in parking lots and along roadways. Sweep pavement to remove sediment. Grade road shoulders and remove accumulated winter sand. Grade gravel roads and gravel shoulders. Clean out the sediment within water bars or trench drains. Ensure that storm water runoff is not impeded by false ditches of sediment in the shoulder.
<b>BUFFERS AND RESTRICTED AREAS</b>	Annually in the spring	Inspect buffers for evidence of erosion, concentrated flow, or encroachment by the Development. Manage the buffer's vegetation with the requirements in any deed restrictions. Repair any sign of erosion within a buffer. Inspect and repair down-slope of all spreaders and turn-outs for erosion. Install more level spreaders, or ditch turn-outs if needed for a better distribution of flow. Clean out any accumulation of sediment within the spreader bays or turnout pools. Mow non-wooded buffers no shorter than six inches and less than three times per year.
<b>WETPONDS AND DETENTION BASINS</b>	Annually in fall and after heavy rains	Inspect the embankments for settlement, slope erosion, piping, and slumping. Mow the embankment to control woody vegetation. Inspect the outlet structure for broken seals, leaking joints, obstructed orifices, and plugged trash racks. Remove and dispose of sediments and debris within the control structure. Repair any damage to trash racks or debris guards. Replace any dislodged stone in riprap spillways. Remove and dispose of accumulated sediments within the impoundment and forebay.
<b>FILTRATION AND INFILTRATION BASINS</b>	Annually in the spring and late fall	Clean the basin of debris, sediment and hydrocarbons. Provide for the removal and disposal of accumulated sediments within the basin. Renew the basin media if it fails to drain within 72 hours after a one inch rainfall event. Till, seed and mulch the basin if vegetation is sparse. Repair riprap where underlying filter fabric or gravel is showing or where stones have dislodged.
<b>PROPRIETARY DEVICES</b>	As specified by manufacturer	Contract with a third-party for inspection and maintenance. Follow the manufacturer's plan for cleaning of devices.



***Dam Safety Division***

***Guidelines for Inspection of Dams***

Mississippi Department of Environmental Quality  
Office of Land & Water Resources

August 2015

ATTACHMENT A

## **Introduction**

The Dam Safety Regulations (11 Miss. Admin. Code Pt. 7, Ch. 3) require that owners of high hazard and significant hazard dams have their dams inspected by an engineer familiar with design and inspection of dams who is registered with the State of Mississippi Board of Licensure for Professional Engineers and Surveyors. These inspections must be done at intervals specified by the Commission using the Mississippi Dam Safety Program's forms and guidance.

The Mississippi Dam Safety Program is implemented by the Department of Environmental Quality, Office of Land & Water Resources. The mission of the program is to protect downstream lives and property from the consequences of a dam failure. A primary means of achieving this goal is through maintenance and periodic inspection of dams.

These inspections are intended to identify conditions that may adversely affect the safety and functionality of a dam and its appurtenant structures; to note the extent of deterioration as a basis for long term planning, periodic maintenance or immediate repair; to evaluate conformity with current design and construction practices; and to determine the appropriateness of the existing hazard classification. The professional engineer performing the inspection should, where appropriate, recommend subsequent investigations required to resolve uncertain conditions and corrective measures to enable the dam to continue to perform its intended functions.

## **Inspection Guidelines**

These inspection guidelines are designed to assist the dam owner to better understand the requirements, responsibilities, and duties inherent with dam ownership and to assist the professional engineer by providing a consistent approach to dam inspection and in-service evaluation.

Several different types of dam inspections can be performed. Dams and appurtenances should be inspected regularly to identify conditions that may adversely affect the safety of a dam and its ability to perform intended functions. An inspection may include the periodic evaluation of the as-built dam to insure conformity with current design and construction practices.

## **Dam Classifications**

There are three (3) hazard classifications for dams (high, significant, and low) as defined below:

- High hazard dams are those dams in which failure may cause loss of life, serious damage to residential, industrial, or commercial buildings; or damage to, or disruption of, important public utilities or transportation facilities such as major highways or railroads. Dams proposed for construction in established or proposed residential, commercial, or industrial areas will be placed in the high hazard category, unless the applicant provides convincing evidence to the contrary.

- Significant hazard dams are those dams in which failure poses no threat to life, but may cause significant damage to main roads, minor railroads, or cause interruption of use or service of public utilities.
- Low hazard dams are those dams which failure would at the most result in damage to agricultural land, farm buildings (excluding residences), or minor roads.

## **Types of Inspections and Requirements**

**Formal Inspection** – The inspection and performance evaluation (risk analysis) of high hazard and significant hazard dams to review and determine the safety and integrity of the dam and appurtenant structures. A formal inspection may involve many specialists such as geologists, hydrologists, surveyors, divers, ROV camera operators and others to evaluate individual features and conditions, however, the overall inspection and report must be supervised and prepared by a qualified Mississippi licensed professional engineer with experience in dam design and construction. Formal inspections shall include, but are not limited to, the following:

### ➤ **Detailed Field Examination**

- Mississippi Dam Safety program inspection report forms or approved equivalent completed with a photographic record of the inspection as well as a plan and profile drawing of the dam showing the location and extent of any deficiencies noted. Descriptions should be very precise and complete enough so that current conditions can be understood by the Dam Safety Program.
- A survey of the dam and appurtenant structures must be conducted by a qualified Mississippi licensed professional surveyor and the survey compared to previous surveys to evaluate settlement and deformation.
- Any conduits in the embankment must have a video or physical inspection. This includes drain pipes for filter drains. Detailed underwater inspections should be included as needed.
- Any instrumentation shall be read and a summary of current and any available previous readings shall be included with the inspection report.

### ➤ **Records Review and Analysis**

- A thorough review of the records on project design, construction, and performance. Any information on the dam maintained by the owner and all DEQ records shall be reviewed.
- A review of prior owner's and formal inspection reports shall be undertaken to evaluate trends in performance.
- Long-term patterns revealed by instrumentation should be closely examined and evaluated.

- If unknown, spillway capacities shall be calculated and a complete Hydrologic and Hydraulic report shall be submitted.
- An approved Emergency Action Plan (EAP) and Operation and Maintenance Manual (O & M) shall be confirmed and their adequacy determined. If an O & M manual and/or EAP has not been prepared, then one shall be prepared as part of the inspection.

The inspection report along with any supporting documentation shall be submitted to the Mississippi Dam Safety Program for review and approval.

**Owner's Inspection** – The annual inspection of a dam by the owner to detect signs of deterioration in material, weaknesses or unsafe hydraulic or structural behavior and to record the progress of any repairs or correction of deficiencies noted in previous inspection reports. Any instrumentation data that can be read by the owner shall be reviewed and evaluated per instructions in their Operations and Maintenance Manual and the results noted in the inspection report. The inspection report shall be completed using Mississippi Dam Safety Program approved forms and submitted to the Mississippi Dam Safety Program, along with a photographic record of the inspection, for review and approval.

**Informal Inspection** – A visual inspection of the dam by the dam owner or operator which is done periodically in order to spot any developing problems. Informal inspections require that personnel conducting the inspection be knowledgeable about the dam and its appurtenances. An informal inspection must be performed every 60 days for high and significant hazard dams as well as after significant storm events. No reports are required to be made to the Dam Safety Program unless a problem with the dam is discovered and a potential failure situation may result. Personnel from the Mississippi Dam Safety Program will also perform informal inspections on selected dams in order to inspect the progress of any construction work, or to gain more information in order to evaluate their performance.

**Emergency Inspection** – An emergency inspection is an unscheduled inspection of a dam and its appurtenances necessitated by a potentially natural event such as a large flood, earthquake or when a condition develops that appears to threaten the safety of the dam. An emergency inspection is applicable to any hazard classification. Any required emergency repairs resulting from an emergency inspection should be conducted in compliance with 11 Miss. Admin. Code Pt. 7, Ch. 3.

**Documentation of Deficiencies** – When documenting deficiencies for any inspection, use the acronym "SMPL" as a guide:

S – Sketch the deficiency and describe its characteristics

M – Measure the deficiency and record the dimensions

P – Photograph the deficiency

L – Locate the deficiency in relation to a standard reference point and record the precise location in the report

## **Resources**

The Dam Safety Program has training and reference materials on conducting dam inspections, instrumentation, creating an operation and maintenance program, evaluation of stability and deformation, evaluation of seepage as well as resources for other aspects of dam design, construction, operation and emergency planning. These resources are on our website, in manuals as well as on DVD and VHS and are available for engineers and dam owners to borrow. Please contact the dam safety program to obtain a complete list of resources or to borrow materials. Mississippi Dam Safety Program personnel are also available to provide training to owners and operators.

## **Inspection Reports and Qualifications of Inspection Personnel**

Formal dam inspections must be led by a qualified professional engineer. The term “qualified engineer”, as used in these guidelines is intended to mean an individual who:

1. Is a licensed Mississippi professional engineer.
2. Is competent in dam investigation, design, construction, and operation for the type of dam being inspected.
3. Understands the failure mechanisms for the dam being inspected.

Formal dam inspections may call for other technical specialists. If any of these specialists are required to be registered in accordance with state law or certified in accordance with their association’s rules, then their report must be fixed with their seal and signature and attached to the inspection report. Geological reports must be signed and stamped / sealed by a Mississippi Registered Professional Geologist in accordance with state law. Surveys of the dam for inspection purposes and establishment of survey monuments for instrumentation purposes must be conducted by a Mississippi Registered Land Surveyor and be sealed in accordance with state law. Any drilling for sub-surface exploration must be done by a Mississippi licensed driller and a copy of the driller’s form with their signature and license number included.

The text of the report on the condition of a dam shall provide all relevant dam and dam related facts, findings, conclusions, recommendations, and data. In addition, each report shall contain clear, color photographs with each photograph indicating the date it was taken and the photograph location. The inspection report shall be completed using the inspection forms which can be found on the dam safety page of the website ([www.deq.state.ms.us](http://www.deq.state.ms.us)).

Inspection reports for high hazard and significant hazard dams shall be submitted within ninety (90) days of the completion of the inspection. Informal inspections may be performed by the dam owner or operator and the resulting inspection report shall be a part of the owner’s or operators’ permanent file. Unless specifically requested, informal inspection reports do not need to be submitted.