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Rankin County, MS
Larry Swales, Chancery Clerk

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
COWAN CREEK**

This Declaration of Covenants, Conditions and Restrictions for Cowan Creek ("Declaration") is made on September 14, 2015, by Berg Cowan Development, LLC, a Mississippi limited liability company ("Declarant") whose address is P.O. Box 5086, Brandon, Mississippi, 39047, and whose phone number is (601) 942-3224.

The Declarant is the owner of certain real property situated in Rankin County, Mississippi, and described in Exhibit "A" attached hereto ("Property"). The Property has been subdivided into various Lots and is depicted as Lots 1-37 on a plat of Cowan Creek, which plat is of record in the office of the Chancery Clerk of Rankin County, Mississippi in Plat Cabinet E at Slide 63. The Declarant desires to create and to develop a residential community on the Property which shall have a designated common area ("Common Area") for the benefit of the residential community. The Declarant desires to provide for the preservation of the values and amenities and the enhancement of the beauty of the residential community, and for the designation, administration and maintenance of the Common Area. Declarant desires to subject all of the Property including any and all improvements constructed or to be constructed on the Property, to the covenants, conditions, restrictions, uses, limitations, obligations, easements, servitudes, charges, assessments and liens set forth in this Declaration which individually and collectively are for the benefit of the Property, each Owner, and Declarant.

Declarant shall create and organize Cowan Creek Home Owners Association, Inc. ("Association"), and shall delegate and assign certain powers and duties created by and in this Declaration to the Association (1) for the administration and maintenance of the Common Area, (2) for administration and enforcement of the provisions of the Declaration, and (3) for the determination, collection and disbursement of charges and assessments hereinafter specified. Where used herein, "Articles" or "Articles of Incorporation" or "Bylaws" shall mean the Articles of Incorporation and the Bylaws of the Association.

Now, therefore, the Declarant declares that the Property is and shall be owned, leased, held, transferred, assigned, sold, conveyed, rented, used occupied, hypothecated, encumbered, and improved subject to the provisions of this Declaration which (i) are agreed and declared to be beneficial for and in aid of the development of the residential community and the improvement of the Property, (ii) shall be deemed to run with and bind the Property, and (iii) shall inure to the benefit of and be enforceable by the Declarant, its successors and assigns, the Association, any Owner and any Person who holds such interest solely as security for the performance of an obligation or the payment of a debt.

ARTICLE I **DEFINITIONS**

Section 1.01. Definitions. For all purposes of this Declaration, the following words and terms shall have the meanings assigned in this Section 1.01 unless otherwise specified or the context requires a different construction.

“Additional Property” shall mean any real property which from time to time the Declarant may add to the Property as permitted by Section 2.05.

“Articles” shall mean the Articles of Incorporation of the Association, as amended from time to time.

“Assessment” shall mean the share allocated to a Lot of the Association’s (i) Annual Assessments under Section 5.02, (ii) Special Assessments under Section 5.03, and (iii) expenses, costs, charges and other amounts incurred with respect to either such Lot or the satisfaction, discharge or compliance with any obligations or duties of the Owners of such Lot as specified in this Declaration.

“Association” shall mean the Cowan Creek Home Owners Association, Inc., a Mississippi nonprofit corporation, and its successors and assigns.

“Board of Directors” shall mean the Board of Directors of the Association.

“Builder” shall mean any Person or Entity who is in the business of constructing a Dwelling on a Lot.

“Bylaws” shall mean the bylaws of the Association as amended from time to time.

“Common Area” shall mean all real property shown and designated on the Plat as a Common Area which is owned or otherwise made available to the Association for the common use, benefit and enjoyment of the Members. The Common Area shall be all of the Property except (i) all platted and numbered Lots as shown and designated on a Plat, (ii) any portion of the Property shown and designated on a Plat as reserved or designated for future development as a part of or an addition to the residential community, (iii) the Streets, and (iv) easements as shown and designated on a Plat for utilities and drainage and all water and sewer lines located in such easements or within the Streets.

“Declarant” shall mean Berg Cowan Development, LLC, a Mississippi limited liability company, and its successors and assigns. The designation of any successor to or assignee of the Declarant may be made by a written instrument making such designation or assignment and filed of record in the Land Records of Rankin County, Mississippi. The Declarant may assign part or all of its rights hereunder at any time.

"Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for Cowan Creek, as amended or supplemented from time to time.

"Dwelling" shall mean any building or portion of a building located on the Property which is designed and intended for use and occupancy as a residence by a single individual or by a family, including a detached house, a town house or a garden house.

"First Mortgage" shall mean a mortgage, deed of trust or similar encumbrance creating a lien or encumbrance against a Lot which has priority over all other mortgages, deeds of trusts or similar encumbrances creating liens or encumbrances against such Lot.

"Invitees" shall mean an Owner's guests, patrons, employees or other guests or invitees.

"Lot" shall mean each subdivided parcel, plot or tract of land constituting a portion of the Property which is shown and designated as a numbered lot on the Plat and is intended to be improved with a Dwelling, but does not include the Common Area.

"Management Agent" shall mean the Person employed or retained by the Board of Directors for the purpose of conducting and managing the daily operations of the Association.

"Member" shall mean each Person who holds or has any class of membership in the Association as provided by Article III.

"Mortgagee" shall mean any Person who owns, holds or is the beneficiary of a mortgage, deed of trust or similar encumbrance creating a lien or encumbrance against any Lot and the improvements on such Lot.

"Owner" shall mean the record holder, whether one or more Persons, of a fee or undivided fee interest in or to any Lot, including a contract seller, but excluding those Persons who hold an interest in a Lot merely as security for the performance of an obligation or payment of a debt. Each owner shall be a Class A Member or a Class B Member of the Association.

"Person" shall mean an individual, a corporation, a general or limited partnership, an association, a trust, an estate, a limited liability company, or any other legal entity.

"Plans" shall mean the plans, blueprints, architectural drawings, specifications and samples prepared by or for an Owner or Builder in connection with the development or improvement of a Lot.

"Property" shall mean (i) all real property situated in Rankin County, Mississippi, which is described in Exhibit "A", and (ii) any portion of the Additional Property which is added to the Property by annexation pursuant to Article II.

“Streets” shall mean the streets, roads, parking areas, curbs and sidewalks which have been dedicated to and accepted for maintenance and repair by Rankin County, Mississippi, or such other governmental authority which may have, obtain or acquire the jurisdiction or obligation for such maintenance and repair. Notwithstanding the designation of sidewalks as part of the streets, each Owner may be required to construct a sidewalk on his Lot, subject to the specifications established by the Cowan Creek Architectural Review Committee.

“Supplement” or “Supplementary Declaration” means any amendment, modification, change or restatement of or to this Declaration.

ARTICLE II

PROPERTY SUBJECT TO DECLARATION

Section 2.01. The Property. The real property which is and shall be owned, leased, held, transferred, assigned, sold, conveyed, rented, used, occupied, hypothecated, encumbered, and improved subject to this Declaration is the Property which is located in Section 21, Township 6 North, Range 3 East, Rankin County, Mississippi, and is more particularly described in Exhibit “A”.

Section 2.02. Common Area. All of the real property which is set aside as, and declared to constitute the Common Area, after such real property is conveyed to the Association by the Declarant, shall be held and owned for the common use, benefit and enjoyment of the Members. The Declarant may at any time convey additional portions of the Property to the Association and declare such portion to the Common Area. The designation of any portion of the Property as a Common Area shall not mean that the public at large acquires any easement of use, benefit and enjoyment in or to the Common Area.

Section 2.03. Annexation of Additional Property. The Declarant expressly reserves the option, right and privilege (i) to annex any other real property to the Property, and (ii) by or as a result of such annexation to subject the annexed Additional Property to the provisions of this Declaration. The provisions of this Declaration shall not affect or apply to any portion of the Additional Property unless and until such portion of the Additional Property is annexed to the Property pursuant to the provisions of Section 2.05.

Section 2.04. No Obligation to Annex. The Declarant shall not have the obligation, but only the option, right and privilege, to develop or annex property as Additional Property. The Declarant expressly does not represent, warrant or guarantee to any Person that any property will be developed or will be annexed to the Property. By acceptance of a deed conveying any interest in a Lot, each Owner agrees and represents and warrants to the Declarant or other grantor that, in purchasing or otherwise acquiring such interest in the Lot, the Owner has not relied on any proposed, current or future development of any property as Additional Property or annexation of any property as Additional Property to the Property.

Section 2.05. Annexation Procedure. To annex Additional Property to the Property as permitted by Section 2.03, the Declarant shall execute and file for record a Supplementary Declaration which describes the property being annexed as Additional Property to the Property and a new, amended or revised description of the Property. The option, right and privilege of the Declarant to annex any real property as Additional Property to the Property is subject to the following provisions:

- (a) The Declarant may annex any property as Additional Property at different times and in any sequence desired by the Declarant without regard to whether or not the portion of the Additional Property being annexed is contiguous or noncontiguous to the Property.
- (b) The Supplementary Declaration shall extend the provisions and scheme of this Declaration to the Additional Property being annexed. The Supplementary Declaration may contain such complimentary additions to and modifications of the provisions of this Declaration as the Declarant determines to be appropriate or necessary for the different character or use, if any, of the Additional Property being annexed. Such additions and modifications shall not be generally or substantially inconsistent with the provisions of this Declaration, except as permitted by Section 2.07.

Section 2.06. Effect of Annexation. Upon the Supplementary Declaration referred to in Section 2.05 being filed for record, the Additional Property described therein shall be annexed to the Property. Any and all Lots and the Common Area of or in the annexed Additional Property shall be subject to the provisions and scheme of this Declaration and the jurisdiction, functions, duties, obligations and membership of the Association, including the Articles, the Bylaws and the rules and regulations promulgated or adopted by the Board of Directors. The Owner of any Lot platted in the Additional Property shall become a member of the Association.

ARTICLE III **ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

Section 3.01. Organization of the Association. The Declarant shall organize the Association by filing Articles of Incorporation with the Secretary of State of Mississippi. The Association shall be responsible for the administration and maintenance of the Common Area, the enforcement of the provisions of this Declaration as they relate to the Association, and such other matters as the Declarant and the Association deems proper.

Section 3.02. Membership. The Members of the Association shall consist of every person who is, or who hereafter becomes, an Owner of record of the fee title to a Lot in Cowan Creek, and who is included in the definition of an Owner under Article I of this Declaration. When more than one person owns or holds an interest in a Lot, all such persons shall be Members, subject to the limitations on voting rights set forth herein.

Section 3.03. Class of Members. The Association shall have two (2) classes of Members:

Class A. The Class A Members of the Association shall be all Members other than persons herein defined as the "Declarant", who are or who hereafter become the Owner of a Lot.

Class B. The Class B Members of the Association shall be each of the persons herein defined as the "Declarant". Upon the sale or disposition of all the Property; or upon the Declarant's abandonment of the development of the Property, the Class B Membership shall terminate. The previous sentence shall not apply to, nor shall the Class B Membership terminate upon, the sale, assignment or other disposition of all or part of the Property by the Declarant to a person acquiring such Property for resale, if concurrent with such sale, assignment, or disposition the Declarant also assigns its rights as Declarant to the Person acquiring the Property.

Section 3.04. Members' Voting Rights. Except as otherwise specifically provided in the Articles of Incorporation or the Bylaws, the voting rights of the Members shall be as follows:

- (a) **Class A Members.** Each Class A Member shall be entitled to one (1) vote for each Lot in which such Member holds the interest required for membership. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any such Lot.
- (b) **Class B Members.** Each Class B Member shall be entitled to four (4) votes for each Lot in which such Member holds the interest required for membership.

Section 3.05. Action by Members. Whenever any provision of the Declaration or the Bylaws requires a vote of a specified percentage of the votes of the Members, such provisions shall require a vote by the specified percentage of the votes cast on such matter.

Section 3.06. Membership Appurtenant to Real Property. The membership of both the Class A Members and the Class B Member shall be appurtenant to the ownership of a Lot or a part of the Property. A membership shall not be held, assigned, transferred, pledged, hypothecated, encumbered, conveyed or alienated in any manner except in conjunction with and as an appurtenance to the ownership, assignment, transfer, pledge, hypothecation, encumbrance, conveyance or alienation of the Lot to which the membership is appurtenant, except that Class B Memberships may be transferred and/or assigned by the Declarant, in whole or in part, to an entity that is owned, in whole or in part, by at least one member of Declarant.

Section 3.07. Voting Conflict Between Members. If the fee title to a particular Lot is owned of record by more than one Class A Member, the one vote appurtenant to such Lot may be exercised by any one of such Members, unless the other Members who own an interest in such Lot shall object prior to the completion of voting upon the particular matter under consideration. In the event of any such obligation, the vote appurtenant to such Lot shall not be counted, unless the Members who own an interest in such Lot unanimously agree on the vote prior to completion of voting upon the particular matter under consideration.

Section 3.08. Other Voting Provisions. The Articles and/or Bylaws may contain other provisions relating to voting rights of Members with respect to matters or issues unrelated to the Declaration, including, but not limited to, the election of individuals to the Board of Directors or as Officers.

Section 3.09. Other Provisions. The Articles and/or Bylaws may contain other provisions relating to the operation of the Association so long as such provisions do not conflict with this Declaration.

ARTICLE IV
BOARD OF DIRECTORS AND OFFICERS OF COWAN CREEK HOME OWNERS
ASSOCIATION, INC. AND MANAGEMENT AGENT

Section 4.01. Board of Directors. The affairs of the Association shall be managed and controlled by the Board of Directors of Cowan Creek Home Owners Association, Inc. ("Board of Directors") which shall have all of the power and authority necessary or appropriate for such management and control. The initial Board of Directors shall consist of one (1) or more individuals designated in the Articles or appointed by the Incorporators. After the first meeting of the Members, the Board of Directors shall consist of the number of individuals as may be prescribed in the Bylaws from time to time. All Directors must be Members of the Association, except that Directors appointed by the Class B Member are not required to be Members of the Association. The Directors shall be elected or appointed by the Members in the manner prescribed in the Bylaws, except that so long as the Class B Membership exists, the Class B Member shall be entitled to appoint the number of Directors which is one more than one-half of the Directors to be elected or appointed. The Class B Member may, but is not required to, waive this right at any time.

Section 4.02. Powers and Duties. In the management and administration of the Association's affairs, the Board of Directors shall have power, authority, and duty to do all acts and actions, except acts and actions which by law, this Declaration, the Articles or the Bylaws may be exercised only by or are reserved only to the Members. Such powers, authorities, and duties of the Board of Directors to create, establish or approve policies or decisions relating to the management and administration of the Association's affairs include, but shall not be limited to, the following:

- (a) To provide for the maintenance, care, upkeep, surveillance, services and efficient operation of the Common Area.
- (b) To establish, determine, assess, collect, use and expend the Assessments from the Members, and to file and enforce liens for such Assessments when any Member fails to pay such Assessments.
- (c) To select, designate, train, hire, supervise and discharge personnel necessary or appropriate for the proper maintenance, care, upkeep, surveillance, services and efficient operation and maintenance of the Common Area; and to establish the compensation and other benefits of or for such personnel.
- (d) To adopt, promulgate and enforce such rules, regulations, restrictions and requirements as may be recommended by the Cowan Creek Architectural Review Committee pursuant to Article X hereof or the Management Agent pursuant to Section 4.04 hereof, or as the Board of Directors may consider to be appropriate with respect to the Property, the Lots, and any improvements on the Lots, including Dwellings, or the use, occupancy and maintenance of the Common Area, including but not limited to, rules, regulations, restrictions and requirements designed to prevent unreasonable interference with the use, benefit and enjoyment of the Common Area by the Members and other authorized Persons, or to govern activities which may be environmentally dangerous or hazardous, including the use or application of fertilizers, pesticides and other chemicals in or on the Property.
- (e) To authorize the payment of patronage refunds to the Members if and when the Board of Directors determines that the funds derived from Assessments are more than sufficient to satisfy all reasonably foreseeable financial needs or requirements of the Association during the current fiscal year, including funds for reserves.
- (f) To purchase insurance for the Common Area.
- (g) To maintain, repair, restore, reconstruct or demolish all or any portion of the Common Area after any casualty loss, and to otherwise improve the Common Area.
- (h) To lease or grant licenses, easements, rights-of-way and other rights of use in or option, sell, assign, exchange, trade, transfer, quitclaim, surrender, release, abandon, mortgage or encumber or otherwise convey all or any portion of the Common Area upon such terms, conditions and provisions

as the Board of Directors considers to be advisable, appropriate, convenient or advantageous for or to the Association, subject to any requirements or limitations therein.

- (i) To lease as tenant, purchase or otherwise acquire Lots and to option, lease, sell, assign, exchange, trade, transfer, quitclaim, surrender, release, abandon, mortgage, encumber or otherwise convey any of such Lots upon such terms, conditions and provisions as the Board of Directors considers to be advisable, appropriate, convenient or advantageous for or to the Association.
- (j) To retain or employ a Management Agent for such compensation and for the performance of such duties and services as established or prescribed by the Board of Directors from time to time.
- (k) To negotiate, prepare, execute, acknowledge and deliver all contracts, agreements, commitments and other documents relating to the Association's affairs.
- (l) To prosecute, defend, appeal, settle, compromise or submit to arbitration any suit, action, claim or proceeding at law or in equity or with or before any governmental agency or authority which involves or affects the Association, including the Common Area.
- (m) To retain or employ and pay the fees, expenses or other compensation of accountants, attorneys, architects, contractors, engineers, consultants or other persons who may be helpful, necessary, appropriate or convenient in or to the Association's affairs, whether or not related to or affiliated with any director or officer of the Association or any Member of the Declarant.
- (n) Subject to Section 9.01, to borrow any funds required for the Association's affairs from any person on such terms, conditions and provisions as may be acceptable to the Board of Directors, and to secure the repayment of any such loans by executing deeds of trust or by pledging or otherwise encumbering or subjecting to security interests all or any portion of the assets of the Association, including the Common Area and Common Facilities.
- (o) To establish rules, regulations, restrictions, requirements and fees and charges from time to time relating to the use of the recreational areas and amenities now or hereinafter located in or on the Common Area or Common Facilities.

- (p) To accept title to any property either alone or with covenants, as a Common Area, or as property owned by the Association for such purposes and on such terms as the Board of Directors may approve.
- (q) To adopt, promulgate and enforce such rules and regulations as may be recommended by the Board of Directors for enforcement of the provisions of this Declaration and any Supplementary Declaration hereof; however, the Board of Directors shall determine whether or not any action or omission by any party is subject to the covenants and what, if any, actions the Association shall take.

Section 4.03. Officers. The Association shall have such officers as are prescribed by the Bylaws and shall choose such officers in the manner prescribed by the Bylaws. The officers shall conduct affairs of the Association and implement the policies and decisions of the Board of Directors.

Section 4.04. Management Agent. The Board of Directors may retain or employ a Management Agent at a rate of compensation established by the Board of Directors to perform such duties and services as the Board of Directors from time to time may authorize. The Management Agent shall perform such duties and services as the Board of Directors shall direct and authorize and which may include, without being limited to, the following power and authority:

- (a) To establish and collect the Annual and Special Assessments, and enforce liens to secure the collection of such Assessments.
- (b) To provide for the maintenance, care, upkeep, surveillance, services and efficient operation of the Common Area.
- (c) To select, designate, train, hire, supervise and discharge personnel necessary or appropriate for the proper maintenance, care, upkeep, surveillance, services and efficient operation of the Common Area.
- (d) To enforce and to recommend that the Board of Directors approve and enforce such rules, regulations, restrictions, and requirements relating to maintenance, care, upkeep, surveillance, services and operation of the Common Area.
- (e) To provide such other services for the Association as may be requested by the Board of Directors, including legal and accounting services.

The Association may enter into a management agreement with the Management Agent containing such terms and conditions as the Board of Directors finds necessary and appropriate.

Section 4.05. Limitation of Liability. Neither the Declarant, its agents, officers, partners, or employees, nor the Association, the Board of Directors, any Director nor any Officer of the Association shall be liable to any Person for any failure of or failure to provide any service to be furnished by the Association or to be paid with funds from charges, fees or Assessments, or for any death, injury or damage to any Person or property caused by the elements or caused by or resulting from electricity, gas, or water which may discharge or flow from any portion of the Common Area or Common Facilities, or from any wire, pipe, drain, conduit or similar property. Neither the Declarant, its agents, officers, partners, or employees, nor the Association, the Board of Directors, any Director nor any Officer of the Association shall be liable to any Person for theft or other loss of or damage to any property which may be left or stored in the Common Area, any Lot or Street. No diminution or abatement of Annual or Special Assessments shall be claimed or allowed for the inability to use, any inconvenience or discomfort caused by or arising or resulting from the need for or the conduct of routine or other maintenance or repairs, or the construction or reconstruction of improvements on the Common Area, or from any action taken or omitted or from inaction by the Association to comply with any of the provisions of this Declaration, any Supplement, any law or ordinance or the order or directive of any governmental authority or any court.

ARTICLE V

COVENANTS FOR ASSESSMENTS

Section 5.01. Assessments. Each Owner, except as otherwise exempt under Section 5.07, by acceptance of a deed or other conveyance document for such Lot, whether or not expressed in any such deed or other conveyance document, shall be deemed to covenant and agree to pay to the Association the Owner's Assessments for such Lot which shall be such Lot's proportionate share of the amount estimated by the Board of Directors to be required for the purposes contained in Section 5.02 or Section 5.03, or otherwise considered to be an Assessment under this Declaration. Except as provided herein, there shall be no distinction between the Assessments with regard to whether or not a Dwelling has been constructed or is occupied.

Section 5.02 Annual Assessments. The initial Annual Assessment shall be \$360.00. Thereafter, the Board of Directors shall determine the amount of the Annual Assessment with respect to each Lot annually or at such more frequent intervals as the Board of Directors considers appropriate. The Annual Assessment for each fiscal year may be paid in the number of installments during such fiscal year, as the Board of Directors shall determine. The due date for each installment payment of the Assessment shall be the first day of the applicable installment period. Any Assessment installment may be prepaid without penalty or premium. Any Assessment not paid within fifteen (15) days of the due date shall be subject to such late fee or fees as the Board of Directors may set from time to time, including additional late fees for each additional month or other period for which the Assessment remains unpaid. The Board of Directors may file a lien or other notice of nonpayment of Assessments if any Owner shall fail to pay the Assessment as and when due.

See Board action dated 2/7/2017 one installment and \$50.00 late fee after Feb 15.

The Board of Directors shall prepare, or cause to be prepared, an annual operating and capital expenditure budget for the Association. The Board of Directors shall make reasonable efforts to determine and to calculate the amount of the Annual Assessment against each Lot for each fiscal year at least thirty (30) days prior to the start of such fiscal year. Within a reasonable time after determining the Annual Assessment, notice thereof shall be given to the Members. The Association shall prepare and maintain at the Association's office a schedule of the Annual Assessment for the Lots. The schedule shall be available for inspection by any Member at any reasonable time during the Association's normal business hours, upon three (3) days' written request.

The omission or failure by the Board of Directors to determine or calculate the amount of the Annual Assessment applicable to the next fiscal year shall not constitute a waiver or modification of any provision of this Article V, and shall not constitute a release of any Member from the obligation to pay the Annual Assessment against the Member's Lot, or to pay any installment of such Assessment for the next or any subsequent fiscal year. The Annual Assessment for the prior fiscal year shall continue to be the Annual Assessment payable by the Members until a new Annual Assessment is determined or calculated by the Board of Directors. Subject to the limitations in Section 5.09, the Board may change the Annual Assessment at any time during the year. No Class A Member may become exempt from or otherwise avoid liability for the payment of the Annual Assessment by the abandonment of any Lot or by the abandonment or release of the Member's rights to the use, benefit and enjoyment of the Common Area.

Except as permitted by Section 5.04, the Annual Assessments levied by the Association shall be used (i) to promote the health, safety and welfare of the residents of the Property, including the improvement, maintenance and repair of the Common Area, and (ii) to pay the costs of labor, the purchase or rental of equipment and materials used or required for, and the management, care and supervision of the Common Area. The purposes for which the Annual Assessments may be levied include, but are not limited to, the following purposes:

- (a) The amount of all operating and maintenance expenses of or for the Common Area and the services furnished or provided to or in connection with the Common Area, including charges for any services furnished or provided by the Association.
- (b) The costs of appropriate or necessary management and administration of the Common Area, including fees or other compensation paid to a Management Agent.
- (c) The amount of all taxes and assessments levied against the Common Area.
- (d) The costs of fire and extended coverage and liability insurance on the Common Area and the Association's other assets and the costs of such other insurance with

respect to the Common Area and the Association's other assets and affairs as the Board of Directors considers appropriate.

- (e) The costs of garbage and trash collection to the extent provided by the Association, and of utilities and other services which may be provided by or for the Association for or to the Common Area and/or the Lots.
- (f) The costs to maintain, replace, repair and landscape the Common Area, including but not limited to, the costs (i) to maintain, replace and repair the sidewalks, streets, roads and parking areas, and (ii) of such equipment as the Board of Directors shall determine to be necessary or appropriate in connection with such maintenance, replacement, repair and landscaping.
- (g) The costs to fund all reserves established by the Association, including any appropriate general operating reserve and/or reserve for replacement of the Common Area.
- (h) **The Class B Member shall not be required to pay Annual Assessments.**

Section 5.03. Special Assessments. In addition to the Annual Assessments authorized in the Section 5.02, the Association may levy Special Assessments as follows:

- (a) In any fiscal year the Association may levy a Special Assessment applicable only to that fiscal year (i) for the purpose of paying all or a portion of the costs of any construction, reconstruction, replacement or inordinate repair or maintenance of improvements on the Common Area, including any fixtures and personal property on or related to the Common Area, or (ii) for such other purposes as the Board of Directors may consider to be appropriate. Any such Special Assessment shall be approved by a vote of a majority of the votes cast by the Members. As used herein, inordinate repair or maintenance shall mean such repair or maintenance which is not necessary on an annual basis, but rather is necessary on an irregular or as needed basis, or which arise because of a casualty or catastrophe.
- (b) The Association may levy a Special Assessment against any Lot and the Owner of any Lot for reimbursement (i) of or for repairs occasioned by the willful or negligent acts of the Owner of such Lot or his Invitees or (ii) of or for any and all costs, expenses and expenditures made or incurred by the Association with respect to such Lot, including work or activities performed on such Lot, or for the Owner of such Lot pursuant to the provisions of this Declaration, including the discharge or satisfaction of any obligation or duty imposed upon such Owner under this Declaration.

- (c) The Association may levy a Special Assessment against any Lot and the Owner of any Lot for any violation of any Covenant set forth herein which is not cured or corrected within a reasonable time after notice of such violation is given. The Board of Directors may establish a procedure for levying such special assessments.
- (d) The Association may levy a Special Assessments on particular platted Lots within the Property if two-thirds (2/3rds) of the Owners of such Lots request, in writing, that additional services be provided by the Association and the Association agrees to provide such additional services. The Board of Directors shall have the authority (1) to decide if the Association wishes to provide such service, (2) to determine the Lots affected by such request, and (3) to determine if the requisite approval for such Additional Assessment has been obtained.
- (e) The Association may levy a Special Assessment against each Lot containing a Dwelling for an amount equal to the charge made by any governmental authority for backup fire protection pursuant to any current or future agreement, as amended from time to time, by and between the Association and such governmental authority.
- (f) The Association may levy a Special Assessment against each Lot for reimbursement to the Association for any attorneys fees, court costs, or other costs of enforcement of any provision of this Declaration.
- (g) The Association may levy a Special Assessment against any Lot which borders a Private Street for the maintenance and repair of such Private Street.
- (h) The Association may levy a Special Assessment against any Lot for any negligent or willful damage to any utility, drainage or other infrastructure or any Common Area.
- (i) **The Class B Member shall not be required to pay any Special Assessments.**

Section 5.04. Dwelling and Lawn Maintenance. This Declaration does not contemplate that the Association shall have any responsibility for the maintenance or repair of any Dwelling or its appurtenances or for the maintenance and care of lawn, garden and landscaped areas on any Lot. The Association shall have the responsibility and duty only for the maintenance, repair and care of the Common Area. However, the Association may provide the exterior maintenance and repair of any Dwelling and any appurtenances and/or the maintenance and care of lawn, garden and landscaped areas of certain Lots pursuant to (i) a determination by the Board of Directors either on its own recommendation or initiative or the recommendation or request of the Owner of a Lot, or (ii) the provisions of a Supplementary Declaration which provides that the Association shall perform such maintenance, repair and care in or on a specified portion of the Property. The

cost of such maintenance, repair and care shall be included in the Annual Assessment of such Lot. In no event shall the Association maintain and care for lawn, garden and landscaped areas in or on any enclosed portion of any Lot which is intended for use only by the occupants of the Dwelling on such Lot.

Section 5.05. Reserves for Repair and/or Replacements. The Association shall establish and maintain a reserve fund for repair and/or replacement of the Common Area, and shall allocate and pay such amount to the reserve fund from time to time as may be designated by the Board of Directors. Amounts paid to the reserve fund shall be included in the Annual Assessment under Section 5.02. All amounts paid into the reserve fund shall be deposited in such bank account or accounts in federally insured banks or in such investment accounts or investment assets as shall be designated by the Board of Directors from time to time. The reserve fund for replacements (i) for the repair and replacement of the Common Area, (ii) for repairs to any sidewalks, streets, roads or parking areas located on the Common Area, (iii) for equipment replacement, or (iv) for non-recurring start-up expenses and operating contingencies of the Common Area. The Association may establish other reserve funds for other purposes considered necessary or appropriate by the Board of Directors from time to time.

Section 5.06. Reserve Fund Appurtenant to Lot. The proportional interest of each Class A Member in any reserve funds shall be considered to be an appurtenance to the Lot of such Member, and shall not be withdrawn, assigned or transferred separately from or other than as an appurtenance to the Lot to which the proportional interest in the reserve funds appertain. Any transfer or assignment of the Lot shall be deemed to be a transfer or assignment of the proportional interest in the reserve funds. No Member shall be entitled to a refund of his proportionate share of such reserve funds.

Section 5.07. Initial Annual Assessments. As and when new Lots are platted, applicable Annual Assessments for such Lots shall be the same as for existing Lots unless the Board of Directors determines otherwise. Annual Assessments shall only apply as and when each Lot is transferred from a Class B Member to a Class A Member; specifically, the Declarant of Cowan Creek together with its successors and/or assigns shall not pay Annual Assessments but shall retain its right to vote. Additionally, any builder/contractor who purchases a Lot in Cowan Creek in order to build a house will not be required to pay any Annual Assessments for the first 365 days of its ownership of said Lot and that such a builder/contractor will have no voting rights until such time as the builder/contractor begins paying dues (i.e. it is the intent of this Declaration that builders/contractors will not pay any Annual Assessments for the first year owning any lot).

Section 5.08. Commencement of Assessments. Each Class A Member who acquires a Lot shall be liable to pay monthly installments of the Annual Assessment with respect to such Lot beginning on the first day of the next month following the date a deed or other conveyance document to the Lot is delivered to the Class A Member, as Grantee. If any Owner sells his Lot, such Owner shall still be liable for the full amount of the Assessment for the month in which the

sale is made. Upon the sale or transfer of a Lot, the Annual Assessment shall be adjusted according to the number of months remaining in the fiscal year.

Section 5.09. Changes in Annual Assessments. The Board of Directors may change the Annual Assessment for each Lot at any time; however, any increase in the Annual Assessment may be (i) not more than twenty percent (20%) above the immediately prior fiscal year's Annual Assessment without a vote of the Members, or (ii) more than ten percent (10%) above the immediately prior fiscal year's Annual Assessment only if approved by a vote of fifty-one percent (51%) of the votes cast for the increase.

Section 5.10. Assessments Are Not Dues. No portion of any Annual or Special Assessments provided in or permitted by this Section 5 are intended to be, or shall be construed to be, dues for membership in the Association.

Section 5.11. Costs and Expenses of Certain Damage. If the Board of Directors determines that any Owner (i) has failed or refused to properly satisfy or discharge any maintenance, repair, care, upkeep, replacement or any other obligations or duties for which the Owner is responsible under this Declaration, or (ii) is responsible for damage to the area of common responsibility which is not covered by insurance, the Board of Directors may provide such maintenance, repair, care, upkeep or replacement or satisfy or discharge any such other obligations or duties at the Owner's sole cost and expense. Entry on the Owner's Lot for such purposes shall not be a trespass. Such costs and expenses shall be increased by all amounts specified in Section 6.03: All such amounts shall be considered to be a Special Assessment against the Lot and the Owner of such Lot shall be personally responsible and liable for the payment of all such amounts immediately upon notice from the Association. All such amounts shall become a lien against such Lot which shall be enforceable by the Association.

Section 5.12. Meetings to Approve Assessments. If the consent or approval of any class of the Members is required for any action hereunder, the Board of Directors shall call a meeting of the Members pursuant to the Bylaws for the purpose of considering the consent or approval for such action.

Section 5.13. Uniform Rate for Assessments. Except as provided in herein, to the extent that the Annual or Special Assessments for particular Class A Members may be increased under Section 5.04, all Annual and Special Assessments shall be levied at a uniform rate for each Lot to which Class A membership is appurtenant. The Board of Directors may change the pro-rata obligation of any Lot or of the Owners of such Lot for the purposes of levying Annual or Special Assessments.

Section 5.14. Notices. The Association may send notices to Members advising each Member of the status of his or her Annual and Special Assessments. Failure of the Association to send notice of assessments or any notice of non-payment or delinquency shall not release the Member from the obligation to pay such Assessments nor prevent any delinquent Member from

being subject to any provision of this Declaration or the By laws which provides for removal of such Member as an Officer or Director or prohibits such Member from being elected as an Officer or Director.

Section 5.15. Exempt Property. No Assessments of any kind or nature shall be levied by the Association against (i) any portion of the Streets and other real property and improvements dedicated and accepted by the local public authority and devoted to public use, (ii) all areas unplatted or reserved for future development by the Declaration or a Plat of the Property, (iii) the Common Area, (iv) any Lot held by the Class B Member.

ARTICLE VI

ENFORCEMENT OF ASSESSMENTS

Section 6.01. Lien of Assessments. All Assessments with respect to or against a Lot plus such additional amounts as are specified in Section 6.03 shall be (i) a charge on the land, (ii) a continuing lien upon and against the Lot, (iii) binding upon such Lot and (iv) the continuing joint and several personal obligation and liability of each person who was an Owner of such Lot when any portion of such Assessment became due and payable, and the heirs, devisees, personal representatives, successors and assigns of each such Owner, which shall not be extinguished or diminished by an transfer or conveyance of any Lot.

The personal obligation of each Member to pay all Assessments levied against the Member's Lot shall continue for the full statutory period permitted by law. A suit to recover a monetary judgment for the non-payment of all or any portion of such Assessment, including any installment, may be commenced and maintained by the Association without the foreclosure or waiver of any lien created under this Declaration to secure the payment of such Assessment. Any judgment may include all amounts specified in Section 6.03. The Association may commence and maintain an action at law against any Member personally obligated or liable to pay any Assessment and/or may foreclose the lien against any Lot in the manner now or hereafter provided in the State of Mississippi for foreclosure of mortgages and other liens on real property containing a power of sale provision. Any such foreclosure by the Association shall be subject to the substantive and procedural requirements prescribed by the laws of the State of Mississippi applicable to the foreclosure of mortgages and other liens on real property containing the power of sale provision. The Association may buy such Lot at any such foreclosure.

The Association shall have the right to accept or reject partial payments of an Assessment and to demand the full payment of such Assessment; however, acceptance of any partial payment shall not relieve the Member of the obligation to pay the balance of the Assessment. The lien for unpaid Assessments shall be unaffected by any sale or other transfer of the Lot subject to the Assessments, and the lien shall continue in full force and effect. No Member may waive or otherwise avoid or escape personal liability for payment of any Assessment by abandonment of the Member's Lot or by abandonment or release of the Member's rights to the use, benefit and enjoyment of the Common Area.

If any proceeding to foreclose the lien for any unpaid portion of an Assessment is commenced by the Association with respect to any Lot, the Board of Directors may require the Owners of the Lot to pay reasonable rent for use of the Lot, and the Association shall be entitled to the appointment of a receiver to collect such rent.

The Board of Directors may post in any prominent location on the Property or publish in any Association newsletter, or on any Association website a list of Members who are delinquent in the payment of any portion of an Assessment or other fees which may be due to the Association, including any installment of an Assessment.

Section 6.02. Assessment Certificate. Upon receipt of a written request, the Board of Directors or the Management Agent, within five (5) business days, shall furnish to any Member liable for the payment of any Assessment, or to any other person having legitimate interest in the payment of such assessment, a certificate signed by an Association officer or the Management Agent stating whether or not the Assessment has been paid. The certificate shall be conclusive evidence of the payment of any Assessment stated to have been paid in the certificate. The Board of Directors may require the payment of a reasonable charge for the issuance of a certificate.

Section 6.03. Amount of Lien. Upon the default in the payment of any installment of an Assessment, the entire unpaid balance of all Assessments for the fiscal year shall immediately be and become due and payable, unless the Board of Directors shall otherwise direct. In addition to the amount of the unpaid Annual or Special Assessments, the following amounts shall be considered to be Special Assessments against the Lot and the Owners of such Lot and shall be subject to the lien of Assessments provided under Section 6.01:

- (a) All reasonable costs and expenses of collection of Assessments including attorneys' fees, court costs and other costs and expenses relating to the collection of Assessments or enforcement of the lien of Assessments, whether or not suit is filed.
- (b) Such late payment charges or fees as shall be established by the Board of Directors from time to time.
- (c) Such Association overhead charges as shall be established by the Board of Directors from time to time which reimburse the Association for overhead or indirect costs and expenses incurred to collect unpaid Assessments or to perform or satisfy any obligation or duty imposed upon such Owners under this Declaration or any Supplement.
- (d) Interest on or with respect to all amounts specified in this Section 6.03, including the unpaid balance of all Assessments. Such interest shall accrue from the due date until paid in full at the rate of eight percent (8%) per annum; provided, however, that if such rate is greater than the maximum allowable rate of interest

allowable on a debt of this type, the interest rate shall be deemed to be adjusted to such maximum rate.

Section 6.04. Priority of Lien. The lien to secure payment of an Assessment against a Lot shall have preference over any other liens, assessments, judgments or charges of whatever nature, except (i) general and special assessments for ad valorem property taxes on or against such Lot, (ii) the lien of any First Mortgage on such Lot made in good faith and for value received and duly recorded prior to the Assessment creating the lien against the Lot or duly recorded after receipt of a certificate under Section 6.02 stating that payment of the Assessment was current as of the date the First Mortgage was filed of record.

Section 6.05. Subordination to Mortgages. As provided by Section 6.04, the lien against any Lot to secure payment of any Assessment shall be subordinate to the lien of any duly recorded First Mortgage on or against the Lot made in good faith and for value received, and shall not affect the rights of the holder of any First Mortgage. However, the lien shall be subordinate only with respect to Assessments which have become due and payable prior to the sale or transfer of the Lot pursuant to a foreclosure of any such First Mortgage, or prior to the execution of any deed, assignment or other proceeding or arrangement in lieu of foreclosure. Any such holder of a First Mortgage who acquires possession of such Lot pursuant to a foreclosure or pursuant to the execution of any deed, assignment or other proceeding or arrangement in lieu of foreclosure, and any purchaser or assignee at a foreclosure sale or any transferee under any deed, assignment or other proceeding or arrangement in lieu of foreclosure, shall acquire the Lot free of any claims for unpaid Assessments levied against the Lot which accrued prior to the time such holder acquires the Lot, or prior to the foreclosure sale or prior to the execution of any deed, assignment or other proceeding or arrangement in lieu of foreclosure, except for claims for a proportionate share of such unpaid Assessments resulting from a reallocation of such unpaid Assessments among the various Lots. However, such foreclosure, deed, assignment or other proceeding or arrangement in lieu of foreclosure shall not relieve the holder of the First Mortgage or the purchaser or assignee at foreclosure or the transferee under any deed, assignment, or other proceeding or arrangement in lieu of foreclosure, from any liability for payment of any Assessments thereafter becoming due, or from the lien created to secure the payment of any such Assessments, and the lien for the payment of such Assessments thereafter becoming due and payable shall have the same effect and shall be enforced in the same manner as provided in this Paragraph 6.

No amendment to this Section 6.05 shall adversely affect the rights of the holder of any First Mortgage on any Lot or the holder of any indebtedness secured by such First Mortgage, filed for record prior to the amendment being filed for record, unless such holders execute, approve or consent to the amendment.

In its sole and absolute discretion, the Board of Directors may extend the provisions of this Section 6.05 to Mortgagees not otherwise entitled to the benefits of this Section 6.05.

Section 6.06. Filing of Notices of Delinquency. If any Owner becomes more than sixty (60) days delinquent in paying any Annual or Special Assessment, the Association may file a Notice of Delinquency in the Land Records of Rankin County, Mississippi, referencing such Owner and the Lot to which such delinquency applies. As and when such Assessments and the costs of recording such Notice and cancellation thereof have been paid in full, the Notice shall be canceled.

ARTICLE VII

INSURANCE

Section 7.01. Association's Insurance. The Association shall apply for, obtain, pay the costs or premiums of and maintain insurance in such limits and forms and from such companies as the Board of Directors shall consider appropriate and as required by the Bylaws of the Association. All costs, charges and premiums for all insurance authorized by the Board of Directors shall be included in the Annual Assessments.

Section 7.02. Owner's Insurance. Each Owner shall insure his Dwelling, the other improvements on his Lot, and the furnishings and personal property in or on such Dwelling to the extent and in the manner provided in the Bylaws of the Association.

Section 7.03. Contractor's Insurance. Any contractor or subcontractor performing any work on any Lot or Dwelling shall upon request of the Association provide evidence of general liability insurance of at least \$300,000 per occurrence, or such other amount as the Association may require, and shall provide evidence of statutory workers compensation insurance.

ARTICLE VIII

AD VALOREM TAXES

Section 8.01. Owners. Each Owner shall be responsible for the payment of and shall promptly pay all ad valorem taxes assessed on or against his Lot and improvements on his Lot.

Section 8.02. Association. The Association shall pay the ad valorem taxes assessed on or against the Common Area and the Association's other assets.

ARTICLE IX

PROPERTY RIGHTS

Section 9.01. Members' Easements of Enjoyment. Every Member shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The Association may levy reasonable admission and other fees for the use of any Common Areas by the Members and their families and Invitees. Any such fees

shall be charged on a uniform basis for each Member. No admission or other fees shall be charged or levied for the use of any Streets.

- (b) The Association may suspend any Member's voting rights and any Member's rights to use the Common Area for any period during which any Assessment remains unpaid for a period of sixty (60) days or more, and for a period not exceeding sixty (60) days for any infraction, breach or violation of any rules and regulations of the Association. The rights of the Members to use the Streets may not be suspended by the Association for any reason whatsoever.
- (c) The Association may dedicate or transfer all or any part of the Common Area to any governmental agency or authority or any utility for such purposes and subject to such conditions as may be determined by the Members. No such dedication or transfer shall be effective unless Members representing at least fifty one percent (51%) of the votes cast to approve or consent to such dedication, transfer, purpose and conditions. This provision shall not apply to the grant of easements or rights of way which may be done by action of the Board of Directors of the Association as provided in paragraph (g) of this Section.
- (d) In accordance with the Articles and the Bylaws, the Association may borrow money to repair, maintain or improve all or any portion of the Common Area in a manner designed to promote the enjoyment and welfare of the Members. In connection with any such loan, the Association may subject all or any portion of the Common Area to the liens of deeds of trust or other security interests. The Association shall not borrow money or subject all or any portion of the Common Area to the lien of a deed of trust or other security interest unless approved by at least fifty-one percent (51%) of the votes cast on such matters.
- (e) The Association may take any action permitted by this Declaration as is reasonably appropriate or necessary to prevent a default of any of the Association's obligations or to protect the assets of the Association against or from foreclosure or enforcement of any security interest by a creditor.
- (f) The Association may adopt reasonable rules with respect to the use of the Common Area and to limit the number of Invitees who may use any portion of the Common Area.
- (g) The Association may grant to any governmental agency or authority or to any utility or to the Declarant or to any other persons such licenses, rights-of-way and easements for access or for the construction, reconstruction, maintenance and repair of the Property. No such license, right-of-way or easement shall be unreasonably and permanently inconsistent with the rights of the Members to the use, benefit and enjoyment of the Common Area.

- (h) The Association may open or permit the use of all or any portion of the Common Area to a wider group of persons for such purposes and on such basis or conditions, including fees or charges, as the Board of Directors may from time to time consider appropriate.
- (i) The Members shall have perpetual easement for ingress and egress and related purposes over and across the streets in Cowan Creek.
- (j) The Members shall have the right to use the Common Area, provided that each Member shall comply in all respects with all rules and regulations not inconsistent with the provisions of this Declaration which the Board of Directors may from time to time adopt or promulgate with respect to parking and traffic control upon the Common Area.
- (k) The Declarant may dedicate or grant to any governmental authority having jurisdiction over the Property, some or all of the streets, roads, parking areas, sidewalks and/or rights-of-way as shown and designated on the Plat. If such streets, roads, parking areas and rights-of-way have not been dedicated by the Declarant, then the Association may dedicate such streets, roads, parking areas, sidewalks and rights-of-way to any governmental authority which will accept such dedication and agree to maintain or repair the streets, roads, parking areas, sidewalks and/or rights-of-way as public streets. Such dedication by the Association shall be done only if approved by at least fifty one percent (51%) of the votes cast on such matter.
- (l) The Association may temporarily restrict the use, benefit and enjoyment of certain portions of the Common Area in accordance with a prior reservation scheduled by the Management Agent.
- (m) The Association may maintain guarded or electronically monitored gates to restrict or monitor vehicular access to and from the Property or on Private Streets and roads located or situated in the Property.

Section 9.02. Rights Not Subject to Suspension. The Association shall have no authority to either temporarily or permanently suspend any of the rights specified in Section 9.01(i) and Section 9.01(j) for any reason whatsoever.

Section 9.03. Delegation of Use. In accordance with the Bylaws and subject to such reasonable rules and regulations as the Board of Directors may adopt or promulgate and uniformly apply and enforce, any Member may delegate his rights to the use, benefit and enjoyment to the Common Area to (i) family members who reside permanently with him, (ii) contract purchasers who reside on the Property, and (iii) Invitees.

ARTICLE X
COWAN CREEK ARCHITECTURAL REVIEW COMMITTEE

Section 10.01. Establishment of Cowan Creek Architectural Review Committee.

There is hereby established an Architectural Review Committee, to be known as Cowan Creek Architectural Review Committee (referred to herein as "Architectural Review Committee"). The Architectural Review Committee shall be appointed by the Declarant as long as Declarant owns of record any Lot or any of the Property and shall have the number of members designated by the Declarant. Thereafter, the Architectural Review Committee shall be appointed by the Board of Directors, and shall have the number of members designated by the Board of Directors. The Declarant may, at its sole discretion, assign to the Board of Directors the right to appoint additional members of the Architectural Review Committee. Any members so appointed by the Board of Directors shall serve at the pleasure of the Board of Directors and may or may not be Members in the Association. The Declarant at anytime may assign to the Board of Directors of Cowan Creek its rights to appoint the Architectural Review Committee as described hereinabove.

Section 10.02. Vote and Actions by Architectural Review Committee. The affirmative vote of a majority of the members of the Architectural Review Committee shall be required to make any finding, determination, ruling or order or to issue any permit, consent, approval or disapproval hereunder. Notwithstanding any approval by the Architectural Review Committee, if during construction, the Architectural Review Committee determines that any action an Owner or Builder is or would be contrary to or in violation of the rules of the Architectural Review Committee or the Review Process, the Architectural Review Committee shall have the authority to order the Owner or Builder to cease, modify or correct such action so as to comply with the rules of the Architectural Review Committee or the Review Process even if such action requires the Owner or Builder to remove or tear down structures that have been built. The Architectural Review Committee may take any action by vote via electronic mail, conference call or other means to express their vote on the matter.

Section 10.03. General Requirements. Except for the purposes of proper maintenance and repair, no improvement, including, but not limited to, buildings, fences, walls or other structures, and no exterior addition, change or alteration to any improvement, including any change or alteration of color, shall be commenced, erected, constructed, placed, altered, moved, maintained or permitted to remain on any portion of the Property, including any Lot, until after compliance with the review process established by the Architectural Review Committee, and approval of the Plans by the Architectural Review Committee ("Review Process"). Lot Owners shall submit to the Declarant, in PDF format, a complete set of blueprints, site plans, elevation plans, drainage plans, and exterior material and color schedules in addition to any other requirements set forth in the review process and/or rules and guidelines established by the Architectural Review Committee. Any Builder, including any Owner of a Lot, who remodels or alters existing improvements on any Lot shall be required to submit to the Review Process. No construction or alteration shall be commenced without a properly issued building permit from the

proper governmental agency and prior written approval from the Declarant or Architectural Review Committee.

Section 10.04. Review Process. The Architectural Review Committee shall, from time to time, establish rules and guidelines for the Review Process. Such rules and guidelines may include, but not be limited to, requirements concerning:

- (a) the number, type, style, size, location and form of buildings, drainage areas, site plans, landscape plans, setbacks, and other plans;
- (b) sidewalks, driveways, parking, storage areas, utility lines, signs, topography, vegetation and tree removal;
- (c) representations with respect to compliance with laws, regulations, this Declaration, and any Supplementary Declaration;
- (d) construction timetables and schedules;
- (e) changes, amendments, or revisions to such information previously submitted;
- (f) time periods for review by the Architectural Review Committee;
- (g) procedures for approval or disapproval by the Architectural Review Committee, and any appeals or resubmissions based thereon; and,
- (h) all other matters which are pertinent, desirable, reasonable, or necessary to the operation of the Architectural Review Committee, which are not specifically set forth herein and which are not inconsistent with this Declaration.

Section 10.05. Decisions and Appeal. The decisions of the Architectural Review Committee shall be final except that any decision may be appealed to the Board of Directors by any Member who is aggrieved by any action or forbearance from action by the Architectural Review Committee or by any policy, standard, or guideline established by the Architectural Review Committee. Upon written request, such Member shall be entitled to a hearing before the Board of Directors within a reasonable time not to exceed thirty (30) days.

Section 10.06. Expenses. Any person or entity submitting Plans shall be responsible for the payment of reasonable charges established by the Architectural Review Committee for review of the Plans or amendments, modifications or changes to Plans, but no charges shall be imposed on any governmental authority using any portion of the Property.

Section 10.07. Disclaimer. The Board of Directors, the Architectural Review Committee, each director and each officer of the Association, each member of the Architectural

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

Section 10.08. Rules and Regulations. The Architectural Review Committee may publish and/or file for record such statements of policy, standards, and guidelines, and may establish such criteria relating to architectural styles or details, colors, size, set-backs, materials or other matters relating to architectural control, protection of the environment, including the use and application of fertilizers, pesticides and other chemicals, and the preservation of such aesthetic values, characteristics and amenities, as may be considered necessary and appropriate. No such rules, regulations, statements or criteria shall be construed as a waiver of any of these provisions, or any other provision or requirement of this Declaration.

Section 10.09. Limitations. Construction in accordance with approved Plans shall be commenced within six (6) months after approval, whether by affirmative action or by forbearance from action, and shall be substantially completed either within six (6) months after construction commences, or within such other period as the Architectural Review Committee shall specify in the approval of the Plans. If construction is not commenced or is not completed as required, approval of the Plans shall be conclusively deemed to have lapsed and compliance with these provisions shall be required again.

Section 10.10. Government Rules, Regulations, Codes and Ordinances. All plans and construction shall comply with all rules, regulations, codes and ordinances of Rankin County, Mississippi, and any other governmental entity, department, agency or body politic having jurisdiction over the Property.

ARTICLE XI **EASEMENTS**

Section 11.01. Utility and Drainage Easements. The Declarant, the Association, and each utility providing service to the Property shall have and is granted or reserved non-exclusive easements and rights-of-way in, through, across, on, over and under the portions of the Property which are not improved with Dwellings, buildings or other structures, including full rights of

ingress and egress, for the construction, installation, operation, use, maintenance, repair and removal of utilities and all apparatus or systems related thereto and drainage easements as shown and designated on any Plat, and the right to remove any obstruction in any utility or drainage easement which may interfere either with the use of any utility or drainage easement or with the construction, installation, operation, use, maintenance, repair and removal of such utility or drainage facility.

The Declarant shall have non-exclusive easements and rights-of-way in, through, across, on, over and under the portion of the Common Area which is not improved with buildings or structures to store building supplies and materials, install, construct, maintain, reconstruct, repair, and remove sewers, water pipes, irrigation pipes, electrical wires or cables, telephone wires or cables, gas lines, storm drains, television cables, underground conduits, and any related improvements or appurtenances and for all other purposes reasonably related to the completion of construction and the provision of public or private utility services to any portion of the Property. Any and all conveyance documents from the Declarant to the Association with respect to the Common Area shall be conclusively deemed to incorporate the provisions of this Section 11.01, whether or not specifically contained in such conveyance documents or assignments. At the Declarant's request, the Association shall from time to time execute, acknowledge, and deliver to the Declarant such documents as the Declarant considers necessary to implement the provisions of this Section 11.01.

The reservations and rights in this Section 11.01 expressly include the right to (i) cut any trees, bushes, or shrubbery, (ii) make any gradings of the soil, and (iii) take any other similar action reasonably necessary to provide economical and safe utility and drainage facility construction, installation, operation, use, maintenance, repair and removal and maintain reasonable standards of health, safety and appearance.

Section 11.02. Damage from Ingress and Egress. Any entry by the Declarant, the Association, or any utility upon any Lot for the purposes permitted or contemplated by this Article XI shall be made with as little inconvenience to the Owner as reasonably practical. All physical damage to any Lot or improvement on a Lot resulting from or caused by such entry shall be promptly repaired and restored by the party causing such damage.

Section 11.03. Maintenance and Support Easements. Where Dwellings are permitted on or near to the boundaries of a Lot, or the Common Area each Lot and Dwelling on such Lot shall be subject to irrevocable easements for the benefit of the Association and the Owners of the adjoining Lots and abutting Dwellings for (i) drainage, (ii) the maintenance and unobstructed and uninterrupted use of any and all pipes, ducts, flutes, chutes, conduits, cables and wire outlets and utility lines, (iii) maintenance and lateral support of adjoining and abutting buildings and improvements, (iv) such portions of any building or improvements that may overhang a Lot or any portion of the Common Area, and (v) the walks and sidewalks serving such adjoining and abutting areas.

ARTICLE XII

USE AND OTHER RESTRICTIONS AND REQUIREMENTS

Section 12.01. Use of Lots and Dwellings. Except (i) for the activities of a Builder during the construction and development of a Lot or the Common Area, (ii) for activities and uses expressly permitted and not substantially inconsistent with the provisions of this Declaration or pursuant to the approval of the Architectural Review Committee, (iii) as may be necessary or appropriate in connection with reasonable and necessary repairs or maintenance to any Dwelling or other improvements on a lot or the Common Area and (iv) as permitted by herein, each Lot and Dwelling shall be used for residential purposes. No trade and business of any kind or nature, whether or not for profit, may be conducted on or in such Lot or Dwelling. The use of a portion of a Dwelling as an office by the Owner shall not be considered to be a violation of this Section 12.01 if such use does not create regular or continual customer, client, or employee traffic. In no event shall any Lot or Dwelling or other improvements on a Lot be used as a storage area for any building contractor, except as specifically permitted by this Declaration. In no event shall any Dwelling be leased unless the requirements of Section 12.02 are met.

Section 12.02. Lease of Dwelling. The lease or rental of a Dwelling for residential purposes shall not violate Section 12.01 if (i) the entire Dwelling and all the improvements on the Lot are leased, (ii) the term of the lease is at least six months, or longer if so determined by the Board of Directors (iii) the lease otherwise complies with the rules and regulations adopted and promulgated from time to time by the Board of Directors, and (iv) the lease is subordinate and subject to this Declaration and is in writing. Prior to commencement of any lease term, the Owner shall provide the Association and Management Agent, if any, with copies of the lease. A permitted leasing shall not relieve the Owner of the liability for any Assessments. The Owner shall remain liable for any actions or omissions of any tenant which are found to be in violation of this Declaration. If at anytime an Owner shall lease his/her Dwelling for residential purposes, the Board of Directors shall impose an additional assessment of \$300.00 per year for said Owner.

Section 12.03. Exterior Appearance. No chainlink fences shall be permitted within the Property except with respect to (1) maintenance areas within the Common Area and (2) chainlink fences erected by the Declarant or the Association. No aluminum foil shall be permitted on or over windows. No projections of any type shall be placed or permitted above the roof of any improvement except chimneys or vents or other objects approved by the Architectural Review Committee. Each Owner shall provide a screened storage area for trash or garbage receptacles, fuel tanks or similar storage receptacles, electric and gas meters, air conditioning equipment, clotheslines, and other similar or unsightly objects in order to conceal such objects from view from the roads and adjacent Lots and the Common Area. Plans for such screened area delineating the size, design, texture, appearance and location must be approved by the Architectural Review Committee prior to construction. Trash or garbage receptacles and fuel tanks may be located

outside of such screened areas only if located underground. No window or wall heating or cooling units shall be permitted in any Dwelling.

Section 12.04. Signs. Except as maybe required by legal proceedings, no signs, advertising or ornaments of any kind shall be placed, maintained or permitted on a Lot or within any windows or on the exterior of any Dwelling or other structure located on any Lot by any Person, including the Owner, without the approval of the Architectural Review Committee. The approval of any signs and posters, including name and address signs, and "for sale" signs, shall be upon such conditions the Architectural Review Committee shall determine from time to time, and approval may be arbitrarily withheld. The Board of Directors shall have the right to erect reasonable and appropriate signs on any portion of the Common Area and within easement areas established by this Declaration.

Section 12.05. Other Buildings and Vehicles. No playhouse, tent, trailer, barn, storage building or other similar outbuilding or structure shall be temporarily or permanently placed or maintained on any Lot or on any other area of the Property without prior approval of the Architectural Review Committee. No mobile home shall be temporarily or permanently placed or maintained on any Lot or Common Area. Each Owner shall provide parking for at least two automobiles for each Dwelling owned or maintained by such Owner in a covered, enclosed two car garage. No overnight parking shall be permitted in any street, either by an Owner or any guest or invitee of the Owner. When not in use, all garage doors shall be kept closed. To the extent possible, all automobiles owned or used by Owners or occupiers of a Lot, except temporary guests and visitors, shall be parked in such garage. Such garage shall not be converted to living area unless a replacement garage is constructed at the same time as the conversion. The Board of Directors shall have authority to adopt and promulgate rules and regulations to govern or to prohibit the outside storage, maintenance, operation, or parking of vehicles described below on any Lot, within any Dwelling or other structure, or on any portion of the Common Area. Such rules and regulations shall apply to motor homes, tractors, trucks, commercial vehicles of any type, campers, motorized campers or trailers, boats or other water craft, boat trailers, motorcycles, motorized bicycles, motorized go-carts, or any other similar or related forms of transportation vehicle or device, except pickup trucks. No Owner or other occupant of any Lot shall repair or restore any vehicle of any kind on any Lot within any Dwelling or other structure, or on any portion of the Common Area, except (i) within enclosed garages or workshops, or (ii) for emergency repairs but only to the extent necessary to enable the movement of such vehicle to a proper repair facility.

Section 12.06. Unsightly Conditions and Nuisances. Each Owner has the responsibility to prevent the development of any unclean, unsightly or unkept conditions of buildings or grounds on his Lot which may tend to decrease the beauty or aesthetic characteristics of any portion of the Property, including the Lot and is obligated to maintain and service all grass and landscaped areas on his Lot and maintain the area of the Street and right-of-way abutting his Lot in a clean condition. Any Owner who fails to maintain his Lot shall be liable to the Association

for all costs or expenses incurred in maintaining the Lot and shall be subject to a special assessment as set forth herein.

No rubbish or debris of any kind shall be dumped, placed or permitted to accumulate or remain upon any Lot or other portion of the Property. No nuisance or odors shall be permitted to exist, operate or remain upon or arise from any Lot or any other portion of the Property which are unsanitary, unsightly, offensive or detrimental to Persons using or occupying any other portion of the Property. Nocuous or offensive activities shall not be permitted or conducted in or on any Lot or Dwelling or any portion of the Common Area. Each Owner, his family, his Invitees, and all other Persons shall refrain from any act or use of a Lot, the Dwelling or other structures on the Lot or Common Area, which might cause disorderly, unsightly or unkept conditions or which might cause embarrassment discomfort annoyance or nuisance to the occupants of other portions of the Property or which might or would result in a cancellation of any insurance for any portion of the Property or which would be in violation of any law, governmental code or regulation. Without limiting the generality of the foregoing conditions, no exterior speakers, horns, whistles, bells or other sound devices shall be located, used or placed within the Property, except security, fire, adverse weather or similar alarm devices used exclusively for such purposes. Any Owner or other Person who dumps or places, or permits his family or Invitees to dump or place, any trash or debris upon any portion of the Property shall be liable to the Association for all costs and expenses for the removal of such trash or debris incurred or paid by the Association which shall be payable immediately upon demand by or from the Association and shall be considered to be a Special Assessment against the Lot.

Section 12.07. Antennae. No television antennae, satellite dish, television receiving device, radio receiver or similar device shall be attached to or installed on any Lot or any Dwelling or other structure on the Lot or any portion of the Property, unless approved by the Architectural Review Committee. No radio or television signals or any other form of electromagnetic radiation shall be permitted to originate from any Lot which may unreasonably interfere with reception of other signals within the Property. The Declarant and the Association shall have the right, but not the obligation, to install, operate, maintain and repair equipment necessary for master television antennae, cable television, mobile radio, security system or other similar systems within the Property. The Declarant or the Association may permit a private entity to provide such service for a fee.

Section 12.08. Lights. The design and location of landscape lighting fixtures shall be subject to the approval of the Architectural Review Committee. Neither the lighting fixtures nor any other illumination devices, including Christmas ornaments, located anywhere on the Dwelling or other structure or grounds of any Lot shall be located, directed or of such intensity so as to adversely affect the nighttime environment of any adjoining Lot or any portion of the Common Area.

Section 12.09. Pets. No animals, livestock or poultry of any kind, shall be raised, bred, kept, staked or pastured on any Lot or any portion of the Common Area, except dogs, cats, birds

or other domesticated household pets for non-commercial purposes and which are kept in Dwellings and are not a source of annoyance or a nuisance to the Property or any Member. The Board of Directors shall have the right, but not the obligation, to prohibit or bar certain dogs or breeds of dogs or other household pets from any Lot or Dwelling or other structure on the Lot or any portion of the Property. Pets shall be attended at all times and shall be registered, licensed and inoculated as required by law. Pets shall not be permitted upon the Common Area unless accompanied by an adult individual and either carried or leashed. The Owner of any Pet shall be responsible to clean up any pet waste. The Board of Directors shall have the right to adopt such additional rules and regulations regarding pets from time to time as considered necessary or appropriate, including more restrictive "leash" regulations. Each Owner shall take all necessary action to prevent uncontrolled barking of such Owner's dog.

Section 12.10. Sales and Construction Activities. The Declarant is expressly permitted and authorized to construct and maintain such facilities and to conduct such activities as may be reasonably appropriate, necessary, required, convenient or incidental to the construction, completion, improvement and sale of Lots and/or Dwellings or the development of Lots, Dwellings and other improvements, and the Common Area, including, without limitation, the installation and operation of sales and construction trailers, offices and other structures or other improvements. The location of any construction trailers of any Builder shall be subject to the Declarant's approval. The right to maintain such facilities and conduct such activities specifically includes the right to use Dwellings as model residences, as offices for the sale of Lots and/or Dwellings, and for related activities. The Declarant is expressly permitted and authorized to use, stock, maintain, locate, store and place on any portion of the Property any and all equipment tools and vehicles as may be reasonably appropriate, necessary, required, convenient or incidental to such construction, improvement, completion, sale or development, including, but not limited to, construction equipment and construction machinery, machines and vehicles.

Section 12.11. Time Sharing. No Lots or Dwellings shall be sold, assigned or leased under any time sharing, time interval or right-to-use programs or investments.

Section 12.12. Trespass. Whenever the Association and/or the Declarant is permitted by this Declaration to repair, clean, preserve, clear out or do any action on any part of the Property, including perform obligations or duties imposed on any Owner under this Declaration, then entering any Lot or any portion of the Property for such purposes and taking such action shall not be or be deemed to be a trespass.

Section 12.13. Replatting and Changes to Lot Lines. The Declarant expressly reserves the right to replat any Lot or Lots owned by the Declarant and to take such other action as may be reasonably appropriate, convenient or necessary to make such replatted Lot or Lots suitable for use as a building site for a Dwelling, including, but not limited to, the relocation of easements, walkways, rights of ways and other amenities to conform to the new boundaries of such replatted Lots. The boundary lines of any Lot not owned by the Declarant may be changed only with the

written consent of the Lot Owner and the Board of Directors or the Declarant if the Declarant owns any Lots subject to the Declaration. An appropriate instrument shall be filed of record in the Land Records of the Rankin County, Mississippi, to reflect any action set forth in the Section.

Section 12.14. Combination of Contiguous Lots. The provisions of this Section shall not prohibit an Owner of two or more contiguous Lots from combining such Lots into one larger Lot or prohibit the Owner of three or more contiguous Lots from combining such Lots into fewer Lots, provided that unless approved in writing by the Board of Directors or by the Declarant, each of the resulting Lots are larger and contain a minimum Lot frontage equal to or greater than the original frontage on the Lot having the least frontage before such Lots were combined. Thereafter, only the exterior boundary lines of the resulting larger Lot or Lots shall be considered in the interpretation of this Declaration. An appropriate instrument shall be filed of record in the Land Records of the Rankin County, Mississippi, to reflect any action set forth in the Section.

Section 12.15. Certain Construction Rights. The Declarant expressly reserves the right, but the Declarant shall not be obligated, to build bridges or walkways across any natural or man made water area in, on, abutting or contiguous to the Property.

Section 12.16. Easement Interference. No fence, structure, planting or other material shall be placed or permitted to remain upon any Lot which may damage or interfere with any easement for the installation or maintenance of utilities, or which may unreasonably change, diminish, obstruct, or retard the direction or flow of surface water runoff in any drainage easement, sale or channel.

Section 12.17. Water Wells and Septic Tanks. No water wells or septic tanks shall be permitted on any Lot and no Plans shall be approved by the Architectural Review Committee unless such Plans provide that the Lot will be served by the water and sanitary sewer system serving the Property. This restriction shall not prevent the Declarant from developing a community water and sanitary sewer system to serve the Property or other real property developments in proximity of the Property or dedicating such part of the Property to a governmental authority or company for the purpose of developing a water and sanitary sewer system to serve the Property.

Section 12.18. Reconstruction after Fire or Other Casualty Loss. If a Dwelling is partially or completely destroyed by fire or other casualty, the Owner of such Dwelling shall promptly clear the debris from the Lot within 90 days of the event and restore or reconstruct such Dwelling within a reasonable time of such event. If the debris is not cleared from the Lot within 90 days of the event and/or reasonable progress is not instituted to restore or reconstruct the Dwelling, the Board of Directors may assess to the Owner a noncompliance fee as it may determine from time to time.

Section 12.19. Vacant Lot Maintenance. Each Owner shall be responsible for the property seeding, fertilization, watering, mowing, and maintenance of any Lot which is vacant or undeveloped. If fill is placed on the Lot and the construction of the improvements is not promptly commenced and completed, the Owner will be required to maintain such Lot. Any Owner who fails to maintain his Lot shall be liable to the Association for all costs or expenses incurred in maintaining the Lot and may be charged a special assessment for such purposes.

Section 12.20. Fireworks. Fireworks are strictly prohibited on the Property.

Section 12.21. Weapons. No firearms, pellet guns, air guns, BB guns, crossbows, archery, archery equipment or other devices of a similar nature which may be classified as weapons shall be discharged on the Property.

ARTICLE XIII **ENFORCEMENT OF DECLARATION**

Section 13.01. Compliance. If any provision of this Declaration is breached or violated or threatened to be breached or violated by any Owner, Member or other Person, each of the other Owners, each Member, the Declarant and/or the Association, jointly or severally, shall have the right, but not the obligation, to proceed at law or inequity to compel a compliance with, or to prevent the threatened violation or breach of, the provisions of this Declaration. If any structure or other improvement located on any portion of the Property, including any Lot, violates any provision of this Declaration, the Declarant and/or the Association, jointly or severally, shall have the right, but not the obligation, to enter upon any portion of the Property, including any Lot, to abate or remove such structure or other improvement at the cost and expense of the Owner of the Lot where such structure or improvement is located or which otherwise causes such violation, if the violation is not corrected by such Owner after written notice of such violation. Any Person entitled to file or maintain a legal action or proceeding for the actual or threatened violation or breach of this Declaration shall be entitled to recover attorney's fees and other costs and expenses attributable to such action or proceeding, and the Association shall be entitled to recover and receive any other amounts specified in Section 6.03. Any such entry and abatement or removal shall not be or be deemed to be a trespass. The failure by any Person for any period of time to enforce any provision of this Declaration shall not be or be deemed a waiver of the right to enforce or otherwise bar or affect the enforcement of any and all provisions of this Declaration at any time, including any future time.

Section 13.02. Enforcement. This Declaration shall be enforced by any appropriate proceeding at law or in equity (i) against any Person who breaches or violates or threatens to breach or violate any provisions of this Declaration, (ii) to recover damages for any such breach or (iii) to collect any amounts payable by any Owner to the Association under this Declaration, including Assessments, attorneys' fees, costs of collection, late charges, overhead charges or other amounts incurred by the Association to perform or discharge any obligation or duty of an Owner under this Declaration or otherwise specified under this Declaration or otherwise

specified in this Declaration, including Section 6.03, and (iv) to enforce any lien created by this Declaration. There is hereby created and declared to be a conclusive presumption that any actual or threatened violation or breach of this Declaration cannot be adequately remedied by an action at law exclusively for recovery of monetary damages. The Declarant the Association and each Owner by acceptance of a deed or other conveyance document to a Lot, waives and agrees not to assert any claim or defense that injunctive relief or other equitable relief is not an appropriate remedy.

ARTICLE XIV

LOTS

Section 14.01. Plat and Lots. Cowan Creek has been divided into various Lots as is shown and depicted on the Plat thereof, which Plat has been filed for record in the office of the Chancery Clerk of Rankin County, as set forth herein. Reference to the Plat is hereby made for all purposes.

Section 14.02. Imposition of Declaration. All the terms, provisions and conditions of this Declaration are hereby imposed upon Cowan Creek, and each and every portion thereof, is and shall be held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied and improved subject to each and all of the covenants, restrictions, uses, limitations, obligations, easements, servitudes, charges and liens set forth in this Declaration, as the same may be amended in accordance with the provisions thereof, to the same extent and with like force and effect as if each and all of such covenants, restrictions, uses, limitations, obligations, easements, servitudes, charges and liens were set forth herein.

Section 14.03. Additional Covenants. Cowan Creek, and each and every portion thereof, are and shall be held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied and improved subject to each and all of the additional and supplemental covenants, restrictions, uses, limitations, obligations, easements, servitudes, charges and liens herein set forth below, as follows, to-wit:

- (a) All Lots, with no exceptions, shall be known, described and used as residential lots, and no building shall be erected, altered, placed or permitted to remain on any Lot other than one single-family dwelling, together with reasonable accessory buildings and outbuildings. No dwelling shall exceed two stories in height. Each accessory building and outbuilding shall be attractive in appearance and shall have a roof and outside walls constructed of the same materials, respectively, as those used in the dwelling on the same Lot.
- (b) Except as otherwise provided, no dwelling, nor any other building, shall be located on any Lot nearer than seventeen (17) feet from the adjoining right-of-way line of the street abutting the front lot line of the Lot, nor nearer than twelve (12) feet to any right-of-way line of a street abutting any

other side of the Lot.

- (c) Except as otherwise provided, no single family dwelling or any other building, shall be located on any Lot closer than five (5) feet to any interior side line of the Lot.
- (d) Except as otherwise provided, no single family dwelling or any other building shall be located on any Lot closer than twelve (12) feet to the back lot line of the Lot.
- (e) No single family Dwelling shall be constructed, placed, moved or maintained upon any Lot unless such Dwelling shall contain at least One Thousand Eight Hundred (1800) square feet of heated and cooled floor space exclusive of open porches and unheated storage spaces. No Dwelling shall have a basement below street grade of the street.
- (f) Due to the natural terrain, lot configurations and/or proximity of adjacent structures, it may be inadvisable to enforce the above stated set-back and square footage requirements. Therefore, notwithstanding anything herein to the contrary, the Architectural Review Committee or the Declarant may approve specific deviations to the set-back requirements and square footage requirements which the Architectural Review Committee believes to be beneficial to a specific home site or to adjacent home sites so long as the same is done in accordance with state and county laws, ordinances and regulations.
- (g) Except as otherwise provided, each Dwelling shall be served with off-street parking in the form of a concrete driveway extending from the pavement on a public street abutting the Lot on which the Dwelling is situated to a garage, which garage must be covered and enclosed and must be attached to the Dwelling. The garage must provide space for parking of not less than two (2) or more than three (3) standard-size automobiles.
- (h) The builder of the original Dwelling on each Lot shall construct a sidewalk four (4) feet in width along the entire length of that portion of the public street or streets which abuts the Lot. The edge of each sidewalk nearest to the street along which it is constructed shall be located two (2) feet from the back of the curb alongside the street, unless it becomes necessary to curve the sidewalk away from the curb so as to avoid a fire hydrant, street sign, tree or other obstruction. If it becomes necessary so to curve the sidewalk, the sidewalk shall be curved smoothly, uniformly and attractively away from the curb and around the obstruction so that neither the obstruction nor the sidewalk itself will become a hazard to persons using the sidewalk. Construction and/or maintenance of the sidewalk either within the street right-of-way or on private property shall

constitute the granting of permission to use the sidewalk to any and all persons who use the sidewalk in a safe and reasonable manner. The grade of each such sidewalk shall be uniform and consistent with, and shall vary uniformly and consistently with, the grade of the top of the curb along which the sidewalk is constructed. Each such sidewalk shall be scored at four-foot intervals, with an expansion joint every eight (8) feet, and shall be constructed of broom finish concrete four (4) inches in thickness. All sidewalks constructed in Cowan Creek shall comply with all applicable ordinances, laws or regulations pertaining to the same, including but not limited to the Americans with Disability Act.

- (i) Plans for the construction of any fence must be submitted to and approved by the Architectural Review Committee before any fence is placed or construction is commenced on any Lot in the Subdivision. Such plans must include the location, materials, height, design, character and color of each and all components of the fence. Any fence which does not comply with the plans approved therefor shall be removed or brought into full compliance with the approved plans.
- (j) All mailboxes shall be the type approved by the Architectural Review Committee. Any mailbox which does not comply with the approved mailboxes, shall be removed.
- (k) Complete plans for each and all Dwellings, buildings and improvements shall be submitted to and approved by the Architectural Review Committee before any such Dwelling, building or other improvement is placed or construction is commenced on any Lot within the subdivision. Such plans shall contain all information requested by the Architectural Review Committee. Architectural shingles shall be required on all Lots.
- (l) The ownership, maintenance and repair of any and all drainage pipes, storm water inlets, and other appurtenant drainage facilities located on any Lot shall be that of the Owner of the Lot on which such pipes, inlets and facilities are located. The Declarant shall have the right, but not the obligation, to improve, maintain and repair such pipes, inlets and facilities at any time for any purpose. In no event shall the Declarant have the duty to improve, maintain or repair any drainage pipe, storm water inlet or other appurtenant drainage facility located within Cowan Creek. Under no circumstances shall drainage facilities be considered a "utility" which is reserved to the Declarant by the Reservation of the Plat. The Declarant has granted an easement to the Cowan Creek Home Owners Association, Inc. to maintain and repair any drainage pipe, storm water inlet, or other appurtenant drainage facility.

- (m) The Declarant will convey to the Association certain Common Areas as depicted on the Plat. The Association has agreed to assume all maintenance of the Common Area.

Section 14.04. Construction. The following shall apply with respect to all construction on any Lot in Cowan Creek:

- (a) The Owner of any Lot shall be responsible for any damage caused by Owners, contractors, subcontractors, Builders, Invitees, tenants, and/or material suppliers that occurs to any curb, gutter, manhole, water valve, storm water inlet, fire hydrant, street light or any apparatus related to any thereof which is located on, under, across or adjacent to such Owner's Lot.
- (b) The Owner of any Lot shall file or cause to be filed any forms or documents required by the Mississippi Department of Environmental Quality under which the Owner shall assume responsibility for compliance with all storm water rules and regulations applicable to such Lot. The Owner shall take necessary actions to control sediment and erosion on the Lot.
- (c) Prior to preparing any Lot for construction, the Owner shall cause to be placed on the Lot a portable toilet. No trash, debris or scrap building materials shall be burned on any Lot. Upon completion of construction, the portable toilet shall be removed.
- (d) In addition to the right of any other party to enforce the Declaration, these requirements may be specifically enforced by the Association, which shall have the authority to cause any Owner to cease construction on any Lot until such requirements have been met and to take any other action authorized in the Declaration. Costs of any such enforcement may be assessed to the Owner.

ARTICLE XV

MERGER WITH CASTLEWOODS OWNERS ASSOCIATION, INC. **OR ANY OTHER HOMEOWNER'S ASSOCIATION**

Section 15.01. General. So long as the Declarant owns any Lot in Cowan Creek, the Declarant may cause Cowan Creek to be annexed by, to be merged with and to become a part of the Castlewoods Subdivision including the Communities of Castlewoods Owners Association, Inc. or any other homeowner's association, whether contiguous or not. Such merger may occur upon sixty (60) days notice to the Owners. In such event, the Lots in Cowan Creek and the Owners shall become subject to the Covenants applicable thereto and shall become Members of the such association. At such time as the Declarant owns no Lot in Cowan Creek, the Owners may cause Cowan Creek to become a part of any other homeowner's association as set forth

above, upon a vote of at least 51% of the votes cast in favor of becoming a part of that homeowner's association.

Section 15.02. Filing of Supplementary Declaration. If the action described in Section 15.01 occurs, a Supplementary Declaration describing such event and any matters relating thereto shall be filed of record in the Land Records of Rankin County, Mississippi.

ARTICLE XVI

GENERAL PROVISIONS

Section 16.01. Duration. This Declaration shall run with and bind the land subject to this Declaration, and shall inure to the benefit of and be enforceable by the Declarant, the Association and the Owners of any Lot subject to this Declaration, and each one's respective legal representatives, heirs, devisees, successors and assigns, until December 31, 2035. After such date, this Declaration shall be automatically extended for the successive periods of ten years unless at least six months prior to the effective date of termination, a Supplementary Declaration signed by the President of the Association has been properly filed for record and such Supplemental Declaration certifies that 51% of the votes cast by the Members of the Association voted to terminate this Declaration.

Section 16.02. Amendments. Subject to any specific limitation or restrictions set forth herein, this Declaration or any Supplementary Declaration hereto maybe amended or supplemented as follows:

- (a) At any time there is a Class B Member, by an instrument executed by the Declarant and filed for record in Rankin County, Mississippi.
- (b) At any time there is not a Class B Member, by an instrument executed either by the Owners of more than fifty percent (50%) (or such higher percentage if required hereunder) of the Lots subject to or affected by the Supplementary Declaration or by the President and Secretary of the Association confirming that Owners of more than fifty percent (50%) of the Lots voted in favor of such Supplementary Declaration at an Annual or Special Meeting of the Members, in which event minutes of such meeting shall be attached to the Supplementary Declaration.

Section 16.03. Interpretation. The provisions of this Declaration shall be construed to implement the purpose of the creation of a uniform plan for the development of the Property.

Section 16.04. Severability. Invalidity of any provision of this Declaration by judgment or court order shall not affect any other provisions of this Declaration which shall remain in full force and effect.

Section 16.05. Headings. The headings contained in this Declaration are for reference purpose only and shall not in any way affect the meaning or interpretation of this Declaration.

Section 16.06. Notices to Owner. Any notice required to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly delivered when deposited in the United States mail, postage prepaid, addressed to the last known address of the Person who appears as Owner on the records of the Association, or, if applicable, the Declarant at the time such notice is mailed or if hand delivered to such person.

Section 16.07. Successors of Declarant. All or any portion of any and all rights, reservations, easements, interests, exemptions, privileges and powers of the Declarant under this Declaration may be assigned and transferred exclusively by the Declarant with or without notice to the Association. The designation of a successor or assignee as Declarant shall be made by a written instrument filed of record in the Land Records of Rankin County, Mississippi.

Section 16.08. Incorporation by Reference on Resale. In the event any Owner sells or otherwise transfers any Lot, any deed or other conveyance document purporting to the effect such transfer shall contain a provision incorporating the provisions of this Declaration by reference. However, failure to include such provision shall not cause the Lot not to be subject to this Declaration.

Section 16.09. No Dedication to Public Use. No provision of this Declaration shall be construed as a dedication to public use or as an acceptance for maintenance of any Common Area by any public agency or authority or by any utility, or shall be interpreted as imposing upon any public agency or authority or any utility any responsibility or liability for the maintenance and operation of any portion of the Common Area.

Section 16.10. Notice to First Mortgage Holders. The Association shall notify the holder of the First Mortgage on any Lot for which any Assessment shall be and remain delinquent for at least sixty (60) days. The Association shall notify the holder of the First Mortgage on any Lot for which there is default by the Owner with respect to performance of any other obligation or duty under this Declaration which default remains uncured for at least sixty (60) days following the date of such default. Any failure to give any such notice shall not affect the validity or priority of any First Mortgage on any Lot, and the protection provided in this Declaration to the holder of any First Mortgage shall not be altered, modified or diminished by reason of such failure. Any such failure shall not affect the validity of the lien of any Assessment or affect any of the priorities for liens as specified in Article VI.

No suit or other proceeding may be brought to foreclose the lien for an Assessment except after ten (10) days written notice to the holder of the First Mortgage encumbering the Lot which is the subject matter of such suit or proceeding.

Any holder of a First Mortgage on any Lot may pay any taxes, rents, utility charges, Assessments or other charges levied against the Lot or Common Area which are in default and which may or have become a charge or lien against any Lot or the Common Area, and may pay any overdue premiums on any hazard or liability insurance policy, of any policy, relating to any Lot or the Common Area. Any holder of a First Mortgage who advances any such payment shall be due reimbursement of the advanced amount from the Owner of the Lot or the Association as the case maybe; however, the Association shall not be liable for any amount advanced on behalf of any party other than itself.

Section 16.11. Captions and Gender. The captions contained in this Declaration are for convenience only and are not a part of this Declaration and are not intended to limit or enlarge the terms and provisions of this Declaration. Whenever the context requires, the male shall include all genders and the singular shall include the plural.

Section 16.12. Exhibits. All Exhibits which are referred to in this Declaration are made a part of and incorporated into this Declaration by reference.

Section 16.13. Governing Law. The operation of the Association and the enforcement of these covenants shall be governed by and construed in accordance with the laws of the State of Mississippi.

ARTICLE XVII

DECLARANT'S RIGHTS AND RESERVATIONS

Section 17.01. Declarant's Rights and Reservations. No provision in the Articles, the Bylaws or this Declaration shall limit, and no Owner or the Association shall interfere with, the right of Declarant to (i) subdivide or resubdivide any portions of the Property, (ii) complete or alter improvements or refurbishments to and on the Common Area or any portion of the Property owned by Declarant, or (iii) alter the construction plans and designs, or construct such additional improvements or add future phases as Declarant deems advisable during development of the Property. Such right shall include, but shall not be limited to, the right to install and maintain such structures, displays, signs, billboards, flags and sales offices as may be reasonably necessary for the conduct of Declarant's business or completion of the work and disposition of the Lots by sale or otherwise. Each Owner by accepting a deed or other conveyance document to a Lot hereby acknowledges that the activities of Declarant may temporarily or permanently constitute an inconvenience or nuisance to the Owners, and each Owner hereby consents to such inconvenience or nuisance.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed
on this the 14th day of September, 2015.

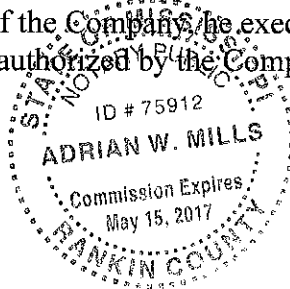
Berg Cowan Development, LLC


By: Randy Berg, Member/Manager

STATE OF MISSISSIPPI
COUNTY OF RANKIN

PERSONALLY APPEARED before me, the undersigned authority in and for the
aforesaid county and state, on this 14th day of September, 2015, within my jurisdiction,
the within named Randy Berg, who acknowledged that he is Member/Manager of Berg Cowan
Development, LLC, a Mississippi limited liability company, and that for and on behalf of and as
the act and deed of the Company, he executed the above and foregoing instrument after first
having been duly authorized by the Company so to do.

(SEAL)




NOTARY PUBLIC

Prepared by:

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**SURVEYOR'S CERTIFICATE
STATE OF MISSISSIPPI
COUNTY OF RANKIN**

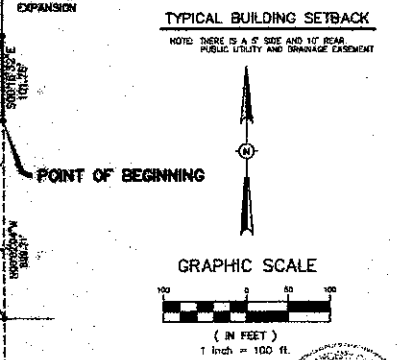
I, Donald L. McDonald, Professional Surveyor, do hereby certify that at the request of the undersigned Owner, I have subdivided and platted the following described land being situated in the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ and in the Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 21, T6N-R3E, Rankin County, Mississippi, and being more particularly described as follows:

Commence at the Southeast corner of the aforesaid Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 21 and run thence North 00 degrees 02 minutes 04 seconds West for a distance of 899.71 feet to a set $\frac{1}{2}$ " iron pin marking the Northeast corner of Willow Woods of Castlewoods, Part 4, a subdivision according to the map or plat thereof, on file and of record in the office of the Chancery Clerk of Rankin County at Brandon, Mississippi, as now recorded in Plat Cabinet B at Slot 397; said point being the POINT OF BEGINNING of the parcel of land herein described; from said POINT OF BEGINNING, run thence South 81 degrees 39 minutes 38 seconds West along the North line of said Willow Woods of Castlewoods, Part 4 for a distance of 299.22 feet to an existing $\frac{1}{2}$ " iron pin on the East right-of-way line of Meadowview Ridge; run thence South 79 degrees 28 minutes 56 seconds West for a distance of 50.00 feet to an existing $\frac{1}{2}$ " iron pin on the West right-of-way line of said Meadowview Ridge; run thence South 82 degrees 16 minutes 46 seconds West for a distance of 198.28 feet to an existing $\frac{1}{2}$ " iron pin; run thence South 14 degrees 43 minutes 01 seconds West for a distance of 40.00 feet to an existing $\frac{1}{2}$ " iron pin marking the Northeast corner of Lot 169, Willow Woods of Castlewoods, Part 3, a subdivision according to the map or plat thereof, on file and of record in the aforesaid Chancery Clerk's office, as now recorded in Plat Cabinet B at Slot 381; run thence North 77 degrees 49 minutes 08 seconds West along the North line of said Willow Woods of Castlewoods, Part 3 for a distance of 441.89 feet to a set $\frac{1}{2}$ " iron pin marking the Northwest corner thereof; said point also being the Northeast corner of Lot 1, Glensview Place, Part One, a subdivision according to the map or plat thereof, on file and of record in the aforesaid Chancery Clerk's office, as now recorded in Plat Cabinet D at Slot 347; run thence North 77 degrees 49 minutes 04 seconds West along the North line of said Lot 1, Glensview Place, Part One for a distance of 129.55 feet to a "x" marked on a power box on the East right-of-way line of Glensview Drive; leaving said North line of Lot 1, Glensview Place, run thence North 15 degrees 29 minutes 39 seconds East along said East right-of-way line of Glensview Place for a distance of 138.91 feet to a set $\frac{1}{2}$ " iron pin marking the Point of Curvature of a 5.13357 degree curve bearing to the right having a central angle of 18 degrees 03 minutes 26 seconds and a radius of 1,116.10 feet; run thence northeasterly along said East right-of-way line of Glensview Drive and along the arc of said curve an arc length of 351.75 feet to a set $\frac{1}{2}$ " iron pin marking the Point of Tangency of said curve; said curve having a chord bearing of North 25 degrees 28 minutes 52 seconds East and a chord distance of 350.29 feet; run thence North 34 degrees 59 minutes 21 seconds East along said East right-of-way line of Glensview

Drive for a distance of 212.86 feet to an existing ½" iron pin marking the the Southwest corner of the Vineyard Apartments property as described in deed recorded in Deed Book 2008 at Page 8356, on file and of record in the aforesaid Chancery Clerk's office; leaving said East right-of-way line of Glensview Drive, run thence along the South line of said Vineyard Apartments property the following bearings and distances: South 77 degrees 26 minutes 27 seconds East for a distance of 140.43 feet to a set ½" iron pin; South 74 degrees 28 minutes 15 seconds East for a distance of 80.82 feet to a set ½" iron pin; South 81 degrees 35 minutes 15 seconds East for a distance of 45.94 feet to a set ½" iron pin; North 87 degrees 37 minutes 20 seconds East for a distance of 55.13 feet to a set ½" iron pin; North 80 degrees 31 minutes 49 seconds East for a distance of 142.00 feet to a set concrete monument; leaving said South line of the Vineyard Apartments property, run thence South 06 degrees 41 minutes 20 seconds East for a distance of 216.03 feet to a set ½" iron pin; run thence South 71 degrees 54 minutes 29 seconds East for a distance of 205.33 feet to a set ½" iron pin; run thence South 08 degrees 21 minutes 08 seconds East for a distance of 126.43 feet to a set ½" iron pin on the arc of a 106.10330 degree curve bearing to the right having a central angle of 119 degrees 53 minutes 03 seconds and a radius of 54.00 feet; run thence southeasterly along the arc of said curve an arc length of 115.10 feet to a set ½" iron pin; said curve having a chord bearing of South 39 degrees 35 minutes 36 seconds East and a chord distance of 94.52 feet; leaving the arc of said curve, run thence South 70 degrees 44 minutes 12 seconds East for a distance of 48.32 feet to a set ½" iron pin; run thence South 00 degrees 16 minutes 32 seconds East for a distance of 101.76 feet to the POINT OF BEGINNING, containing 12.40 acres, more or less.

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Q INDICATE SET 1/2" IRON PINS



OFFICE OF THE
ATTORNEY GENERAL

was in County of _____
I certify this instrument was filed
on 09/14/2015 11:04:41 PM
and recorded in the

