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# TURTLE CREEK

## PROTECTIVE COVENANTS

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PROTECTIVE COVENANTS FOR  
TURTLE CREEK SUBDIVISION  
COUNTY OF HARRISON,  
STATE OF MISSISSIPPI

BEFORE ME, the undersigned authority, a Notary Public, came and appeared:

TURTLE CREEK SUBDIVISION, LLC (the "Developer"), a Mississippi Limited Liability Corporation, having its mailing address at 181 Main Street, Biloxi, Mississippi 39530, represented herein by its Managing Member, Paul T. Benton,

which declared as follows:

TURTLE CREEK SUBDIVISION, LLC is the owner of all of the lots in TURTLE CREEK SUBDIVISION, a Single Family Subdivision Development of Gulfport, Harrison County, Mississippi, as per instrument number 2009-1766-D-J1 recorded in the Harrison County Courthouse.

It is the desire of the Developer to place certain restrictions, covenants, conditions and limitations upon and against the above-described property in order to establish a uniform plan for the development, use, improvement and sale of lots in Turtle Creek Subdivision and to insure the preservation of such uniform plan for the benefit of both the present and future owners of lots in Turtle Creek Subdivision.

The purpose of these covenants is to assure as far as can be, that Turtle Creek Subdivision will be free of undesirable buildings and activities. It is intended that these regulations and restrictions on use and these bans on certain undesirable activities and events will make and keep Turtle Creek Subdivision a desirable, safe and orderly place to live and will make properties in Turtle Creek Subdivision more saleable in the years to come, and preserve and improve their value.

## ARTICLE I

### DEFINITIONS

**Section 1.01 Architectural Control Authority.** The term "Architectural Control Authority" shall mean and refer to the entity, either the Developer or the Committee, then having authority over architectural control in Turtle Creek Subdivision.

**Section 1.02 Association** "Association" shall mean and refer to the Turtle Creek Subdivision Homeowners Association, a Mississippi non-profit corporation, and its successors and assigns.

**Section 1.03 Builder.** The term "builder" shall mean and refer to any person or entity who holds, in good standing, a State Residential Building License and who purchases a Lot and builds a speculative or custom home thereon for a third party.

**Section 1.04 Committee.** The term “Committee” shall mean and refer to the Turtle Creek Subdivision Architectural Control Committee, as established and empowered pursuant to Article II, below.

**Section 1.05 Common Area.** The term “Common Area” shall mean and refer to all property and the improvements thereon which may be conveyed by the Developer to the Association for the use and enjoyment of the Owners. No property shall be considered or deemed to be “Common Area” unless and until such property has been conveyed by the Developer to the Association pursuant to a recorded deed.

**Section 1.06 Control Transfer Date.** The term “Control Transfer Date” shall mean and refer to the sixtieth (60th) day following the recordation in the Conveyance Records of Harrison County, Mississippi, of a statement by the Developer that (a) the Developer has sold each of the Lots in Turtle Creek Subdivision or (b) the Developer transfers control of Turtle Creek Subdivision to the Association.

**Section 1.07 Developer.** “Developer” shall mean and refer to Turtle Creek Subdivision, LLC and its successors and assigns.

**Section 1.08 Lot.** The term “Lot” shall mean and refer to any plot or parcel of ground identified as a numerical lot on the plat (or any revised or amended plat) of Turtle Creek Subdivision.

**Section 1.09 Member.** The term “Member” shall mean and refer to any person or entity who is a member of the Association.

**Section 1.10 Turtle Creek Subdivision.** “Turtle Creek Subdivision” shall mean and refer to the Single Family Subdivision Development of Gulfport, Harrison County, Mississippi, as per instrument number 2009-1766-D-J1 recorded in the Harrison County Courthouse together with any adjacent or adjoining property or property in the proximity thereof that may hereafter be declared by the Developer to be a part of Turtle Creek Subdivision.

**Section 1.11 Owner.** The term “Owner” shall mean and refer to the owner of record title, whether one or more persons or entities, to any Lot, including, without limitation, the Developer and Builders.

**Section 1.12 Unit.** The term “Unit” shall mean and refer to any unit of Turtle Creek Subdivision that may now or hereafter be platted as such.

## **ARTICLE 2**

### **ARCHITECTURAL CONTROL**

**Section 2.01 Authority** (a) The authority over architectural control, as set forth hereinafter, is initially vested exclusively in the Developer, and shall remain vested exclusively in the Developer until the Control Transfer Date and the due election of the initial Committee.

(b) Upon the latter to occur of the Control Transfer Date or the due election of the initial Committee, authority over architectural control in Turtle Creek Subdivision shall be vested exclusively in the Committee.

**Section 2.02 Committee** (a) At such time as all of the Lots in Turtle Creek Subdivision have been sold by the Developer to Builders or Owners, the Developer shall, within thirty (30) days after the recordation of the sale of the final Lot, record a statement in the Conveyance Records of Harrison County, Mississippi, that all such Lots have been sold; or, alternatively, the Developer may, at any time, record a statement in the Conveyance Records of Harrison County, Mississippi, that the Developer has transferred control over Turtle Creek Subdivision to the Association of which the owners of every lot agree to become a member. The sixtieth (60th) day after the recordation of the first of the above-described statements shall be the Control Transfer Date. Within the sixty-day period, the Developer shall arrange for the holding of an election to elect the members of the initial Committee.

(b) The initial Committee shall consist of five (5) persons, each of whom must be an Owner of a Unit in Turtle Creek Subdivision. Regardless of the number of Units in Turtle Creek Subdivision, there shall be only one Committee which shall have and exercise architectural control over the entirety of Turtle Creek Subdivision. In the election of Committee members, each Owner shall have one (1) vote for each whole Unit owned by that Owner.

(c) The initial election of Committee members shall be by written ballot which shall be mailed by the Developer to each Owner at his address as shown on the most recent county tax records. The ballots shall state the time (which must not be less than thirty (30) days after the mailing of the ballots) and the place (which must be in Harrison County, Mississippi) for the election. The Developer may recommend candidates for election. Any ballot not timely received at the place established for the election shall not be counted. Each ballot, in order to be counted, must be signed by at least one Owner if the Unit is owned by one or more individuals, or by at least one person having appropriate authority to act on behalf of an entity which is an Owner. The five persons receiving the highest number of votes shall be elected to the Committee. In the event of a tie, the Developer shall determine the winner. The initial Committee shall serve for a two-year term and until their successors are duly elected and qualified.

(d) The members of the initial Committee shall also serve as the Board of Directors of the Association. After the election of the initial Committee, the number, qualifications, election, removal, compensation and other matters with respect to the Committee and its members shall be governed by the Articles of Incorporation and the Bylaws of the Association.

**Section 2.03 Architectural Control.** No building, fence, wall or other structure or improvement whatsoever on any Lot in Turtle Creek Subdivision (a) shall be commenced, erected or maintained, nor (b) shall be the subject of any exterior addition, change or alteration (including, without limitation, painting, staining or siding), nor (c) shall be the subject of demolition or destruction by voluntary action until the necessary approval from the Architectural Control Authority shall have been obtained. Approval shall be granted or withheld based on matters of compliance with the provisions of these Covenants, the type, quality and color of materials, drainage, harmony of external design and color with existing and proposed structures, and location with respect to topography, trees and finished grade elevation.



**Section 2.04 Purpose of Architectural Control.** The Architectural Control Authority will concern itself with maintaining the natural beauty and scenic and architectural harmony of Turtle Creek Subdivision. The Architectural Control Authority will concern itself with location of buildings, exterior designs and exterior materials and colors to provide what the Architectural Control Authority considers to be harmonious blendings with existing structures.

**Section 2.05 Applications for Approval.** Each application made to the Architectural Control Authority shall be accompanied by complete, final plans and specifications showing the nature, kind, shape, height, materials, color and location of the proposed structure, alteration or demolition. The Architectural Control Authority shall approve or disapprove each application in writing.

**Section 2.06 Effect of Inaction.** In the event the Architectural Control Authority fails to approve or disapprove any application within thirty (30) days after proper submission to it, approval will be deemed granted and this Article deemed fully complied with. The 30-day period shall commence to run from the date of actual receipt by the Architectural Control Committee of said plans and specifications which receipt must be evidenced by a postal receipt for certified or registered mail.

**Section 2.07 Effect of Approval.** The granting of approval (whether in writing or by lapse of time) shall constitute only an expression of opinion by the Architectural Control Authority that the terms and provisions hereof shall be complied with if the building and/or other improvements are erected in accordance with the submitted plans and specifications. No approval of plans or specifications shall ever be construed as representing or implying that such plans or specifications will result in a properly designed, constructed or located structure.

**Section 2.08 No Liability.** Neither the Committee or any of its members, nor the Developer or its officers, directors, shareholders, employees, agents or insurers shall ever be liable for any loss, cost, damage, expense or injury arising out of or in any way related to the performance or nonperformance of the duties of the Architectural Control Authority, unless due to the willful misconduct or bad faith of the party to be held liable.

**Section 2.09 Variances and Waivers.** The Architectural Control Authority is empowered to waive or vary requirements in these Covenants on a case-by-case basis provided such changes or waivers are in compliance with city, county and state regulations governing Subdivisions. As examples, circumstances such as topography, natural obstructions trees, Lot configuration, Lot size, hardship, aesthetic or environmental considerations may require a variance or waiver. No change or waiver shall be effective unless in writing and signed by the Developer or a majority of the members of the Committee, whichever is applicable.

**Section 2.10 Notices of Noncompliance.** If the Architectural Control Authority finds that any action has been commenced or taken without obtaining the necessary approval of the Architectural Control Authority or was not done in conformity with the approved plans and specifications, the Architectural Control Authority shall notify the Owner in writing of the noncompliance (a "Notice of Noncompliance"). The Notice of Noncompliance shall specify the particulars of the noncompliance and shall require the Owner to take such action as may be necessary to remedy the noncompliance. The Owner

shall commence to correct the noncompliance without delay. If the Owner does not correct the noncompliance within fifteen (15) days after the mailing of the Notice of Noncompliance or commence within ten (10) days after the mailing of the Notice of Noncompliance the correction of such noncompliance in the case of a noncompliance which cannot reasonably be expected to be corrected within fifteen (15) days (provided that such Owner diligently continues the correction of such noncompliance), the Architectural Control Authority may, at its option, record a Notice of Noncompliance against the Lot on which the noncompliance exists and/or may otherwise correct such noncompliance, and the Owner shall reimburse the Architectural Control Authority, upon demand, for all expenses incurred therewith. The reimbursement obligation and/or the obligation to correct the noncompliance shall be a charge on such Owner's Lot or Unit and shall be a continuing lien (secured by the same lien which secures the Maintenance Charge). The right of the Architectural Control Authority to remedy or remove any noncompliance shall be in addition to all other rights and remedies which the Architectural Control Authority may have at law, in equity, or under these Covenants to cure such noncompliance.

**Section 2.11 No Implied Waiver or Estoppel.** No action or failure to act by the Architectural Control Authority shall constitute a waiver or estoppel with respect to future action by the Architectural Control Authority with respect to the construction, alteration or demolition of any improvements within Turtle Creek Subdivision. Specifically, the approval by the Architectural Control Authority of any application shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar application or any similar proposals, plans, specifications or other materials submitted with respect to any other application by such person or by other Owners.

**Section 2.12 Discretion of the Architectural Control Authority.** Many provisions in these Covenants call for or depend upon the exercise of discretion and judgment on the part of the Architectural Control Authority. In all such instances, the Architectural Control Authority shall have sole, absolute and final discretion, unless it is established in appropriate legal proceedings that the Architectural Control Authority acted in an arbitrary and capricious manner.

### ARTICLE 3

#### **TURTLE CREEK SUBDIVISION HOMEOWNERS ASSOCIATION**

**Section 3.01 Membership.** Every person or entity who is a record owner of fee title to any Unit or Lot in Turtle Creek Subdivision shall be a "Member" of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership for each Lot owned by such Member. Membership shall be appurtenant to and may not be separated from the ownership of the Units or Lots. Regardless of the number of persons who may own a Unit or Lot (such as husband and wife) there shall be but one membership for each Unit or Lot. Ownership of a Unit or Lot shall be the sole qualification for membership. The voting rights of the Members are set forth in the Bylaws of the Association. Prior to the Control Transfer Date, the Members shall have no voting rights with respect to the Association, and all such voting rights are

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hereby reserved to the Developer. Prior to the Control Transfer Date, the Developer shall appoint the Board of Directors of the Association.

**Section 3.02 Nonprofit Corporation.** Turtle Creek Subdivision Homeowners Association, Inc., a non-profit corporation, will be organized, and it shall be governed by the Articles of Incorporation and Bylaws of said Association. All duties, obligations, benefits liens and rights hereunder in favor of the Association shall vest in said corporation.

**Section 3.03 Bylaws.** The Association may adopt whatever Bylaws it may choose to govern the organization or operation of its affairs and the affairs of Turtle Creek Subdivision and the use and enjoyment of the Lots and Common Areas, provided that the same are not in conflict with the terms and provisions of these Covenants.

**Section 3.04 Member's Rights of Enjoyment.** Every Member shall have a beneficial interest of use and enjoyment in and to the Common Areas and such right shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association, with respect to the Common Areas, to limit the number of guests of Members;

(b) the right of the Association, in accordance with its Articles and Bylaws, to (i) borrow money for the purpose of improving and maintaining any private streets and roads within Turtle Creek Subdivision, the Common Areas and facilities placed or located thereon, and (ii) mortgage said property; and

(c) the right of the Association to suspend the Member's voting rights and the Member's right to use any facilities within the Common Areas during any period in which the Maintenance Charge or any assessment against his Lot remains unpaid or in which any Notice of Noncompliance remains uncorrected.

**Section 3.05 Delegation of Use.** If a Member leases his Unit to a tenant, the tenant, but not the Member, shall have the exclusive privilege of enjoyment of the Common Areas and facilities of the Association during the term of said tenant's tenancy.

**Section 3.06 Rental and Leasing.** Owners must notify the Architectural Control Authority if their Units are leased or rented. Portions of Lots or the improvements thereon may not be rented or leased under any circumstances. Owners must also provide the Architectural Control Authority with the name of the tenant, a copy of the lease and the current mailing address of the Owner of the Lot. In no event, however, shall any leasing be allowed except pursuant to a written agreement or form approved by the Architectural Control Authority that affirmatively obligates all tenants and other residents of the Lot to abide by these Covenants, and by the Articles and Bylaws of the Association.

## **ARTICLE 4**

### **MAINTENANCE**

**Section 4.01 Maintenance Fund Obligation.** Each Owner of a Lot or Unit in Turtle Creek Subdivision by acceptance of a deed therefore, whether or not it shall be expressed in any such deed or other conveyance, is deemed to covenant and agree to pay

to the Association a monthly maintenance charge (the "Maintenance Charge") and any other assessments or charges hereby levied. The Maintenance Charge and any other assessments or charges hereby levied, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the Lots and shall be a continuing lien upon the property against which each such Maintenance Charge and other charges and assessments are made.

**Section 4.02 Basis of the Maintenance Charge.** The Maintenance Charge shall be used to create a fund to be known as the "Maintenance Fund," which shall be used as herein provided; and each such Maintenance Charge (except as otherwise hereinafter provided) shall be paid by the Owner of each Lot to the Association annually, in advance, on or before the first day of June of each year, or on such other basis (monthly, quarterly or semi-annually) as the Board of Directors of the Association may designate in its sole discretion. Maintenance Charges shall be prorated on the basis of the number of full months remaining in the calendar year, in the event of a sale of a Lot during the year.

(a) Any Maintenance Charge not paid within thirty (30) days after the due date shall bear interest from the due date at the lesser of (i) the rate of fifteen percent (15%) per annum or (ii) the maximum rate permitted by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the hereinafter described lien against the Owner's Lot. No Owner may waive or otherwise escape liability for the Maintenance Charge by non-use of any Common Areas or facilities available for use by Owners of Turtle Creek Subdivision or by the abandonment of his Lot or Unit.

(b) The initial Maintenance Charge applicable to each Lot will be One Hundred and Twenty Dollars (\$120.00) per year. The Maintenance Charge cannot be changed or increased by the Developer prior to the Control Transfer Date. After the Control Transfer Date, the Maintenance Charge may be increased or decreased by the action of a majority of the Board of Directors of the Association. All other matters relating to the Maintenance Charge and the collection, expenditure and administration of the Maintenance Fund shall be determined by the Board of Directors, subject to the provisions hereof.

(c) The Maintenance Charge will include a charge for utilities, if any, consumed or used by the Common Areas.

(d) The Maintenance Charge and other charges or assessments described in these Covenants shall not, without the express written consent of the Developer, apply to the Lots owned by the Developer.

**Section 4.03 Special Charges.** The Developer, prior to the Control Transfer Date, and the Board of Directors, from and after the Control Transfer Date, reserve the right at all times and from time to time, in their own judgment and discretion, to levy special charges as may be required or appropriate to construct, maintain, repair or replace any improvement in Turtle Creek Subdivision. All special charges shall be levied equally against each Lot in Turtle Creek Subdivision, regardless of whether any particular charge may benefit one Lot more than another.

**Section 4.04 Creation of Lien and Personal Obligation.** In order to secure the payment of the Maintenance Charge and other charges and assessments hereby levied, a lien for the benefit of the Association, shall be and is hereby reserved, which lien shall be enforceable through appropriate proceedings by the Association. In the event of nonpayment by any Owner of any Maintenance Charge or other charge or assessment levied hereunder, the Association may, in addition to foreclosing the lien hereby retained and exercising the remedies provided herein, upon ten (10) days prior written notice thereof to such nonpaying Owner, exercise all other rights and remedies available at law or in equity.

**Section 4.05 Notice of Lien.** In addition to the right of the Association to enforce the Maintenance Charge or other charges or assessments levied hereunder, the Association may file a claim or lien against the Lot of the delinquent Owner by recording a notice ("Notice of Lien") setting forth (a) the amount of the claim of delinquency, (b) the interest and costs of collection which have accrued thereon, (c) the legal description and Street address of the Lot against which the lien is claimed and (d) the name of the Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Association. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the filing of the Notice of Lien have been fully paid or satisfied, the Association shall execute and record a notice releasing the lien upon payment by the Owner of a reasonable fee as fixed by the Board of Directors to cover the preparation and recordation of such release of lien instrument.

**Section 4.06 Liens Subordinate to Mortgages.** The liens described in this Article shall be subordinate to a first lien or other liens of any bank, Mississippi Development Authority, HUD, insurance company, savings and loan association, university, pension and profit sharing trusts or plans, or other bona fide, third-party lender, which may have heretofore or may hereafter lend money in good faith for the purchase or improvement of any Lot and any renewal, extension, rearrangement or refinancing thereof. Each such mortgagee of a mortgage encumbering a Lot who obtains title to such Lot pursuant to the remedies provided in the mortgage or by judicial foreclosure shall take title to the Lot free and clear of any claims for unpaid Maintenance Charges or other charges or assessments against such Lot which accrued prior to the time such holder acquires title to such Lot. The Association shall make a good faith effort to give each such mortgagee sixty (60) days' advance written notice of the Association's proposed foreclosure of the lien described in this Article, which notice shall be sent to the nearest office of such mortgagee by prepaid United States registered or certified mail, return receipt requested, and shall contain a statement of delinquent Maintenance Charges or other charges or assessments upon which the proposed action is based; provided, however, the Association's failure to give such notice shall not impair or invalidate any foreclosure conducted by the Association pursuant to the provisions of this Article.

**Section 4.07 Use of the Maintenance Fund.** The Maintenance Fund shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Owners of Turtle Creek Subdivision, including the maintenance and landscaping of the Common Areas and the establishment and maintenance of a reserve fund for

maintenance of the Common Areas. The Maintenance Fund may be expended by the Association for any purposes which, in the judgment of the Association, will tend to maintain the property values in Turtle Creek Subdivision, including, but not limited to, providing funds for the actual cost to the Association of all taxes, insurance, repairs, utilities, replacement and maintenance of the Common Areas as may from time to time be authorized by the Board of Directors, and other facilities, services and activities as may from time to time be authorized by the Board of Directors, including, but not limited to, construction, maintenance and operation of an administration and/or maintenance building, salaries of personnel and fees paid to independent contractors, mowing of grass and weeds within Turtle Creek Subdivision and maintaining and caring for the Common Areas, the maintenance of the right-of-way along Oneal Road and Three Rivers Road (to the extent necessary or appropriate), rent or purchase of any equipment needed to perform the duties of the Association and maintenance or replacement of such equipment, the operation, maintenance, repair and replacement of facilities, fences, walls, plantings and equipment and improvements, payment of all legal and other expenses incurred in connection with the enforcement of these Covenants, payment of all reasonable and necessary expenses in connection with the collection and administration of the Maintenance Charge and other charges and assessments required by these Covenants or that the Board of Directors shall determine to be necessary to meet the primary purposes of the Association. It is understood that the judgment of the Association as to the expenditure of said funds shall be final and conclusive so long as such judgment is exercised in good faith.

**Section 4.08 Exempt Property.** The following property subject to these Covenants shall be exempt from the Maintenance Charge and all other charges and assessments created herein: (a) all properties dedicated to and accepted by a local public authority; (b) the Common Areas; and (c) Conservation Easement(s).

## **ARTICLE 5**

### **DEVELOPER'S RIGHTS RESERVATIONS**

**Section 5.01 Period of Developer's Rights and Reservations.** The Developer shall have, retain and reserve certain rights as hereinafter set forth with respect to the Association and the Common Areas from the date hereof until the Control Transfer Date. The rights and reservations hereinafter set forth shall be deemed accepted and reserved in each conveyance of a Unit or Lot by the Developer to an Owner whether or not specifically stated therein and in each deed or other instrument by which any property within the Common Area is conveyed by the Developer. The rights, reservation and easements hereinafter set forth shall be prior and superior to any other provisions of these Covenants and may not, without the Developer's prior written consent, be modified, amended, rescinded or affected by any amendment of these Covenants. The Developer's consent to any one such amendment shall not be construed as a consent to any other or subsequent amendment.

**Section 5.02 Right to Construct or Remove Improvements.** The Developer shall have and hereby reserves the right (without the consent of any other Owner), but shall not be obligated, to construct additional improvements within Turtle Creek Subdivision, including, without limitation, the Common Areas. The Developer may

impose a special charge in order to pay for the cost of such improvements. On or before the Control Transfer Date, the Developer shall convey or transfer those improvements made the subject of a special charge to the Association, and the Association shall be obligated to accept title to, care for and maintain the same.

**Section 5.03 Right to Use Common Areas.** The Developer shall have and hereby reserves the right to reasonable use of the Common Areas and of services offered by the Association in connection with the promotion and marketing of land within Turtle Creek Subdivision. Without limiting the generality of the foregoing, the Developer may erect and maintain on any part of the Common Area such signs, temporary buildings and other structures as the Developer may reasonably deem necessary or proper in connection with the promotion, development and marketing of land within Turtle Creek Subdivision; may use vehicles and equipment within the Common Area for developmental or promotional purposes; and may permit prospective purchasers of property within the boundaries of Turtle Creek Subdivision who are not Owners or Members of the Association.

**Section 5.04 Right to Complete Turtle Creek Subdivision.** No provision of these Covenants shall be construed to prevent or limit the Developer's right (or require the Developer to obtain any approval) to (i) complete development of the real property within the boundaries of Turtle Creek Subdivision; (ii) add property to the original confines of Turtle Creek Subdivision; (iii) plat or re-plat any Unit or portion of a Unit within Turtle Creek Subdivision; (iv) construct, alter, demolish or replace any improvement on any real property owned by the Developer within Turtle Creek Subdivision, including, but not limited to gated access to all or any portion of Turtle Creek Subdivision; (v) maintain model homes, storage areas, offices for construction, initial sales, resales or leasing purposes or similar facilities on any property owned by the Developer or owned by the Association; (vi) post signs incidental to development, construction, promotion, marketing, sales or leasing of property within Turtle Creek Subdivision; or (vii) excavate, cut, fill or grade any property owned by the Developer. Nothing in this Article shall limit or impair the reserved rights of Developer as elsewhere provided in these Covenants.

**Section 5.05 Right to Grant and Create Easements and Servitudes.** The Developer shall have and hereby reserves the right, without the consent of any other Owner or the Association, to grant or create temporary or permanent easements, for access, utilities, pipelines, cable television systems, communication and security systems, drainage, water and other purposes incident to development, sale, operation and maintenance of Turtle Creek Subdivision, located in, on, under, over and across (i) the Lots or other property owned by the Developer, (ii) the Common Area, and (iii) existing utility easements. The Developer also reserves the right, without the consent of any other Owner or the Association, to grant or create temporary or permanent easements for access over and across the streets and roads within Turtle Creek Subdivision and to and from Turtle Creek Subdivision for the benefit of owners of any other property, regardless of whether the beneficiary of such easements owns property which is now or hereafter made a part of Turtle Creek Subdivision.

**Section 5.06 Right to Convey Property to the Association.** The Developer shall have and hereby reserves the right, but shall not be obligated to, convey real

property and improvements thereon, if any, to the Association as Common Area at any time and from time to time in accordance with these Covenants, without the consent of any other Owner or the Association, and the Association shall be bound and obligated to maintain the same.

## ARTICLE 6

### GENERAL IMPROVEMENTS

**Section 6.01 Streets.** All streets in Turtle Creek Subdivision shall be of asphalt construction and finished with integral curb and gutter.

**Section 6.02 Sidewalks.** Pedestrian sidewalks, with a minimum width of forty-eight (48) inches, will be required by the Architectural Control Authority.

**Section 6.03 Street Lights.** Street lights within Turtle Creek Subdivision shall be of a type chosen by the Architectural Control Authority. Street light poles shall be of an aesthetically pleasing design and electrical service to all streetlights shall be underground.

## ARTICLE 7

### LAND USE AND BUILDING TYPE

**Section 7.01 Residential Use.** Except as expressly provided herein, no Lot shall be used for any purpose except for residential purposes, and no business or commercial activity will be conducted from or on any Lot. Subject to Architectural Control Authority approval) a home office may be maintained by an Owner on a Lot, so long as the business conducted therein does not involve excessive vehicular traffic. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one detached permanent type single-family dwelling not to exceed two stories in height.

**Section 7.02 Dwelling Size.** The size of any residential structure shall be not less than One Thousand (1,000) square feet under roof, inclusive of all exterior storage, whether attached or detached) and inclusive of all open porches, carports and garages. However, the structure located at 13020 Turtle Creek Parkway, Gulfport, MS 39503 shall be exempt from this requirement.

**Section 7.03 Location.** All structures must be located within the permitted building area of a Lot. In some instances, residences will be required to be located at the tangent to street curves.

**Section 7.04 Building Setbacks.** Unless expressly approved in writing by the Architectural Control Authority and the City of Gulfport, the minimum front setback for any improvement on any Lot shall be twenty-five (25) feet, notwithstanding any lesser setback that may be shown on any plat or rendering of Turtle Creek Subdivision. Unless expressly approved in writing by the Architectural Control Authority and the City of Gulfport, the minimum side setbacks for any improvement on any Lot shall be Eight (8) feet on each side, notwithstanding any lesser setback that may be shown on any plat or rendering of Turtle Creek Subdivision.



**Section 7.05 Roofs.** Prior to the construction of any improvements on a Lot, the quality, type, material, wind-rating and pitch of the roof for the improvements are to be first approved in writing by the Architectural Control Authority.

**Section 7.06 Garages and Car Ports.** Each dwelling may have a carport or enclosed garage and shall have a paved concrete driveway access thereto. Garage doors, except when the garage entrance is in use, will be kept closed.

**Section 7.07 Driveways, Walkways and Patios.** Driveways shall be constructed of reinforced concrete and shall be a thickness of 3 ½" with 6' x 6' wire mesh inserted 1" to 1.5" off the bottom and be poured with concrete having a minimum strength of 2,500 psf. Drives, sidewalks and patios shall have a light broom finish and shall be constructed in a manner sufficient to conform with all applicable building codes.. No other driveway surface is permitted unless submitted to the Architectural Control Authority and approved in writing by the Architectural Control Authority. All driveways shall be of sufficient width to accommodate two automobiles side by side.

**Section 7.08 Lighting.** Front exterior eave lighting will be required on all residences. Exterior lighting on poles is generally prohibited, except for street lighting installed by the Developer, unless specifically approved in writing by the Architectural Control Authority. Flood lights may not face a street.

**Section 7.09 Detached Structures.** Detached garages, detached storage buildings and any other detached structures may be built on any Lot if the same architectural style and materials are utilized as in the main residence. The exact location of any detached structure on a Lot must be specifically approved by the Architectural Control Authority.

**Section 7.10 Water and Sewer.** No residence shall be connected to any sanitary sewage disposal facility, other than the public facility. No private water supply shall be installed, constructed or maintained in Turtle Creek Subdivision.

**Section 7.11 Lot Maintenance.** All lots shall be kept at all times in a neat, attractive, healthful and sanitary condition, and the Owners of all Lots and Units shall keep all weeds and grass thereon cut and shall in no event use any Lot for storage of materials or equipment except for normal residential requirements or incident to construction of improvements thereon, or permit the accumulation of garbage, trash or rubbish of any kind thereon, and shall not burn any garbage, trash or rubbish. All yard equipment or storage items shall be kept screened from the view of neighboring Lots, streets or other property.

**Section 7.12 Drying of Clothes.** Drying of clothes in the view of any Lot, street or other property is prohibited.

**Section 7.13 Basketball Goals.** The location of any basketball goal placed on a Lot shall be subject to Architectural Control Authority approval. As a general rule, basketball goals will not be permitted to be placed nearer to the street than the front foundation of the residence.

**Section 7.14 Batting Cages and Other Structures.** Any structure on a Lot that can be viewed from any other residence, such as swing sets, shall be subject in all

respects to Architectural Control Authority approval. Batting cages shall not be permitted on any Lot.

**Section 7.15 Air Conditioning Units.** All exterior air conditioning or heating equipment must be substantially screened from view by permanent materials approved by the Architectural Control Authority.

**Section 7.16 Swimming Pools.** No above-ground swimming pool shall be installed or maintained on any Lot. In-ground swimming pools must be approved by Architectural Control Authority, be fenced and not nearer to the street than front foundation of residence.

**Section 7.17 Private Storm Drain.** Each Owner shall have the responsibility of maintaining, repairing and replacing any private plastic storm drain pipes and related facilities that may have been installed on such Owners Lot by the Developer as an aid and supplement to the storm drain system in Turtle Creek Subdivision.

## **ARTICLE 8**

### **CONSTRUCTION**

**Section 8.01 Mud Control.** Builders are required to install driveways and to complete preliminary rough drainage immediately after the installation of the foundation so that construction mud will be limited in the streets. Builders and contractors are required to remove mud and concrete from the streets after concrete installation. Builders and contractors are required to maintain erosion control in such a way to prohibit the collection of mud and dirt in the streets. Builders are required to review and sign the Storm Water Pollution Control Plan in effect for Turtle Creek Subdivision.

**Section 8.02 Parking.** Parking of vehicles at construction sites in Turtle Creek Subdivision will be limited to approved vehicles only. Approved status can be obtained only by way of a written agreement between the Builder and Developer. All other vehicles will be assigned a specific area in which to park.

**Section 8.03 Signs.** Except as required by law, rule or regulation, contractors, other than the Builder, are not permitted to place signs on any Lot.

**Section 8.04 Appearance of Lots.** All Owners and Builders, during the construction of any improvements, are required to keep the Lot in a reasonably clean and organized condition. Paper, rubbish, trash, scrap and unusable construction materials are to be kept picked up and hauled from the Lot, daily. Usable construction materials are to be kept stacked and organized in a reasonable manner upon the Lot.

**Section 8.05 Licensed Builders.** No person other than a builder holding a valid Mississippi State Residential Building License shall be permitted to construct any residence on a Lot. All Builders are encouraged to maintain active membership in the National Association of Home Builders and the Home Builder's Association of the Mississippi Coast.

## ARTICLE 9

### FENCES AND WALLS

**Section 9.01 Materials.** All fencing which runs along any rear Lot line shall be constructed of wood and supported by either wood or metal posts. Wooden slats are required to cover all metal posts supporting wooden fences. Except with the approval of the Architectural Control Authority, fences erected on any Lot shall be constructed of wood. No fence shall be constructed with cyclone, barb wire, hog wire, chain link or similar type mesh materials. No wall shall be constructed unless constructed with stone, brick or wrought iron materials.

**Section 9.02 Height.** No fence or wall shall be of more than seven (7) feet in height above ground level, except for fences or walls constructed by the Developer for screening purposes.

**Section 9.03 Architectural Control Approval.** All plans for the construction or alteration (including, without limitation, painting or staining) of any fences or walls shall first be submitted to, and approved in writing by, the Architectural Control Authority.

**Section 9.04 Location.** No fences or walls, other than those constructed by or for the Developer, shall be constructed or allowed to remain nearer a side street than the appropriate minimum building setback line or lines. As to the front street, no fence or wall shall be constructed or allowed to remain forward of the front foundation line of the residence unless specifically authorized in writing by the Architectural Control Authority.

**Section 9.05 Lots on Turtle Creek Parkway.** On Lots along Turtle Creek Parkway, special consideration will be required for the location of, and other matters with respect to, side fences which face Turtle Creek Parkway.

**Section 9.06 Maintenance of Fences.** The cost and expense of maintaining fences which are bounded by a Lot on one side and by Common Area shall be borne by the Lot Owner. The cost and expense of maintaining fences which are bounded by two Lots shall be borne one-half each by the Lot Owners. Any dispute regarding maintenance of fences (i.e., whether maintenance is required or the manner in which the maintenance should be done) will be conclusively determined the Architectural Control Authority.

## ARTICLE 10

### LANDSCAPING AND TREES

**Section 10.01 Approval of Plans.** In addition to the requirements set forth in Article 2 hereof, no building, fence, wall or other structure shall be commenced, erected or maintained upon any Lot until fully developed, complete, professional landscaping plans for such Lot shall have been submitted to and approved in writing by the Architectural Control Authority. The Architectural Control Authority shall, in its sole discretion, determine whether the landscaping plans and layout, including, without limitation, drainage, grass, shrubs and trees, include sufficient landscaping. The Architectural Control Authority may require additional landscaping in its sole discretion.

**Section 10.02 Minimum Requirements.** All such landscaping plans shall include plans for trees and shrubs. For each Lot, there shall be a minimum requirement of one (1) indigenous hardwood tree in the front yard; provided that this requirement may be

changed or waived by the Architectural Control Authority where space limitations are a factor.

**Section 10.03 Responsibility for Landscaping.** The landscaping requirements shall be the responsibility of the Builder. If the Builder desires to delegate that responsibility to the Owner, the Builder should take steps to insure that the Owner is fully aware of these requirements.

**Section 10.04 No Removal or Destruction of Trees.** No tree in Turtle Creek Subdivision may be removed or destroyed without the express prior written approval of the Architectural Control Authority.

## ARTICLE 11

### VEHICLES

**Section 11.01 Parking.** No automotive vehicles will at any time, day or night, be parked within the right-of-way of any street either upon the roadway, the shoulder or the adjacent open area, but shall at all times be parked within the boundaries of privately-owned Lots on areas intended for parking (i.e., on driveways and in garages and carports). It is the intent of these covenants that, to the extent there are sufficient bays, the automotive vehicles owned by Lot Owners will be regularly and normally parked within the garage or carport.

**Section 11.02 Parties or Other Functions.** Any Owner hosting a party or other function at his residence shall insure that visitors park only on one side of the street (to the extent street parking is necessary) to accommodate an orderly flow of traffic.

**Section 11.03 Dangerous Substances.** No vehicle normally or actually used for the transportation of inflammatory, explosive or other hazardous or dangerous substances may be kept within Turtle Creek Subdivision either on the public street or on privately-owned property at any time.

**Section 11.04 Other Vehicles.** Except in an emergency, no truck of tonnage in excess of 3/4 ton, inoperable automotive vehicle, mobile home, utility trailer, school bus, commercial vehicle or industrial or commercial equipment shall be stored, kept, allowed to remain, parked or repaired upon any public Street or upon any privately owned property lying within Turtle Creek Subdivision.

**Section 11.05 Recreational Vehicles.** No recreational vehicle, travel trailer, motor home or similar vehicle shall be stored, kept, allowed to remain, parked or repaired on any public street or upon any privately owned property lying within Turtle Creek Subdivision, except that, subject to the discretion of the Architectural Control Authority, such recreational vehicles may be allowed on privately owned property provided that they are stored behind a wooden privacy fence in the backyard.

**Section 11.06 Boats and Boat Trailers.** No boat or boat trailer shall be stored, kept, allowed to remain, parked or repaired on any public street or upon any privately owned property lying within Turtle Creek Subdivision, unless within an enclosed garage or in a fenced backyard.

**Section 11.07 Repair of Vehicles.** No repair work of any kind may be performed on any vehicle of any kind on any Lot, street or driveway, except routine

maintenance, i.e. changing oil or tire. Any other repair work may only be performed within an enclosed garage with a door closed.

**Section 11.08 Sale of Vehicles.** No vehicle of any type shall be offered for sale with Turtle Creek Subdivision or allowed to remain on a Lot with a "For Sale" or similar sign on or near such vehicle.

## **ARTICLE 12**

### **NUISANCES**

**Section 12.01 No Nuisances.** No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become a nuisance or annoyance to the neighborhood. The Architectural Control Authority shall determine whether any particular activity constitutes a nuisance.

**Section 12.02 Enforcement.** Engagement in any of the activities prohibited in this Article shall, be deemed an offensive activity and subject to the enforcement provisions of Article 27.

## **ARTICLE 13**

### **OTHER STRUCTURES**

With the exception of the residence and garage or carport or other structure of the same design, material and color of the residence, no temporary or permanent structure, trailer, basement, tent, or other outbuilding shall be allowed on any lot at any time unless approved in writing by the Architectural Control Authority. Specifically, no metal storage buildings shall be allowed to be placed or to remain on any Lot at any time. Notwithstanding anything to the contrary contained herein, Builders may have temporary structures on Lots during the construction of a residence on that Lot. As a condition of approval, the Architectural Control Authority may require screening from view by the public or adjacent property owners of any building placed on a Lot.

## **ARTICLE 14**

### **SIGNS**

All signage within Turtle Creek Subdivision shall be subject to the approval and control of, and removal by, the Architectural Control Authority. Generally speaking, signs that promote the sale of items or goods other than homes or Lots will not be permitted in Turtle Creek Subdivision, and the Architectural Control Authority shall remove and discard any nonconforming sign.

## **ARTICLE 15**

### **MAILBOXES**

**Section 15.01 Approval.** All mailboxes must be of a type and size approved by the Architectural Control Authority and the United States Postal Service and said mailboxes shall be placed in a location approved by the Architectural Control Authority and the United States Postal Service. No mailbox may be erected unless the type and size and location thereof have been previously approved in writing by the Architectural Control Authority.

## ARTICLE 16

### EASEMENTS

**Section 16.01 General Provisions.** Easements for the installation and maintenance of utilities and/or drainage facilities are reserved as shown on the recorded plat. The aforesaid easements are across the front of each Lot and/or along one or more sides of certain of the Lots. It is anticipated that the area of such easements may be utilized for more than one purpose at the time of construction of the improvements and/or at some future date. Accordingly, improvements or obstructions shall not be placed upon these easements as the same may have to be removed at the expense of the Owner.

**Section 16.02 Use for Drainage.** All utility easements in Turtle Creek Subdivision may be used by the Developer for the construction of drainage swales or other drainage improvements in order to provide for improved drainage of the property.

**Section 16.03 Use by Utility Companies.** Any utility company serving Turtle Creek Subdivision shall have the right to enter upon any utility easement in Turtle Creek Subdivision for the purpose of installing, repairing and maintaining their respective facilities.

## ARTICLE 17

### LIVESTOCK AND POULTRY

No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot; except that dogs, cats or other household pets may be kept in the total number of not more than three animals in the aggregate, excluding young of not more than 60 days of age, but may not at any time be kept, bred or maintained for any commercial purpose. It is the intent of this Article to prohibit the keeping of groups of animals in such number that they create a nuisance due to excessive noise or noxious odors brought about by the keeping of such animals.

## ARTICLE 18

### GARBAGE AND REFUSE DISPOSAL

**Section 18.01 General.** No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall be kept in covered sanitary containers. All equipment or containers for storage or disposal of such material shall be kept in a clean and sanitary condition.

**Section 18.02 Trash Pick-Up.** Garbage, trash, and recycling, and any receptacles there for, shall not be placed at the front of the house more than 24 hours before normal pick-up time nor shall be allowed to remain at the front of the house more than 24 hours after actual pick-up time.

## ARTICLE 19

### RELOCATION OF BUILDINGS

Construction of new buildings only shall be permitted. It is the intent of this Article to prohibit the moving of any existing buildings onto a Lot and remodeling or converting same into a dwelling Unit or other structure in Turtle Creek Subdivision.

**ARTICLE 20**

**FIREARMS**

Discharge or firing of any air rifles, pellet guns or firearms of any type within Turtle Creek Subdivision is prohibited except in defense of property or persons.

**ARTICLE 21**

**DRAINAGE**

**Section 21.01 Grades and Elevations.** For drainage purposes, the grades and elevations of the land as existing at the time of conveyance of the Lot by the Developer shall for all purposes and as to all parties be deemed the natural grades and elevations, and said grades and elevations shall not be changed or altered unless specifically shown in submitted plans and approved in writing by the Architectural Control Authority.

**Section 21.02 House Pads.** Nothing contained herein shall be construed to prevent construction of foundations above applicable flood levels or to prevent adequate drainage of the structure, provided that all such facilities are reflected in the submitted plans.

**ARTICLE 22**

**COMPLETION OF IMPROVEMENTS**

Construction of any improvements upon any Lot, once commenced, shall be carried forward with due diligence and, in the case of residences, shall be substantially completed within six months from the date of commencement.

**ARTICLE 23**

**ANTENNAS AND SATELLITE DISHES**

**Section 23.01 Approval.** No radio, television or telecommunications transmitting or receiving antenna or equipment having power in excess of one-half (1/2) watt shall be placed on or kept within Turtle Creek Subdivision without the specific written approval of the Architectural Control Authority. In the event of the approval by the Architectural Control Authority, it will be incumbent on the owner of such antenna or equipment to assure that his equipment does not interfere with television, radio or telecommunication reception in the area. In the event such interference does occur, the owner of the equipment shall correct the interference or remove the offending equipment from use.

**Section 23.02 Satellite Dishes.** There shall not be installed on any Lot or structure a television earth receiver or a television satellite dish which is larger than eighteen inches (18") in diameter. The location and placement of any permitted satellite dishes shall be subject to Architectural Control Authority approval.

**ARTICLE 24**

**UNIMPROVED LOTS**

**Section 24.01 Mowing.** The Architectural Control Authority shall cause all unimproved Lots to be mowed during the growing season, and the estimated or actual

cost thereof shall be added to and shall become a part of the Maintenance Charge for the Owners of such unimproved Lots.

**Section 24.02 Construction Materials.** No construction materials may be stored on an unimproved Lot for more than thirty (30) days prior to the commencement of actual construction.

## **ARTICLE 25**

### **RESUBDIVISION PROHIBITED**

No Lot or Lots in Turtle Creek Subdivision may be resubdivided, in whole or in part, without the prior written consent of the Architectural Control Authority and the City of Gulfport.

## **ARTICLE 26**

### **SEVERABILITY**

Invalidation of any one of these covenants or any portion thereof by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

## **ARTICLE 27**

### **ENFORCEMENT**

The Architectural Control Authority or the Developer, in their own right and/or as representative of any Owner, or any Owner shall have the right to enforce in a court of law of competent jurisdiction, by injunctive relief or otherwise, any violation of any of these Covenants, as now existing or as may be hereafter modified or amended. Any attorney fees incurred by the Architectural Control Authority, the Developer or any Owner in the enforcement of these Covenants shall be paid by the violator thereof. This provision grants a right of enforcement, but in no way obligates the Architectural Control Authority, the Developer or any Owner to pursue such enforcement. Failure by the Architectural Control Authority, the Developer or any Owner for any period of less than two (2) years to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

## **ARTICLE 28**

### **TERM**

These Covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date of these Covenants; and shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then Owners has been recorded agreeing to change these covenants in whole or in part.

## **ARTICLE 29**

### **AMENDMENT**

These Covenants and restrictions may be amended during the first twenty-five (25) year period by an instrument signed by not less than ninety percent (90%) of the



Owners, and thereafter by an instrument signed by a majority of the Owners. Any amendment must be properly recorded.

THUS DONE AND PASSED before me, Notary, and the undersigned competent witnesses, on this 24<sup>th</sup> day of May, 2011.

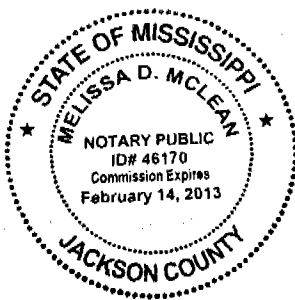
WITNESSES:

Joe Chyl  
D.B. Beale

TURTLE CREEK SUBDIVISION, LLC

By: Paul T. Benton

Paul T. Benton, Managing Member



Melissa D. McLean

NOTARY PUBLIC in and for  
Harrison County, Mississippi.

Prepared by: Paul T. Benton  
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