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**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR WAVERLY**

Prepared by: James T. Weaver, 357 Towne Center Suite 302, Ridgeland, MS 39157

After recording, this instrument is to be returned to:
James T. Weaver, Post Office Box 1666, Ridgeland, MS 39158-1666

Instrument title: Declaration of Covenants, Conditions and Restrictions for Waverly

Declarant: Waverly Development, LLC

Address of Declarant: Post Office Box 1666 Ridgeland, MS 39158-1666

Indexing Instructions:
Rankin County, Mississippi
Southeast ¼ of the Southwest ¼ of Section 28 and the Northwest 1/4 of Section 33,
Township 4 North, Range 2 East, City of Florence, Rankin County

Waverly Development, LLC
Declarant

July 19, 2023

**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR WAVERLY**

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WAVERLY

THIS DECLARATION is made and executed on this the 19th day of July, 2023, by WAVERLY DEVELOPMENT, LLC, a Mississippi limited liability company, hereinafter sometimes referred to as the "Declarant".

WHEREAS, the Declarant is the owner of certain land and real property lying and being situated in the Northwest 1/4 of Section 33, Township 4 North, Range 2 East, City of Florence, Rankin County, Mississippi, which land and real property include the 14.66 acre parcel of land more particularly described in Exhibit "A" and is a part of and wholly within the land generally described in Exhibit "B," both of which exhibits are attached hereto and are hereby made a part hereof; and

WHEREAS, the Declarant desires to create and develop a distinctive residential Neighborhood having designated Common Areas and/or Neighborhood Facilities reserved or dedicated for the welfare, betterment, use and benefit of the residents of said Neighborhood and the owners of lots and dwellings therein; and

WHEREAS, the Declarant desires to provide for the preservation and enhancement of the values and amenities in said Neighborhood, for the designation and maintenance of Common Areas and Neighborhood Facilities, for the administration and enforcement of the covenants, conditions and restrictions hereinafter declared, and for purposes related thereto; and to this end, the Declarant desires to subject all of said 14.66 acre parcel of land described in said Exhibit "A," including any and all improvements existing or to be constructed thereon, to the covenants, conditions, restrictions, uses, limitations, prohibitions, requirements, obligations, easements, servitudes, charges, assessments, and liens hereinafter set forth, each of which separately is and all of which jointly are for the benefit of said Neighborhood and/or said 14.66 acre parcel of land, for the benefit of the Declarant and for the benefit of the subsequent successors of the Declarant to all or any part of said 14.66 acre parcel of land including the owners of lots and dwellings in said Neighborhood; and

WHEREAS, the Declarant desires the efficient preservation and enhancement of the values and amenities in said Neighborhood, and to this end the Declarant has created and organized a corporate entity to which can and shall be delegated and assigned the powers and duties of maintaining and administering any and all Common Areas and Neighborhood Facilities, of administering and enforcing the covenants, conditions and restrictions hereinafter declared, and of collecting and disbursing the charges and assessments hereinafter specified; and

WHEREAS, the Declarant has caused to be formed under the laws of the State of Mississippi a non-profit and non-share corporation named "Waverly Home Owners Association," which corporation shall have as its purpose the carrying out of the powers and duties mentioned or implied herein; and

NOW THEREFORE, WAVERLY DEVELOPMENT, LLC, a Mississippi limited liability company and the Declarant herein, does hereby declare that all of said 14.66 acre parcel of land described

in said Exhibit "A," and all other real property situated thereon or therein, or which may hereafter become situated thereon or therein, hereafter is and shall be held, conveyed, hypothecated or encumbered, sold, assigned, leased, rented, used, occupied and improved subject to the covenants, conditions, restrictions, uses, limitations, prohibitions, requirements, obligations, easements, servitudes, charges, assessments and liens set forth in this Declaration, all of which are agreed and declared to be in aid of a plan for the development of said Neighborhood and the improvement of said 14.66 acre parcel of land, all of which shall be deemed to run with and bind said 14.66 acre parcel of land, and all of which shall inure to the benefit of and be enforceable by the Declarant or its successors, by the successors and assignees of the Declarant to all or any part of the said 14.66 acre parcel of land, or by any person acquiring or owning any interest in said 14.66 acre parcel of land or an improvement thereon, including, without limitation, any person who holds such interest solely as security for the performance of an obligation or payment of a debt.

FURTHER THEREFORE, the Declarant does hereby delegate and assign to the Waverly Home Owners Association the powers and duties created by and mentioned or implied in this Declaration which are necessary, required, convenient, incidental or advisable for the maintenance and administration of Common Areas and/or Neighborhood Facilities, for the administration and enforcement of the covenants, conditions and restrictions hereinafter declared, and for the collection and disbursement of the charges and assessments hereinafter authorized and described.

ARTICLE I

DEFINITIONS AND PROPERTY SUBJECT TO DECLARATION

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

a. **Annexable Lands.** The expression "Annexable Lands" shall mean and refer to the parcels of land and real property described in Exhibit "B" of this Declaration. "Annexable Lands" may also be referred to herein as "Lands Subject to Annexation." Any provision hereof to the contrary notwithstanding, any parcel of land situated in the Sections 28 and 33, Township 4 North, Range 2 East, Rankin County, Mississippi, on the east side of Eagle Post Road, which at the time of annexation is owned by the Declarant or an Associate of the Declarant is hereby deemed a part of the "Annexable Lands" for the purposes of this Declaration. The Declarant has a right but not a duty to annex all or any part of the Annexable Lands to this Declaration in the manner provided hereinafter. The designation of any parcel of land as part of the "Annexable Lands" shall not preclude or constrain in any manner the development, improvement and use of such lands for any purpose.

b. **Architectural Review Committee.** The expression "Architectural Review Committee" shall mean and refer to the person or collective group of people who from time to time is/are designated or appointed by the Declarant or the Board of Directors to discharge certain powers and duties described or implied herein pertaining to dwellings and improvements within the Property. See Article IV.

c. Associate of the Declarant. If the Declarant is a limited liability company, corporation or other business entity, the expression "Associate of the Declarant" shall mean and include a person or corporation who/which is a member or manager of the Declarant; a person who is a principal officer of a corporate member of the Declarant; a person who is a principal officer, member or manager of another limited liability company, corporation or other business entity owned or controlled by the Declarant or owned or controlled by a member or manager of the Declarant or owned or controlled by the principal officer, member or manager of a corporate member of the Declarant; and/or any business entity in which any such person owns a substantial interest or holds a controlling interest. If the Declarant is an individual, the expression "Associate of the Declarant" shall mean and include the spouse, adult children and legal representative of said individual and any limited liability company, corporation or other business entity owned or controlled by said spouse, child or representative. The Declarant shall have the right but not a duty, from time to time and at any time, to identify to the Board of Directors the name(s) of the limited liability companies, corporations or other business entities and/or individuals that are Associates of the Declarant as this expression is hereby defined or that are not, or no longer are, Associates of the Declarant having the rights or privileges herein afforded such entities or individuals.

d. Association. The word "Association" shall mean and refer to the Waverly Home Owners Association, a Mississippi non-profit, non-share corporation, and its successors and assigns.

e. Board of Directors. The expression "Board of Directors" shall mean and refer to the Board of Directors of the Association.

f. Bylaws. The word "Bylaws" shall mean and refer to the Bylaws of the Association and any amendments thereto which may be duly adopted from time to time.

g. Chancery Clerk. The expression "Chancery Clerk" shall mean and refer to the public official of Rankin County, Mississippi, having the responsibility of filing and maintaining the records pertaining to lands and real properties situated in Rankin County, Mississippi.

h. Charter. The word "Charter" shall mean and refer to The Articles of Incorporation of the Association, as same may be duly amended from time to time.

i. City. Florence, MS

j. Common Area. See Section 2 of this Article.

k. County. The word "County" shall mean and refer to the County of Rankin, Mississippi.

l. Covenants, Conditions and Restrictions. The expression "covenants, conditions and restrictions" shall mean and include all the terms, provisions, covenants, conditions, restrictions, uses, limitations, prohibitions, requirements, obligations, easements, servitudes, charges, assessments, and liens set forth in this Declaration and all supplements and amendments thereto.

m. Waverly. The expression "Waverly" shall mean and refer to the neighborhood created and developed on said parcel of land described in Exhibit "A" of this Declaration and/or on any part of the Annexable Lands. The expression "Waverly" may also mean and refer to the parcel(s) of land, including other real property situated therein or thereon, described and subdivided as shown on the record Plat(s) of subdivisions within the Property which is/are subject to the covenants, conditions and restrictions of this Declaration and any supplement or amendment thereto.

n. Declaration. The word "Declaration" shall mean and include this "Declaration of Covenants, Conditions and Restrictions for Waverly" and all supplements and amendments hereto.

o. Declarant. The word "Declarant" shall mean and include WAVERLY DEVELOPMENT, LLC, a Mississippi limited liability company. The word "Declarant" shall also mean and include a successor of said WAVERLY DEVELOPMENT, LLC, to what constitutes substantially all or controlling interest in the lands then owned by said WAVERLY DEVELOPMENT, LLC, within the Property and/or within the Annexable Lands and to which said WAVERLY DEVELOPMENT, LLC, expressly transfers its powers and duties as Declarant hereunder. The word "Declarant" shall also mean and include any person who is a similar successor to a Declarant who is himself a successor Declarant. All or any portion of any and all rights, reservations, easements, interests, exemptions, privileges and powers of the Declarant hereunder may be assigned and transferred by filing for record in the office of the Chancery Clerk a duly executed instrument memorializing such assignment or transfer and its acceptance thereof by the successor Declarant.

The word "Declarant" shall also mean and include any person who, as the mortgagee in or the holder of any recorded mortgage executed by said WAVERLY DEVELOPMENT, LLC, or as the secured party or beneficiary of any recorded deed of trust executed by said WAVERLY DEVELOPMENT, LLC, comes into possession of all or any portion of the Property pursuant to foreclosure or execution of an assignment or other proceeding or arrangement in lieu of foreclosure. The powers and duties of the Declarant, if not theretofore duly transferred, shall transfer to such person when such person comes into such possession pursuant to foreclosure or execution of an assignment or other proceeding or arrangement in lieu of foreclosure and shall likewise transfer to such person's successor when said successor comes into possession of such property.

p. Design Guidelines. The expression "Design Guidelines" shall mean and refer to those policies, guidelines, standards, rules or regulations regarding the construction or alteration of any dwelling, structure or improvement and the form and content of plans and specifications to be submitted to the Architectural Review Committee. Design guidelines are intended to serve as a reference tool and decision-making guide for dwelling construction, alteration and maintenance. Design guidelines are not a part of this Declaration and should not be construed as a waiver of any covenant, condition, restriction, requirement or provision of this Declaration. See Article VI of this Declaration.

q. Detention/Lake. Unless the context clearly indicates otherwise, the word "detention/lake" shall mean and refer to an area that is within a Common Area, Neighborhood Facility and/or that part of a Lot subject to a detention/lake easement and may or may not be

continuously inundated with water. The word "detention/lake" includes the land that may or may not be inundated when the level of the water impounded is at the "normal pool" elevation for the detention/lake, which elevation should be the same as the invert elevation of the weir of its spillway, outlet or discharge control structure. See also Section 8 of this Article.

r. Detention/Lake Shore. Unless the context clearly indicates otherwise, the expression "Lake Shore" shall mean and refer to (i) an area adjoining a detention/lake that is within a Common Area, that is a part of a Neighborhood Facility and/or that is a part of a Lot which is subject to a Lake Shore Restrictive Easement or (ii) is an area that adjoins a detention/lake and from time to time may need to be used, occupied and/or controlled by the Association in order to administer and effect any of the Association's responsibilities with respect to the detention/lake to which the area is appurtenant. The expression "Lake Shore" shall not include any area that is more than twenty (20) feet from the detention/lake's water edge or that is within a Lot on the dwelling side of the nearest required yard or setback line unless a specific area of the Lot is subject to a Lake Shore Restrictive Easement that is delineated on a Plat, is described in this Declaration or a supplement or amendment thereto and/or is described and/or designated in an instrument duly executed for such purpose by the owner of the Lots, Parcels and/or other lands thereby affected and thereafter filed in the office of the Chancery Clerk. Unless such instrument describing and/or designating a Lake Shore Restrictive Easement is duly filed five (5) days prior to the conveyance of a Lot or Parcel affected by such instrument, any part of the Lot or Parcel that would not be considered as being within the Lake Shore as defined and/or described herein shall not be so affected by said instrument. See also Section 8 of this

s. Developer. The word "Developer" shall mean and include WAVERLY DEVELOPMENT, LLC, a Mississippi limited liability company. The word "Developer" shall mean and include the Declarant and any Associate of the Declarant. The word "Developer" shall also mean and include a bona fide home builder who, in the course of the business in which he is engaged, after taking title to a Lot, offers the Lot for sale to prospective home owners and/or is constructing or has constructed a dwelling thereon which is not yet occupied. The word "Developer" shall also mean and include any other person who is a successor in interest to said WAVERLY DEVELOPMENT, LLC, as to any of the real property now or hereafter constituting all or a portion of the Property, and who, with the Declarant's written permission, is engaged or hereafter engages in the business of developing, improving and/or marketing all or any portion of the Property. The word "Developer" shall not mean or include the Association. The word "Developer" shall also mean and include any successor and/or assignee of the entire interest of said WAVERLY DEVELOPMENT, LLC, who, as the mortgagee in or the holder of any recorded mortgage executed by said WAVERLY DEVELOPMENT, LLC, or as the secured party or beneficiary of any recorded deed of trust executed by said WAVERLY DEVELOPMENT, LLC, comes into possession of all or any portion of the Property pursuant to foreclosure or execution of an assignment or other proceeding or arrangement in lieu of foreclosure.

t. Dwelling. The word "dwelling" shall mean and refer to a conventional single-family home or a portion of a home or other habitable structure situated on a Lot within the Property which is designed and/or constructed for use and occupancy as a residence by an individual or family, or which is used or occupied as a residence, by an individual or family.

u. Eligible Mortgage Holder. The expression "eligible mortgage holder" shall mean and refer to a holder of a first mortgage on a Lot who is to be given notice of certain events as identified and/or provided in this Declaration or the Bylaws, and/or who is to be among those mortgagees from whom collectively a specified percentage must give consent for the Association to take certain actions as identified and/or provided in this Declaration or the Bylaws. See Section 1 of Article XI. The expression "eligible mortgagee" shall have the same meaning.

v. Governing Authority Having Jurisdiction. The expression "governing authority having jurisdiction" shall mean and refer to the duly constituted body politic, or a department or agency thereof, exercising lawful jurisdiction over the aspect of the development, improvement, use and/or sale of property which is the subject of, or is implied by the context of, a provision of this Declaration. The term "governing authority having jurisdiction" shall mean and refer solely to the Board of Alderman of the City of Florence. However, if the subject is a matter over which a department or agency of the state and/or federal governments (i.e., the Mississippi Department of Environmental Quality, the Mississippi Department of Health, or the U.S. Department of the Army Corps of Engineers), exercises jurisdiction superseding, in conjunction with, or in lieu of the City (or County), in which case the expression shall mean and refer to, as appropriate, the County and/or City and each and all of such departments and agencies exercising such jurisdiction.

w. Herein. The word "herein" shall mean in this Declaration.

x. Lot. The word "Lot" shall mean and refer to each of the numerically designated subdivided parcels of property constituting a part of Waverly that is approved by the governing authority having jurisdiction for a dwelling. Each of the forty six (46) numerically designated lots delineated on the record plat of Waverly Phase 1 are Lots, and each, if any, of any similar numerically designated lots delineated on a record plat of a future part of Waverly shall be considered as Lots. The word Lot shall be deemed to include any parcel of land situated within the Property which is improved with a dwelling used as a residence or which is configured or delineated as a site suitable for improvement with a dwelling and use as a residence. The word Lot shall not be deemed to include Common Areas. The word Lot shall not be deemed to include parcels of land situated within the Property which are not intended for improvement with a dwelling and use as a residence.

Each Lot shall also be either an "Improved Lot" or an "Unimproved Lot" as hereinafter defined: (i) The expression "Improved Lot" shall mean and refer to a Lot on which the dwelling has been substantially completed or is occupied or would be reasonably considered as ready for occupancy; or (ii) the expression "Unimproved Lot" shall mean and refer to a Lot on which the dwelling has not yet been started or may have been started but is not yet substantially complete or be reasonably considered as ready for occupancy.

With the consent of the Declarant, or in lieu thereof should the Declarant be unwilling or unable to act, the Board of Directors of the Association, two (2) or more contiguous platted lots may be combined or re-subdivided in any lawful manner which does not increase the number of dwelling sites deemed suitable for improvement with a dwelling and use as a residence. All lots so combined or re-subdivided shall remain subject to the covenants, conditions and restrictions

of this Declaration. Such combined lots shall thereafter constitute one Lot. The above to the contrary notwithstanding, for each Lot lost by such action, the Declarant or the Board may require the payment to the Association of an amount of money which is the present value of the then annual maintenance assessment for as many as ten (10) years.

If a person acquires two or more contiguous platted lots and constructs on these lots only one dwelling, and by covenant made for the benefit of the Association and for the benefit of his successors, which covenant must be filed for record in the office of the Chancery Clerk, declares that such contiguous platted lots shall thereafter be held, conveyed, hypothecated or encumbered, assigned, leased, rented, used, occupied and improved collectively in a manner which effectively combines such contiguous platted lots into one parcel of land, then such contiguous platted lots shall constitute one Lot. The above to the contrary notwithstanding, for each Lot lost by such action, the Declarant or the Board may require the payment to the Association of an amount of money which is the present value of the then annual maintenance assessment for as many as ten (10) years.

y. Management Agent. The term "Management Agent" shall mean and refer to the person that the Board of Directors may engage to perform such duties and services as the Board of Directors shall direct and authorize. See Section 1 of Article X of this Declaration.

z. Member. The word "Member" shall mean and include every person holding any class of membership in the Association. Each and every person who is, or who hereafter becomes, an Owner of a Lot comprising part of the Property shall be a Member of the Association.

aa. Mortgage. The word "mortgage" shall mean and refer to a mortgage, deed of trust, and any similar encumbrance that creates a lien or encumbrance against a Lot. The expression "first mortgage" shall mean and refer to 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 the same Lot. The word "holder" shall mean and refer to the person entitled to the security afforded by a mortgage and includes the beneficiary of a land deed of trust. The word "first mortgagee" shall mean and refer to the holder of a first mortgage. The word "institutional," when used to describe a mortgagee or holder, shall mean and include mortgagees or holders that are banks, trust companies, insurance companies, mortgage insurance companies, savings and loan associations, trusts, mutual savings banks, real estate investment trusts, credit unions, pension funds, mortgage companies, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, recognized institutional type lenders or loan correspondents, all corporations, and any agency or department of the United States Government or of any state or municipal government.

ab. Mortgagee. The word "mortgagee" shall mean and include the mortgagee in or the holder, insurer or guarantor of any recorded mortgage, and the party secured or beneficiary in any recorded deed of trust, encumbering one or more Lots. The expression "mortgage holder" shall have the same meaning.

ac. Neighborhood. The word "Neighborhood" shall mean and refer to that certain residential development subdivided, designated and known as Waverly," which has been and/or

is being developed, constructed and/or improved, and which hereafter will be developed, constructed and/or improved, by the Declarant and others on and within the Property and the Annexable Lands.

ad. Neighborhood Facility. See Section 3 of this Article.

ae. Neighborhood Rules. The expression "Neighborhood Rules" shall mean and refer to those certain standards, conditions, rules or regulations not inconsistent with the provisions of this Declaration which may from time to time be duly adopted by the Board of Directors and promulgated among the Members, which standards, conditions, rules and regulations shall govern the use of Common Areas and Neighborhood Facilities or respect the discharge of any responsibility of the Association or the provision of any service rendered by the Association, or effect the furtherance of any purpose of this Declaration.

af. Neighborhood Street. The expression "Neighborhood Street" shall mean and refer to a street within Waverly that is primarily traveled by Members, members and guests of a Member's family and persons who are working for or providing a service to Members in order to access Lots or parcels within Waverly. Neighborhood streets are usually those streets approved by the governing authority having jurisdiction and constructed by the Declarant and/or a Developer for the purpose of providing pedestrian and vehicular access to, and legal ingress and egress from existing public streets to, Lots, parcels, Common Areas and Neighborhood Facilities.

As of the date of this Declaration, all streets, except those, if any, specifically designated as Service Driveways, constructed or proposed for construction within or appurtenant to Waverly are public Neighborhood streets. Notwithstanding the declaration of the preceding sentence, no provision of this Declaration shall preclude the Owners of Lots and parcels within Waverly, with the approval of the Association acting by and through the Board of Directors, and, prior to December 31, 2033, and if the Declarant or an Associate of the Declarant is the owner of any Lot or parcel within Waverly, with the approval of the Declarant, from duly petitioning in accordance with law the governing authority having jurisdiction to close, vacate or abandon a public Neighborhood street. Should a public Neighborhood Street be duly closed, vacated or abandoned, effective upon the date such is duly ordained by the governing authority having jurisdiction, or in the event such action by the governing authority having jurisdiction is appealed, on the date any and all appeals thereof are exhausted and such action is affirmed, each Owner of a Lot or Parcel (other than the Association) abutting the street so closed, vacated or abandoned shall be deemed to have conveyed or assigned to the Association any and all interest in the right-of-way of the street so closed, vacated or abandoned that such Owner acquired by virtue of such closure, vacation or abandonment and shall be deemed further to have conveyed to the Association an assignable, permanent easement for ingress, egress and utilities in, upon, over and across the right-of-way of the street so closed, vacated or abandoned. Thereafter such street shall be a Service Driveway.

The designation of any street as a Service Driveway shall not mean or imply that the public at large acquires any easement of use or right of use therein, unless or until such street becomes a public street. Except as provided for in Section 10 of this Article, the Association may not levy any fee or charge for simply the ordinary use of a Service Driveway for ingress and egress.

ag. Owner. The word "Owner" shall mean and refer to the record owner, whether one or more persons, of any Lot comprising part of the Property, including "contract purchasers" and lessees, but excluding those holding title solely as security for the performance of an obligation or payment of a debt.

ah. Person. The word "person" shall mean and include individuals, limited liability companies, corporations, general or limited partnerships, associations, trusts, estates and all other legal entities, and any combination or group of any of same.

ai. Plat. The word "Plat" when used herein shall mean and refer to that certain plat entitled Waverly Phase 1" and each and all of the record plats of subdivision that comprise all or any part of the Property that are filed for record in the office of the Chancery Clerk. The property described in Exhibit "A" of this Declaration is subdivided for record as shown on that certain plat designated Waverly Phase 1" which is filed in Plat Cabinet E in Slide 354 in AND 356 the office of the Chancery Clerk. When used in a Supplementary Declaration, or in a context where the word "Plat" clearly is intended to mean and refer to another recorded plat, the word "Plat" shall mean and refer to such other plat.

aj. Property. The word "Property" shall mean and refer to the parcel of land described in Exhibit "A" of this Declaration, and all other parcels of land from within the area described as Annexable Lands, which by annexation in accordance with the provisions of this Declaration are subject to the covenants, conditions, restrictions, requirements and other provisions of this Declaration. On the date of this Declaration, the Property is comprised only of the parcel of land described in Exhibit "A," which parcel of land is the same as that subdivided and platted as Waverly Phase 1. From and after the date of any Supplementary Declaration annexing additional parcel(s) of land to the Property as provided herein, the word Property shall include the parcel of land described in Exhibit "A" together with all other parcels of land theretofore duly annexed to the Property and together with the parcel of land annexed by such Supplementary Declaration.

ak. Public View. The expression "public view" shall mean and refer to view by the general public from abutting or nearby streets, including streets other than Neighborhood Streets, and to view by Members who own the abutting or nearby Lots or who have a right to use abutting or nearby Neighborhood streets or other Common Areas and Neighborhood Facilities. The Declarant, or in lieu thereof should the Declarant be unable or unwilling to act, the Board of Directors, on a case-by-case basis, shall determine whether any elevation of a dwelling (or part thereof) or any part of a Lot is within public view.

al. Quorum. The word "Quorum" shall mean and refer to the presence, either in person or by proxy, of Members having at least five percent (5%) of the votes held by all Members in each then outstanding class of membership (each class of membership to be considered separately).

am. Rental Compliance Agent. The term "Rental Compliance Agent" shall mean and refer to the person that the Board of Directors may engage to perform such duties and services with respect to the assurance of compliance with the policies, conditions, procedures, and requirements of this Declaration and the Board of Directors pertaining to the lease, rental, use

and occupancy of Lots and dwellings by persons other than the Owner of the Lot and members of his family. See Section 4 of Article II of this Declaration.

an. Service Driveway. NOT APPLICABLE

ao. Utility Company. The expression "utility company" shall mean and include the City of Florence, Cspire, Entergy, Atmos, Centerpoint and any entity or individual that has a duty or privilege, duly granted and/or certificated by law by a local, state or federal commission, department or agency having lawful authority to so grant or certificate, of rendering a service to the owners or lessees of Lots within Waverly using facilities installed in street rights-of-way or easements. The expression "utility company" shall also mean and include any entity or individual that the Declarant and/or Board of Directors formally authorizes or permits the privilege of rendering a service to said owners and lessees. The services rendered by Rankin County or utility companies, without limitation, include domestic and fire suppression water service, wastewater collection and disposal service, electrical service, natural gas, and any form of telecommunications service. However, the provisions hereof to the contrary notwithstanding, other than the City of Florence, unless the Declarant has granted easement rights to such utility company for purposes related to the rendition of the service(s) such company is authorized or permitted to so render, a utility company does not have the right to use any private utility easement created and reserved by the Declarant on a Plat or other instrument executed for such purpose and filed for record in the office of said Chancery Clerk.

Section 2. Common Area. The expression "Common Area" shall mean and refer to each parcel of land and/or improvement thereon owned or leased by the Association and held by the Association for common use, benefit and enjoyment by Members. At any one or more times on or prior to December 31, 2043, the Declarant, or any other person with the written consent of the Declarant, shall have the right, privilege, and option to convey to the Association the fee or long-term leasehold of any improved or unimproved parcel of land situated within or adjoining Waverly which is reasonably accessible, amenable and feasible for the common use, enjoyment and benefit of all Members. The deed, lease or similar instrument of conveyance transferring title to, or the right to use and/or occupy, said parcel of land shall designate that said parcel of land shall be held and maintained by the Association as a "Common Area" subject to the provisions of this Declaration respecting Common Areas. Said deed or instrument may contain a reverter clause effective in the event said parcel of land fails or ceases to be used as intended. Should any such parcel of land proposed as a Common Area, other than those so excepted, be encumbered by the lien of a mortgage or deed of trust, its acceptance as a Common Area must also be approved by the affirmative vote of at least two-thirds of the then Class A Members and the then Class B Members of the Association, each class voting separately.

The Declarant hereby designates as "initial Common Areas" the structures, improvements, items, facilities, areas, parcels of land, easements and/or rights-of-way so identified and/or described in Exhibit "C" to this Declaration. Such designation does not convey the fee, leasehold or title to the Association of all or any part of all or any the structures, improvements, items, facilities, areas, parcels of land, easements and/or rights-of-way so identified and designated. However, subject to and in accordance with the provisions hereof, the owner(s) of any of same may convey all or any part of any of same which he (they) owns to the Association at any time.

Prior to December 31, 2043, the maintenance, repair, reconstruction and/or improvement of a structure, improvement, item, facility, area, parcel of land, easement, right-of-way or any component or element of any of same which is a part of an initial Common Area may not be terminated by the Board of Directors without the concurrent consent of the Declarant. The maintenance, repair, reconstruction and/or improvement of a structure, improvement, item, facility, area, parcel of land, easement, right-of-way or any component or element of any of same which is a part of an initial Common Area and which is duly required by a governing authority having jurisdiction to be owned or maintained by the owners of Lots within the development may not be terminated by the Board of Directors without the consent of such governing authority.

The conveyance, designation, acquisition or acceptance of any parcel of land or improvement thereon as a "Common Area" shall not mean or imply that the public at large acquires any easement of use or right of enjoyment therein.

Each Common Area shall be treated and considered as part of the Property whether or not the Common Area or a larger parcel of land containing within its boundaries the Common Area has theretofore been duly annexed to the Property as set out in Section 5 of this Article.

The Association may expend reasonable funds for the maintenance, repair, reconstruction and/or improvement of each Common Area that the Board of Directors determines is necessary or advisable for the preservation and/or enhancement of the function and utility of the area or any structure, item or component thereof.

Section 3. Neighborhood Facility. The expression "Neighborhood Facility" shall mean and refer to each structure, improvement, item, facility, parcel of land (including a part of a public or private street right-of-way), and/or any interest in any of same or any component or appurtenance thereof that from time to time becomes available, exclusively or non-exclusively, to the Association for the use, benefit and enjoyment of Members, by short-term lease, grant of easement, permit or license of any term, or by forbearance or prescriptive usage. In accordance with the provisions hereof, each of same shall be treated and considered as a Neighborhood Facility.

From time to time and at any time, the Board of Directors may designate, acquire and/or accept as a Neighborhood Facility any structure, improvement, item, facility, area or parcel of land (including an easement or a part of a public or private street right-of-way), or any interest in any of same or any component or appurtenance thereof, that is situated within or adjoining Waverly, and that is feasibly and/or reasonably available, exclusively or non-exclusively, to the Association for the use, benefit and enjoyment of a substantial number of Members or whose maintenance, repair, reconstruction and/or improvement serves the purposes of the Association or provides for the preservation or enhancement of the values and amenities in Waverly. Except as provided otherwise hereinafter, the Association, acting by and through its Board of Directors, may terminate the classification of any structure, improvement, item, facility, area or parcel of land and/or easement or right-of-way as a Neighborhood Facility at any time. Such termination shall not preclude the Association from time to time and at any time thereafter from again designating, acquiring or accepting the same structure, improvement, item, facility, area or parcel of land and/or easement or right-of-way as a Neighborhood Facility.

The Declarant hereby designates as "initial Neighborhood Facilities" the structures, improvements, items, facilities, areas, parcels of land, easements and/or rights-of-way so identified and/or described in Exhibit "C" to this Declaration. Prior to December 31, 2043, the classification of and the maintenance, repair, reconstruction and/or improvement of the structures, improvements, items, facilities, areas, parcels of land, easements and/or rights-of-way so identified and described in said Exhibit "C" as initial Neighborhood Facilities may not be terminated by the Board of Directors without the concurrent consent of the Declarant.

The maintenance, repair, reconstruction and/or improvement of a facility or amenity which is a part of an initial Neighborhood Facility and/or which is duly required by a governing authority having jurisdiction to be maintained by the owners of Lots within a subdivision may not be terminated by the Board of Directors without the consent of such governing authority.

The designation, acquisition or acceptance of any structure, improvement, item, facility, area or parcel of land as a Neighborhood Facility shall not mean or imply that the public at large acquires any easement of use or right of enjoyment therein, unless such structure, improvement, item, facility or parcel of land is owned or otherwise also available to the public at the time of such designation, acquisition or acceptance.

Whether or not the Neighborhood Facility, or a larger parcel of land containing within its boundaries the Neighborhood Facility, has been duly annexed to the Property as set out in Section 5 of this Article, each Neighborhood Facility shall be treated and considered as part of the Property.

The Association may expend reasonable funds for the maintenance, repair, reconstruction and/or improvement of each Neighborhood Facility that the Board of Directors determines is necessary or advisable for the preservation or enhancement of the function and utility of the Neighborhood Facility or for the preservation or enhancement of the values and amenities in Waverly.

Section 4. Property Subject to This Declaration. The real property which is and shall be held, conveyed, hypothecated or encumbered, assigned, leased, rented, used, occupied, and improved subject to this Declaration is comprised of that certain 14.66 acre parcel of land and real property which is described in Exhibit "A" of this Declaration, together with all other parcels of land from within the Annexable Lands which by annexation in accordance with the provisions of Section 5 of this Article are subjected to the covenants, conditions, restrictions, requirements and other provisions of this Declaration. On the date of this Declaration, the Property which is subject to this Declaration is comprised only of the parcel of land described in said Exhibit "A," which parcel of land is the same as that subdivided and platted as Waverly Phase 1," according to the map or plat thereof filed for record in the office of the Chancery Clerk of Rankin County, Mississippi, at Canton, Mississippi, in Plat Cabinet E in Slide 351 and 355, reference to which is hereby made for all purposes. From and after the date of any Supplementary Declaration annexing additional parcel(s) of land to the Property as provided in said Section 5 of this Article, the word Property shall include the parcel of land described in said Exhibit "A" together with all other parcels of land theretofore duly annexed to the Property and together with the parcel of land annexed by such Supplementary Declaration.

Section 5. Annexation of Additional Property. At any one or more times on or prior to December 31, 2043, and without the assent of either the Class A Members or the Class B Members, the Declarant, or any other person with the written assent of the Declarant, shall have the right, privilege, and option to annex to the Property subject to this Declaration any additional contiguous or non-contiguous real property situated within the area described as Annexable Lands. Any such annexation shall have the effect of making the annexed property part of the Property and of extending the scheme of the within covenants, conditions and restrictions to such annexed property. However, no such annexation shall occur until same has been accomplished in the manner herein prescribed.

Any annexation of all or any part of the lands subject to annexation shall be made by filing for record a Supplementary Declaration of Covenants, Conditions and Restrictions among the land records in the office of the Chancery Clerk, which Supplementary Declaration shall, by declaration therein, extend the scheme of the within covenants, conditions and restrictions to the annexed additional property therein described. The person who owns fee simple title or a long term leasehold to the additional property being annexed shall execute such Supplementary Declaration, and if such person is other than the Declarant, the Declarant shall execute such Supplementary Declaration also.

Such Supplementary Declaration may contain, with respect to the additional property annexed thereby, provisions respecting required yards or setbacks, total square footages, other requirements for dwellings, easements, the degree of care and determination of assessments for any care not rendered to all Members or Lots all within Waverly, and may also contain whatever complementary and supplementary additions and modifications to the covenants, conditions and restrictions set forth in this Declaration as may be appropriate to reflect the different character or use, if any, of the annexed additional property; provided, however, that in no event shall any such provision, addition or modification be substantially inconsistent with the purposes and provisions of this Declaration. The Declarant hereby covenants and agrees that it will not annex, or assent to the annexation of, any additional parcels of land for uses and purposes substantially incompatible with a residential Neighborhood and/or will not impose, or consent to the imposition of covenants, conditions and restrictions incongruous with the requirements for dwellings set forth herein.

Any parcel of land so annexed shall have had the street, drainage and utilities infrastructure thereof designed, constructed, and installed to provide lots and sites for the construction, erection, and improvement of detached, single-family residential dwellings, however the type, architectural styles, landscaping, character and size of such lots and dwelling need not be the same as that of dwellings then existing with Waverly. The Declarant hereby advises all persons of its intent to develop within Waverly lots and sites for construction, erection, and improvement of residential dwellings of differing types, architectural styles, landscaping requirements, character and size.

Any parcel of land so annexed shall have had the street, drainage and utilities infrastructure thereof designed, constructed, and installed in substantial conformance with the plan approved by either the Declarant, or in lieu thereof should the Declarant be unwilling or unable to act, the

Board of Directors of the Association, and in substantial conformance with the preliminary plat or conceptual plan approved by the governing authority having jurisdiction.

Each person who becomes an owner of a Lot comprising part of Waverly, by acquiring title to a Lot, by taking possession of a Lot, by accepting a deed or lease to a Lot, or by accepting a similar instrument of conveyance transferring to him the right to use or occupy a Lot, whether or not said instrument shall so state, shall be deemed (i) to have acknowledged that any other prior representation or subsequent oral representation to the contrary by or on behalf of the Declarant or any other person pertaining to the development, improvement or use of any part of the then Annexable Lands is so superseded and (ii) to have waived any objection to any zoning action that the Declarant may seek from the governing authority having jurisdiction.

Liens arising in connection with the Declarant's or Developer's ownership of and construction of infrastructure, improvements, Common Areas and Neighborhood Facilities on or within lands subject to annexation shall not adversely affect the rights of the Association and existing Lot owners, or the priority of the first mortgagees of record on Lots within the Property executed prior to such annexation.

Section 6. No Dedication to Public Use. No provision of this Declaration shall be interpreted or construed as a dedication to public use or as an acceptance for maintenance of any part of any Common Area or Neighborhood Facility situated outside of a public street right-of-way by any public or municipal agency, authority, or utility. No provision of this Declaration shall be interpreted or construed as imposing upon any public agency, authority or utility any responsibility or liability for the maintenance or operation of any Common Area or Neighborhood Facility.

Section 7. Reservations By Declarant. No provision of this Declaration or the Bylaws of the Association shall limit or interfere with, or be amended to limit or interfere with, the right of the Declarant

- a. to complete the development and construction of Waverly as Declarant deems advisable or appropriate;
- b. to convey or transfer any and all Lots by sale, lease or otherwise;
- c. to subdivide or re-subdivide any portions of the Property;
- d. to alter preliminary plats, master plans, concept plans, development plans, and construction plans, including designs reflected therein;
- e. to construct such additional improvements or add such future phases as Declarant deems advisable or appropriate during development of the neighborhood;
- f. to annex any part of the Annexable Lands to the Property;
- g. to add to, improve, alter or complete any Common Area, Neighborhood Facility, or part of the Property owned or leased by Declarant; or

h. to convey any appropriate part of the Property to the Association as a Common Area.

The Declarant expressly reserves the right to locate, construct, improve, maintain and repair such facilities and conduct such activities as may be reasonably appropriate, necessary, required, convenient, incidental or advisable to the development, construction, completion, improvement, promotion and sale of Lots and dwellings, including, without limitation, using dwellings as model homes, using dwellings or Common Areas as offices for the promotion and sale of Lots and/or dwellings and/or for the development, construction, completion and improvement of Lots and/or dwellings, and installing sales and construction trailers for such purposes. Such rights 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 appropriate, necessary, required, convenient, incidental or advisable for each and all such purposes.

The Declarant expressly reserves the right to take or forebear such action(s) and/or conduct or stop any activity he deems necessary or advisable to preserve the health, safety, convenience, and welfare of the Owners of Lots and parcels within Waverly or otherwise achieve or promote any purpose of this Declaration or develop and improve all or any part of Waverly.

By accepting the deed to his Lot, each Owner thereby acknowledges that the activities of the Declarant, including activities which create smoke, noise, dust, and mud and/or which entail the use of public or private streets by construction vehicles and equipment, may temporarily or permanently constitute an inconvenience or nuisance to the Owner, and each Owner by accepting the deed to his Lot consents to such inconvenience or nuisance. The Declarant, an Associate of the Declarant or a Licensed Builder need not seek or obtain approval from the Association, its Board of Directors or its Architectural Review Committee for any improvement constructed or placed by the Declarant, an Associate of the Declarant or a Licensed Builder on any Lot which is owned by the Declarant, an Associate of the Declarant or a Licensed Builder. Approved hours of construction shall be between 6:00 AM and 6:00 PM.

The Declarant or any Associate of the Declarant need not seek or obtain approval from the Association in order to establish or grant on any Lot that is owned by the Declarant or Associate an easement, license, reservation or right-of-way to any person should such be reasonably appropriate, necessary, required, convenient, incidental or advisable to the development, construction, completion, improvement, promotion and sale of Lots and dwellings on such Lots.

The Declarant expressly reserves the right to join in the sale, lease, dedication, conveyance or grant by the Owner of any Lot or Parcel or by the Board of Directors of any fee, leasehold, easement, license, right-of-way or other right to any utility company for any purpose in, through, over or across all or any part of a Lot or Parcel comprising a part of the Property. This right may be assigned by the Declarant to any Associate of the Declarant at any time. Should the Declarant or his assignee be unable or unwilling to respond within thirty (30) days to a written request for joinder in such sale, lease, dedication, conveyance or grant, the Board, in lieu of the Declarant, shall have and may exercise the right hereby reserved. Should the Declarant decline to join in such sale, lease, dedication, conveyance or grant, the Declarant shall not be deemed to be unable or unwilling to act. The Declarant need not justify his declination.

The Declarant may, but shall not be required to, notice such declination by executing an instrument stating his declination and by filing a Notice of Declination in the office of the Chancery Clerk indexed to such Lot or parcel or to all or any part of the Property. A Notice of Declination duly filed for record by the Declarant shall void any such sale, lease, dedication, conveyance or grant. A Notice of Declination duly filed for record by the Declarant shall not be deemed an alienation of title. The Declarant may require compensation and/or receive compensation for joinder. The Declarant shall be entitled to receive any and all compensation payable to the Owner of the Lot(s) or Parcel(s) that is awarded by condemnation or is or paid under threat of condemnation. In lieu of and/or in addition to such compensation the Declarant may impose on the Grantee and/or beneficiary of such sale, lease, dedication, conveyance or grant those requirements, conditions and restrictions as the Declarant may deem appropriate.

From time to time and at any time prior to the later of December 31, 2043 or five (5) years after a Lot, Parcel or Common Area becomes a part of the Property subject to this Declaration, the Declarant expressly reserves the right to grant on the Lot, Parcel or Common Area, without the necessity of joinder therein by the owner thereof, any easement, license, right-of-way or other right to the Association, the County, the City, or any utility company for the improvement of storm water drainage or rendition of any service the utility company is authorized or certificated to so render and for any purpose related thereto, subject to the conditions of and as otherwise set out in Section 5, 6 and 7 of Article IX, in, through, over or across all or any part of a Drainage or Utility Easement established or delineated within a Lot, Parcel or Common Area or in, through, over or across all or any part of a Lot, Parcel or Common Area that is situated between a boundary of such Lot, Parcel or Common Area and the required yard or setback line corresponding to said boundary or, if there is no such corresponding yard or setback line, between such boundary and a line ten (10) feet from the boundary.

From time to time and at any time prior to December 31, 2043, the Declarant expressly reserves the right to create, establish and delineate on any Lot or Parcel then owned by the Declarant one or more public or private drainage or utility easements by so designating, delineating and reserving same on a Plat, by declaring and delineating same by any supplement or amendment to this Declaration, or by declaring and delineating same in an instrument duly executed for such purpose and filed in the office of the Chancery Clerk.

This Section of this Article shall be in force and effect for so long as the Declarant or an Associate of the Declarant owns any Lot or Parcel within Waverly or any part of the Annexable Lands. Notwithstanding any other provision of this Declaration to the contrary, the prior written approval of Declarant shall be required before any amendment to this Section of this Article shall be effective for so long as the Declarant or an Associate of the Declarant owns any Lot or Parcel within Waverly or any part of the Annexable Lands, but in no event shall this be a requirement after December 31, 2043.

Section 8. Detention Areas. If any are so designated, the Declarant hereby designates as "Detention Areas" the structures, improvements, items, facilities, areas, parcels of land, easements and/or rights-of-way so identified and/or described in Exhibit "C" to this Declaration. From time to time and in accordance with the manner prescribed in Section 5 of this Article, the Declarant may annex to the Property one or more parcels of land, all or part of each of which

may be described and designated as a Detention Area in the Supplementary Declaration effecting such annexation or on the Plat incorporated by reference into such Supplementary Declaration. A parcel of land so described and designated is hereinafter referred to as a "Detention Area." A parcel of land so described and designated shall also be a common area of the Association.

Unless clearly indicated otherwise, Detention areas may consist of a lake or a dry basin, its dam and outlet works, and the adjoining shore owned by the Association. Should a lake or a dry basin at its normal-pool elevation extend across a Parcel boundary and inundate part of a Parcel, such part of the lake or a dry basin and such part of the Parcel shall not be a common Area owned by the Association but shall be a Neighborhood Facility and subject to a Lake and Lake Shore Easement and any other provisions hereof respecting the use of lakes, lake common areas, dry basins and areas within a Lake Shore.

Unless otherwise clearly indicated by the provisions of this Article or the provisions of the Supplementary Declaration annexing same, detention areas shall in all respects be held and owned for the common use, benefit, and enjoyment of the Members of the Association as are other common areas within Waverly.

The Declarant may designate a lake, its dam and outlet works, or any part thereof, as a detention area and restrict access to the lake to only the Owners of specific Lots and/or Parcels, which owners shall include, but need not be limited to, the Owners of all Lots and Parcels that abut the boundary of the detention area being thereby restricted by designating same and thereafter such lake shall be a "Restricted Lake". In such case, other than Members that abut the boundary of the detention area the Restricted Lake is appurtenant, Members may not access or use the Restricted Lake without the prior express written permission of one or more of the Members that abut the boundary, and such access shall be subject to such times, durations, conditions and/or rules that the Members that abut the boundary may from time to time recommend to the Board of Directors be adopted with respect to said Restricted Lake as provided in said Section 9.

Notwithstanding anything to the contrary in this Declaration, for lakes of ten (10) acres or more at normal pool in size on or partially on Waverly or any Annexable Lands, the Declarant may exclude the lake from being designated a Detention Area provided there is created a separate lake owners association for the purposes of managing, maintaining, improving or otherwise exercising the prerogatives and undertaking the duties and responsibilities inherent to such lake. The members of the separate lake owner's association must include the owners of Lots and Parcels abutting the lake that are within Waverly and may include the owners of other properties abutting the lake that are not within Waverly and may also include other designated persons for inclusion in one or more classes of membership in such separate lake owners association regardless of whether or not such person owns a Lot within Waverly.

Unless a separate lake owners association is created for the lake, the Association shall be responsible for the maintenance of the dam, spillway and outlet works of a lake, for the maintenance of appropriate water quality in a lake, for any purpose related to storm water management, storm water detention or retention or for maintenance of water quality, for the removal of vegetation, debris, and/or sediment from a lake, for the regulation of the use and

activities of the water surface of a lake, and for the acquisition of all permits and approvals, including extensions, renewals, and additions, required by Section 51-3-1 through 51-3-55 of the Mississippi Code of 1972. The Association shall not be responsible for the propagation, control, and management of fish or wildlife of any kind which habitat in or around lakes; however, the Board of Directors shall have the right but not a duty to undertake activities intended to affect the control and management of such fish or wildlife but in so doing the Association shall not responsible for the failure of such activities to achieve their objectives. Snakes, beavers, Canada geese, mosquitos and like creatures and the danger, destruction and nuisance they do, or are believed to present, inflict and pose are to be expected in and around lakes even with the implementation of activities intended to control and manage same.

Neither the Declarant nor the Association nor any other person shall be obligated by the designation of a detention area to create, form or construct a lake therein or thereon. Neither the Declarant nor the Association shall be required to maintain the water level of any lake otherwise created, formed or constructed at any certain elevation or between any certain maximum and minimum elevations. The Board of Directors may lower the water level or drain the lake if such is prudent or necessary for the discharge of its responsibilities hereunder, for the installation, maintenance and repair of any street, dock, pier, shoreline improvement, sewer, drain, pipe, wire or cable, or any related appurtenance, or for any other purpose.

Neither the Declarant nor the Association shall be responsible for the safety of any person using a dry basin, lake, lake shore, dam or lake outlet works for any purpose with or without proper authorization or permission. Each person who becomes an Owner of a Lot or Parcel comprising part of Waverly, by acquiring title to a Lot, by taking possession of a Lot, by accepting a deed or lease to a Lot or dwelling thereon, or by accepting a similar instrument of conveyance transferring to him the right to use or occupy a Lot or dwelling thereon, whether or not said instrument shall so state, (i) shall be deemed to have fully accepted responsibility for the activities and safety of the members of his family and his invited guests using the dry basin, lake or lake shore as well as those persons who access the dry basin, Lake and lake shore through or across the Owner's Lot or Parcel, and (ii) shall be deemed to have waived the right to, and to have agreed not to, assert any claim against the Declarant or any of his/its then past or current associates, employees or agents or assert any claim against the Association or any of its then past or current directors, officers, agents, employees or committee members, individually or collectively, for any loss or damage to personal or real property, personal injury, or death arising from any authorized or unauthorized use of a dry basin, Lake, lake shore. Lake dam or lake outlet works unless such loss, injury or death was as a direct result of willful and gross negligence.

Any detention/dry basin, Lake, lake common area and area within a lake shore is hereby declared to be subject to the restrictions, limitations, conditions, duties, prerogatives and rights a "Detention/Dry basin, Lake and Lake Shore Easement" as same are set out in Section 10 of Article IX of this Declaration.

Unless a private lake within Waverly is under the jurisdiction of an association comprised of the owners of properties abutting the private lake, the provisions of this Section that are appropriate for application to private lakes owned by two (2) or more Lot or Parcel Owners shall

be applicable to such private lakes unless and until the owner or owners of more than two-thirds of the area inundated by such private lake's water surface at normal pool determine otherwise and so advise the Association of such determination.

Section 9. Stormwater Reserve Fund Assessments. The property owners shall establish and maintain a Stormwater Reserve Fund adequate for the homeowners' associations to draw against when making repairs and performing maintenance on facilities effecting storm water pipe and or detention/retention. At the end of each five (5) year cycle, the property owners shall cause to be accumulated the amount(s) of money that is reasonably estimated as being necessary to clean out and restore to its capacity when new each detention or retention facility and or to repair or replace any stormwater pipe, ditch or swale located outside the City Right of Way and inside of a dedicated drainage easement. The minimum balance in the Stormwater Reserve Fund at the end of the five-year cycle shall be \$19,000 for each basin or such higher amount as a civil engineer may from time to time prescribe or the Board of Directors may deem prudent. The Board of Directors is expected to assess, collect, reserve and set aside a sum that is not less than three dollars (\$3.00) per calendar month per member. The funds are solely for the purposes of the maintenance, repair, restoration, reconstruction, replacement or improvement of storm water detention and retention facilities and or to repair or replace any stormwater pipe, ditch or swale located outside the city Right of Way and inside of a dedicated drainage easement for which the Association is responsible. The Association, acting by and through its Board of Directors, shall levy assessments annually against Lots within Waverly for defraying the Association's estimated quinquennial expense.

Section 10. Service Driveway. A street within Waverly that is not a public street duly accepted for maintenance by the governing authority having jurisdiction may be accepted by the Association as a Service Driveway. The Association, acting by and through its Board of Directors, must expressly accept a Service Driveway, but such acceptance may not be unreasonably delayed or denied. After acceptance of a fully completed Service Driveway, the Association shall thereafter be responsible for the maintenance, reconstruction, repair, replacement and improvement of the street as a Service Driveway. The conveyance of title to, a description or plat indicating the location of the right-of-way of, and any appurtenances, standards, conditions, and terms relating to the Service Driveway so conveyed shall be fully set forth in the instrument indicating acceptance of the Service Driveway by the Association. Such acceptance shall be recorded in the office of the Chancery Clerk; and unless a later date shall be specified, such acceptance shall be effective on the date of its recording.

A Service Driveway shall be a Common Area of the Association subject to the provisions hereof respecting Common Areas. If reasonable and appropriate and duly designated as such, a Service Driveway may instead be a Village Restricted Common Area. The provisions hereof notwithstanding, the Association, acting by and through its Board of Directors, shall have the right to convey all or any part of any Service Driveway situated outside the perimeter of Waverly (the Property subject to this Declaration together with all other lands within the Annexable Lands) to the governing authority having jurisdiction for maintenance of same as a public street.

The costs incurred by the Association for routine maintenance and repair of Service Driveways other than such streets that are within a Village Restricted Common Area shall be a

common expense of the Association. The cost of extraordinary maintenance, inordinate repair, or replacement, improvement or reconstruction of Service Driveways, other than such streets that are within a Village Restricted Common Area, may be uniformly assessed against the Owners of all Lots within Waverly as provided in Section 3 of Article VII of this Declaration. If any such street is or is within a Village Restricted Common Area, such costs shall be assessed against the Owners of all of the Lots within the Village to which the street is appurtenant.

Subject to duly adopted and promulgated Neighborhood Rules of the Association respecting the use of Service Driveways, and subject to the rights of the Association in Subsection g. of Section 2 of Article V of this Declaration, Service Driveways within Waverly may be used by

a. Any Member of the Association, members of his family residing permanently with him, and any bona fide tenant, guest, agent, employee, repairman, deliveryman, contractor, subcontractor or supplier of such Member having the consent of or invitation from such Member;

b. Officers, agents and employees of any governing authority having jurisdiction and/or of any company under contract or license with any such authority, including without limitation policemen and other law enforcement officers, firemen, emergency response technicians, persons engaged in the maintenance of public facilities, health and safety and persons providing solid waste and refuse collection and disposal, during the performance of their duties;

c. Officers, employees, agents, contractors and subcontractors of any utility company having facilities within and/or serving Waverly during the performance of a duty related to such service;

d. Deliverymen while performing activities in the course of their legitimate service, including postal, express delivery service, and newspaper deliverymen;

e. Principals, employees and agents of licensed business and service enterprises engaged in the design, construction, improvement, repair, maintenance, reconstruction, replacement or marketing of any Lot, or dwelling or personal property thereon or therein, or any facility, fixture or appliance related thereto, during normal business hours or during bona fide emergencies;

f. The Owner, mortgagee or contract-purchaser of any Lot within the Property;

g. The Declarant, any Associate of the Declarant, or any officer, employee, agent, guest, contractor or subcontractor of the Declarant or Associate;

h. A Developer, or any officer, employee, agent, guest, contractor or subcontractor of a Developer while engaged in activities related to the development and sale of properties owned by such Developer which are situated within Waverly;

i. Directors, officers, employees, agents, contractors and subcontractors of the Association; and

j. Any such other person authorized by the Board of Directors, and the Board may from time to time authorize persons by name, classification or other description under such terms and subject to such conditions as the Board may determine appropriate.

Use of any Service Driveway by any of the persons within categories listed in this Section of this Article shall constitute acceptance of the responsibility and liability for the repair of any damage to the subgrade or pavement or any other component of a Service Driveway when such damage is caused by or occurs during use which was in violation of or is contrary to the letter, spirit or intent of any of the standards, conditions, rules and regulations respecting the use of Neighborhood Streets duly adopted and promulgated by the Association; was unreasonable or inappropriate as same may be determined by the Board of Directors or by any court having lawful jurisdiction; or was in excess of the dimensional or structural capacity of the street as such manifested itself by the clearly apparent deterioration or failure of subgrade or pavement. The Association, acting by and through its Board of Directors, may require prior to such use deposits, bonds or other sufficient sureties in an amount(s) to cover the prospective costs of repair or reconstruction of Service Driveways following anticipated inordinate or potentially improper use. The Association, acting by and through its Board of Directors, may set limits and restrictions of any nature on vehicles and equipment using Service Driveways.

The failure of any person who improperly used a Service Driveway or his employer to promptly repair or restore damaged subgrade, pavements and/or components to substantially the same or better condition which existed prior to such damage shall be considered a violation of these covenants, conditions and restrictions, and, upon written notice from the Board of Directors, such violation shall be promptly corrected by repairing said damage to the reasonable satisfaction of the Board. In the event the damage is not repaired, within fifteen (15) days (or within such shorter period as may be reasonably required in such notice) after notice of the violation is mailed, delivered or transmitted to the Member who was responsible for the activity during which said Service Driveway was improperly used and thereby damaged, then the Association shall have the right, through its agents and employees (but only after the Board of Directors by resolution has so directed) to take such action as may be necessary to repair said damage, and the cost thereof may be assessed as a Damage Assessment against any Lot which is owned by the Member who was responsible for the activity during which said street was improperly used and thereby damaged, and, when so assessed, a statement for the amount thereof shall be rendered to such Member as the Owner of such Lot, at which time the assessment shall become due and payable and shall be secured by a continuing lien upon such Lot, and shall be a binding personal obligation of the Owner of such Lot, in the same manner and subject to the same limitations as are provided in Section 4 of Article VII and in Article VIII of this Declaration.

To promote and secure the safety and well being of persons or property on or near a Service Driveway, the Board of Directors of the Association may from time to time adopt, promulgate and enforce as Neighborhood Rules reasonable standards, conditions, rules or regulations respecting the construction and use of Service Driveways and for the protection of lives and property within the neighborhood. Each person who becomes an Owner of a Lot, by taking possession of or by accepting a deed or similar instrument transferring to him a Lot, whether or not said instrument shall so state, shall be deemed to covenant and agree to adhere

to such standards and conditions and abide by such rules and regulations and to ensure that his family members, employees, agents, tenants, guests, repairmen, deliverymen, contractors, subcontractors and suppliers adhere to such standards and conditions and abide by such rules and regulations. The Association, Declarant, or any Member may enforce said standards, conditions, rules or regulations respecting the construction and use of Service Driveways by any proceeding at law or in equity against any person violating or attempting to violate any such standard, condition, rule or regulation, either to restrain or enjoin violation or to recover damages, or both. The failure or forbearance by the Association, Declarant, or Member to enforce any standard, condition, rule or regulation shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE II

ACTIONS, ACTIVITIES AND USES

Section 1. Prohibited Actions, Activities and Uses. Except for the activities of the Declarant, a Developer or other bona fide builder occurring during the construction and development of Waverly or the construction or improvement of a dwelling on a Lot, except for activities and uses expressly permitted and not inconsistent with the provisions of this Declaration, except for things done pursuant to the prior written approval of the Board of Directors or the Architectural Review Committee, except as may be directed by lawful order, ordinance or regulation of any governing authority having jurisdiction or court having lawful jurisdiction, and except as may be necessary in connection with reasonable and necessary maintenance, repair or reconstruction of any dwelling, Common Area or Neighborhood Facility or component thereof:

a. No noxious or offensive trade or activity shall be carried on upon any Lot or other part of Waverly or within any dwelling or structure within Waverly.

b. No noxious or offensive odors shall be allowed to arise from any Lot or other part of Waverly or from within any dwelling or structure within Waverly.

c. No nuisance shall be instigated, carried on or permitted within Waverly. No activity, use, conduct, trade or practice which is or which may become an annoyance or nuisance to Waverly or to another Member shall be started or permitted to remain or continue within Waverly.

d. No activity or practice which intentionally interferes with or intercepts wireless or wired communications systems and/or networks on another Member's Lot or within his dwelling shall be started or permitted to remain or continue within Waverly.

e. No activity, use, conduct, trade or practice which interferes with the peaceful use and possession of another Member's Lot and dwelling thereon shall be started or permitted to remain or continue within Waverly.

f. No speaker, horn, whistle, siren, bell or other sound device, except warning devices kept in good working order, shall be located, installed or maintained upon the exterior of any dwelling or upon the exterior of any other structure or improvement.

g. The maintenance, keeping, boarding, harboring or raising of animals, livestock, wildlife or poultry of any kind, regardless of number, shall be and is hereby prohibited on any Lot or within any dwelling, except that this shall not prohibit the keeping of a reasonable number of domestic pets such as dogs, cats, tropical fish, caged birds and other exotic pets and small creatures lawfully and commercially sold in local retail pet stores; provided such pets are not kept, bred or maintained for commercial purposes, and provided further, that they are not a nuisance or source of annoyance to other Members. The Board of Directors shall have the authority, after a hearing, to determine whether a particular pet is a nuisance or a source of annoyance to other Members, and such determination by the Board shall be conclusive. Pets outside a dwelling and not within a restrictive fence sufficient to contain the pet, shall be attended at all times and shall be registered, licensed and inoculated as may from time to time be required by law or regulation. Pets shall not be permitted within or upon any Common Area, Neighborhood Facility, or Service Driveway unless accompanied by person over the age of eight (8) years and unless the pets are carried, caged or leashed. The Board of Directors shall have the right to adopt such additional rules and regulations regarding pets, including more restrictive "leash" regulations, as the Board may from time to time consider necessary or appropriate. The Board of Directors shall have the right, but not the obligation, to prohibit or bar certain breeds of animals from any Lot or other part of Waverly or from within any dwelling or structure within Waverly.

h. No burning of any trash on any Improved Lot. No accumulation or storage of litter on any Improved Lot. No lumber, scrap metals, refuse, bulk materials, waste, new or used building materials, shall be permitted on any Improved Lot except fenced within the rear of the Lot behind a dwelling screened from public view. Firewood shall be kept neatly stacked only within an Improved Lot on which the dwelling is occupied and only out of public view. A Lot or dwelling or other improvement on a Lot shall not be used as a storage area or facility for or by any contractor, builder or developer (other than the Declarant) unless same is expressly permitted by the Architectural Review Committee or Board of Directors and subject to any such requirements, conditions and restrictions as the Committee or Board may impose.

i. Except for those of a visitor, short term guest or temporary employee, no automobile shall be parked or permitted to remain parked on a street within Waverly or on an unpaved portion of any Lot for more than twenty-four (24) hours except during bona fide emergencies. Lot owners and family members occupying the dwelling must park in the garage or on the driveway. No inoperative motor vehicle, wrecked or junked vehicle, commercial vehicle, large trailer, truck larger than 3/4 tons, house trailer, mobile home, bus, camper, motor home, or machinery or equipment of any kind or character (except such equipment and machinery as may be reasonable, customary and usual in connection with the use and maintenance of any dwelling and except such equipment and machinery as the Association may require in connection with the maintenance and operation of any Common Area and/or Neighborhood Facility) shall be kept upon or within a Lot or other part of Waverly unless such is completely enclosed in a garage or kept in an area specifically designated therefor. No all-terrain vehicle, motorcycle or boat shall be kept on or within a Lot or other part of Waverly except fenced within the rear of the Lot behind a dwelling screened from public view. Except during bona fide emergencies, the repair or extraordinary maintenance of automobiles or other vehicles shall not be carried out within public view. The Architectural Review Committee or Board of Directors

may from time to time on a case-by-case basis permit deviations from the strict enforcement of this prohibition to accommodate the reasonable requirements of a Member. All vehicles shall be currently licensed and maintained in operating condition, so as not to cause or create hazards or nuisances by excessive noise levels, exhaust emissions, or appearance.

j. No refuse, trash and/or garbage containers shall be placed or permitted to remain in public view or the view of a Member from his dwelling or yard except on days of trash collection. No incinerator shall be kept or maintained upon any Lot in Waverly. Garbage, trash, and other refuse shall be placed in covered containers. Containers or other equipment used for the storage or disposal of garbage, trash, rubbish or other refuse shall be kept in clean, sanitary condition. Garbage, trash, and other refuse shall be placed in covered containers when placed at the curb for pick up.

k. No garbage, trash, construction debris or refuse, landscaping debris or refuse, other solid materials or potentially harmful or toxic solvents, paints, fertilizers, insecticides, herbicides, chemicals or substances shall be thrown or otherwise placed into a lake or curb inlet or placed, stored or permitted to remain where such may be washed or blown into a lake or curb inlet during inclement weather.

l. No Member shall sell, lease, dedicate, convey or permit an easement, license, right-of-way or right to any utility company for any purpose in, through, over or across all or any part of a Lot which he owns (unless such was sold, leased, dedicated, conveyed or permitted by the Declarant or its predecessors in title) without joinder therein by the Declarant or his assignee.

m. Except with the written approval of the Association, acting by and through its Board of Directors, which approval should be so indicated within the written instrument effecting the transfer or conveyance, no Lot shall be divided or subdivided, no portion of any Lot (other than the entire Lot) shall be transferred or conveyed for any purpose, and no easement or right-of-way, which would permit access to the Lot or any other part of the Property other than through an approved entrance or which would alter for a long time the appearance or character of the Lot or Waverly, shall be transferred or conveyed for any purpose to any public or private utility company, public body, private entity or person. Notwithstanding the foregoing, this subparagraph shall not be interpreted or construed to prohibit the change or realignment of the boundary between adjacent Lots, or the change or realignment of the boundary between a Lot and a Common Area (provided such does not materially decrease the size and accessibility of the Common Area), or the re-subdivision or combination of two or more Lots into fewer Lot(s), or the conveyance to a public or private utility company of an easement or right-of-way for underground sewers, pipes, wires, cables or conduits which are to be installed and operated for the benefit of Waverly or a Member. The prohibitions of this subparagraph shall not apply to any Lot owned by the Declarant at the time of such transfer or conveyance or to any such transfer or conveyance to the Declarant, to a governing authority having jurisdiction, or to the Association.

n. No water pipe, sewer pipe, gas pipe, drainage pipe, telephone cable, electric wire, television cable, or similar line or facility shall be installed or maintained on any Lot or parcel above the surface of the ground unless such pipe, wire, conduit or appurtenance exists above

ground within an area depicted on a Plat as a utility or utility and drainage easement prior to the date the Plat is filed for record.

o. No Lot shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth fill material. The prohibitions of this subparagraph shall not prohibit the removal of expansive soil materials during the construction, repair or maintenance of a dwelling or appurtenance thereto.

p. No sound hardwood trees measuring in excess of six (6) inches in diameter four (4) feet above the ground shall be removed from any Lot or other part of Waverly without the written approval of the Architectural Review Committee or Board of Directors, and the Committee or Board may, as a condition of such approval, require the planting of a reasonable number of trees of sizes and species available for purchase at local nurseries and garden centers.

q. No structure of a temporary character, and no trailer, tent, storage building, shack, barn, outdoor clothes line or dryer, swimming pool filter system component, fuel or similar tank, playhouse, shed or other building shall be erected, used or maintained on any Lot unless same shall be screened from public view or screened from the view of another Member from his dwelling or yard in a manner approved by the Architectural Review Committee or Board of Directors.

r. Except for entrance signs, street signs, directional signs, signs for traffic control or safety, Neighborhood identification signs, such promotional or informational signs as may be erected, maintained or permitted by the Declarant or the Association, or such signs or similar devices as may be specifically required or permitted by law, no signs, posters, flags, yard decorations, ornaments or advertising devices of any character, including political signs, for rent signs, and handbills, shall be erected, posted, hung from or in windows, or otherwise displayed in public view without the specific approval of the Architectural Review Committee or Board of Directors, which approval may be arbitrarily withheld, restricted or conditioned. However, one temporary real estate sign not exceeding six (6) square feet in area may be erected upon a Lot that is for sale, and any such sign must be removed promptly following the sale of such Lot. One (1) or two (2) political signs, each of which may be doubled sided and neither side of which may exceed four (4) square feet each in area, may be erected on a Lot during the four (4) weeks preceding the primary, general or special election which is the source of the sign provided such sign(s) is/are removed the day after such election. Provided the flagpole therefor is approved by the Architectural Review Committee, the flag of the United States and/or the flag of the State of Mississippi may be flown provided each such flag is of an appropriate size, is in sound and not deteriorated condition, and is handled, raised, flown and lowered with dignity. The prohibitions and permissions of this subparagraph notwithstanding, the Board of Directors may from time to time promulgate guidelines, conditions and/or restrictions for the temporary and/or seasonal display of patriotic flags, decorations, emblems, symbols, political signs and advertisements, and other reasonable and tasteful visual expressions of free speech, provided such guidelines, conditions and/or restrictions are permitted by the governing authority having jurisdiction.

s. No fence, sign, structure, tree, shrub or other improvement or device shall be placed or permitted to remain upon any Lot or other part of Waverly (i) which may obstruct or interfere

with the line of sight along public or private streets and at street intersections, (ii) which may damage or interfere with the installation or maintenance of utilities, or (iii) which may unreasonably change, diminish, obstruct, or retard the direction or flow of rain water or irrigation water runoff in any drainage easement, storm drain, swale or channel.

t. No television or radio aerial or antenna, and no other type of aerial or antenna or similar device such as a satellite antenna, used either for reception or for transmission, shall be maintained on any Lot or other part of Waverly or on the exterior of any dwelling or other structure, unless same be screened from public view in a manner approved by the Architectural Review Committee or Board of Directors. The Committee or Board may permit deviations from the strict enforcement of this prohibition to permit the installation of small direct satellite television and/or security and communications antennas and transmitters at positions on dwellings that will permit proper wireless signal reception and transmission. If a deviation is allowed by the Committee or Board no small direct satellite television and/or security and communications antennas and transmitters shall be installed on a pole of any type.

u. No Member shall engage or direct any employee of the Association on any private business of the Member during the time when such employee is on duty as an employee of the Association, nor shall any Member who is not an officer or Director of the Association direct, supervise, or in any manner attempt to assert control over any employee of the Association during such time.

v. No Member shall erect or permit to remain a chain link or wire fabric fence on any Lot, except that the Architectural Review Committee may permit same as an integral part of a barrier substantially solidly screened or expected to be substantially solidly screened within a reasonable period of time, with acceptable trees, shrubs, vines or other objects of natural growth. All fences must be approved by the Architectural Review Committee or Board of Directors

w. Except during construction of the dwelling, no privy, septic tank, cesspool, outdoor toilet, wastewater treatment system or sewage disposal facility intended or used for the collection, treatment and disposal of sewage or other waste water shall be permitted on any Lot or other part of Waverly. All dwellings must be connected to the public waste water collection and disposal system facilities of the utility company rendering such service within Waverly.

x. No Member shall cause or permit to take place at any time on a Lot any activity that could contribute to the pollution of storm water from eroded soil sediments and debris without first properly installing, and thereafter regularly maintaining, repairing and/or supplementing, sufficient devices and/or measures that will, during and following rainfall events, retain on-site eroded soil sediments and minimize off-site deposition of such sediments.

Section 2. Neighborhood Rules. No Member or other person shall violate any standards, conditions, rules or regulations that may be adopted from time to time by the Board of Directors and promulgated among the Members, particularly but without limitation, those standards, conditions, rules and regulations pertaining to the use of public or private streets, Neighborhood entrances, and/or any Common Area or Neighborhood Facility. Provided however, the Board of

Directors may not adopt or promulgate any standard, condition, rule or regulation which is unreasonable, impractical or inconsistent with this Declaration.

Section 3. Residential Use. All Lots and dwellings thereon shall be used only for private, single-family residential purposes and for such other uses and purposes as are expressly permitted in this Declaration. A Lot or dwelling shall be used or occupied only by the Owner of the Lot or dwelling and other persons related to such Owner by blood, marriage, legal adoption, guardianship or other legally authorized custodial relationship who are considered members of such Owner's immediate family or shall be used or occupied only by *bona fide* tenants of such Owner who constitute a single household and are comprised of any of the following: (i) a person living alone, (ii) two (2) or more persons related by blood, marriage, legal adoption, guardianship or other legally authorized custodial relationship, (iii) two (2) persons unrelated by blood or marriage, and their children of either or both of them, living together as a family, or (iv) a group of no more than four (4) persons having the express written consent of the Board of Directors of the Association to use and occupy a specific dwelling for a specified duration.

A professional home office as described hereinafter is expressly permitted. A Member having the approval of the Architectural Review Committee or Board of Directors may maintain and use a Lot or dwelling for promotional purposes, such as a "model home" or sales office, for a limited duration. A part but no more than forty (40) percent of a dwelling may be used as a professional home office provided in such office and or Lot there is kept no stock in trade; clients are not met on a frequent or regular basis and normally only by appointment; regular or continual customer, client or employee traffic is not created on streets within Waverly; and there is no need for accessibility to the Lot or dwelling by the general public.

Prior to December 31, 2043 with the consent of the Declarant, and after said date, with the consent of the Board of Directors of the Association, a Lot or parcel within Waverly (i) may be used as a public or private street to provide ingress, egress and utilities to a part of the Annexable Lands which on the completion of its development is to be annexed to the Property or (ii) may be used and/or treated as a Common Area or Neighborhood Facility.

Section 4. Lease, Rental and Rental Policies, Procedures, Conditions and Requirements. The use of any Lot and dwelling thereon within Waverly as rental property occupied by persons other than the Owner of the Lot and members of his family shall only be permitted in the case of hardship. Hardship shall be defined as (i) the Owner has lost their job or (ii) the Owner has been transferred to another city, more than 100 miles in distance from the dwelling. The use of any Lot and dwelling thereon within Waverly as rental property, due to hardship, occupied by persons other than the Owner of the Lot and members of his family shall not be permitted unless and until (i) the Owner has complied with all reasonable policies, procedures, conditions and requirements established therefor by the Board of Directors and (ii) the Lot and dwelling have been approved for use and occupancy by persons other than the Owner and members of his family. From time to time and at any time, the Board of Directors may establish policies, conditions, procedures and requirements that must be complied with in order for an Owner to lease a Lot and dwelling without being in violation of these covenants, conditions and restrictions. The Board may hire a Management Agent or Rental Compliance Agent to facilitate the assurance of compliance with such policies, conditions, procedures, and requirements.

The lease of a Lot and dwelling must be for a minimum term of one (1) year; including Lots and dwellings having undergone foreclosure or that are subject to the order of a court having competent jurisdiction.

The entire Lot, dwelling and all the improvements on a Lot must be leased; a part or portion of a Lot or dwelling (as distinguished from the entire Lot or dwelling) shall not be rented for any period. No Lots or dwellings shall be leased or rented under any time-sharing, time interval or right-to-use programs or investments.

The monthly rental rate, not including insurance, utilities and taxes, shall not be less than two-thirds (2/3) of one (1) percent of the total appraised True Value of the Lot with dwelling and improvements.

The conditions and requirements of this Section shall not be interpreted or construed to prevent the use and occupancy of a dwelling by a person who is not the Owner or a member of the Owner's family during a term of limited duration when the Owner is away for an extended period but is expected to return. The term shall not exceed Ninety (90) days.

Any Owner or tenant of any Lot or dwelling that rents a Lot or dwelling, promptly following execution of a rental agreement or upon the request in writing of an officer of the Association, the Management Agent or Rental Compliance Agent, shall forward a conformed copy of such rental agreement to the Association as directed.

All lease or rental agreements shall be in writing and shall contain, or shall be deemed to contain, a provision to the effect that the rights of the tenant to rent, use and occupy the Lot and dwelling shall be subject and subordinate in all respects to the provisions of this Declaration, to the Bylaws, and to such reasonable Rental Rules and Neighborhood Rules as the Board of Directors from time to time may duly adopt and promulgate among the Members. Such rental agreement shall further provide, or shall be deemed to provide, that any failure by the tenant to comply with any of same, including without limitation the provisions of Section 20 of Article III hereof, shall be a default under the rental agreement.

Conditions and requirements for approval to rent dwellings may include, without such being considered unreasonable, and shall not necessarily be limited to the following:

a. The Lot and dwelling being inspected as often as annually by a professional home inspector and found (i) to be habitable and in sound condition, (ii) to have a quality appearance without the need for substantial structural, foundation, roof or cosmetic repairs, (iii) to be free of apparent fire hazards, trash and debris and (iv) to have functioning mechanical, electrical and plumbing systems and operable built-in appliances, and the report of such inspection being provided to the Rental Compliance Agent, the Management Agent, or the Board of Directors; and

b. Certificates of all required insurance coverages being provided to the Rental Compliance Agent, the Management Agent, or the Board of Directors; and

c. A copy of the lease being provided to the Rental Compliance Agent, the Management Agent, or the Board of Directors Board; and

d. The Owner shall furnish to the Association and or Rental Compliance Agent, the Management Agent or the Board of Directors (i) of an irrevocable stand-by letter of credit, certificate of deposit, surety bond or other guaranteed monies acceptable to the Board issued by a federally insured financial institution doing business in Madison, Rankin or Hinds counties or a surety company doing business in the State of Mississippi, (ii) in the principal amount of as much as eight (8) percent of the total appraised True Value of the Lot with dwelling and improvements as such value was last established by the Rankin County Tax Assessor for this or a similar Lot and dwelling, and (iii) payable on demand to the Association to pay for any expense of the Association in maintaining the Lot and exterior of the dwelling should that become, in the sole discretion of the Board, necessary of advisable to preserve the values in Waverly; and

e. Tendering to the Association through the Rental Compliance Agent, the Management Agent, or the Board of Directors the application fee set by the Board for the Association's expense in receiving, reviewing, approving, promulgating, administering and enforcing Rental Requirements established for the Association by the Board. The minimum fee shall be \$500.00. The fee may be increased from time to time to offset expenses associated with receiving, reviewing, approving, promulgating, administering and enforcing Rental Requirements established for the Association by the Board.

Each person who becomes an Owner of a Lot or Parcel comprising part of Waverly, by acquiring title to a Lot, by taking possession of a Lot, by accepting a deed or lease to a Lot or dwelling thereon, or by accepting a similar instrument of conveyance transferring to him the right to use or occupy a Lot or dwelling thereon, whether or not said instrument shall so state, (i) shall be deemed to have fully accepted responsibility for the activities and safety of his tenants and their invited guests; (ii) shall be deemed to have fully and unequivocally accepted, consented to and agreed to comply promptly with the conditions and requirements of this Declaration respecting the lease or rental of the Owner's Lot and dwelling and the administration and enforcement thereof by the Association as authorized herein; (iii) shall be deemed to have agreed that in the event of the receipt on notice of a finding by the Board of Directors, the Management Agent or the Rental Compliance Agent of a violation or attempted violation of the policies, procedures, conditions and requirements established by the Board to terminate the lease or rental agreement, evict the tenant(s) of the Lot and dwelling within forty-five (45) days of such receipt, and without regard to whether such rents are in fact collected, to forfeit to the Association an amount equal to one month's rental in arrears together with the amount equal to all future rental payments that might accrue from the date forty-five (45) days after receipt of such notice to the date the tenant vacates the Lot and dwelling; and (iv) shall be deemed to have waived the right to, and to have agreed not to, assert any claim against the Declarant or any of his/its then past or current associates, employees or agents or assert any claim against the Association or any of its then past or current directors, officers, agents, employees or committee members, individually or collectively, for any loss or damage to personal or real property, personal injury, or death arising from any approved or unapproved rental of a Lot or dwelling unless such loss, injury or death was as a direct result of willful and

gross negligence or was clearly a result of an action taken arbitrarily, capriciously and not in good faith.

A finding of a violation or attempted violation made by the Management Agent or Rental Compliance Agent may be appealed within ten (10) days of receipt of such notice to the Board of Directors of the Association. For each and every day between such appeal and a hearing before the Board, the within mentioned forty-five (45) day periods will be extended by one day. Without regard to whether the finding by the Management Agent or the Rental Compliance Agent is upheld by the Board, the Owner, tenant nor any other person shall have no right of action or claim for damages against the Management Agent or Rental Compliance Agent unless the Board finds such Agent acted arbitrarily and capriciously and not in good faith.

Section 5. Enforcement. The commission, omission, permission, violation or attempted commission or violation of any of the above prohibited actions, activities, uses and nuisances or any duly adopted and promulgated Neighborhood Rules or Rental Conditions and Requirements shall be a violation of the covenants, conditions and restrictions of this Declaration, and in addition to any action the Association acting through the Board of Directors as well as the governing authority having jurisdiction is authorized herein to take, the Association as well as the governing authority having jurisdiction may take such action as is necessary to correct, remove, remedy or otherwise terminate or abate such violation. The Association as well as the governing authority having jurisdiction may assess the cost of such action so taken against the Lot upon which such violation occurred, or against any Lot which is owned by the Member responsible for such violation as a Damage Assessment determined, levied, collected and enforced in accordance with the provisions of Section 4 of Article VII of this Declaration.

Section 6. Sales and Construction Activities. The Declarant at any time, a Developer at any time, or any bona fide builder during the construction and improvement of a dwelling on a Lot, is expressly permitted and authorized to locate, construct, improve, maintain and repair such facilities and conduct such activities as may be reasonably appropriate, necessary, required, convenient, incidental or advisable to the development, construction, completion, improvement, promotion and sale of Lots and dwellings, including, without limitation, using dwellings as model homes, using dwellings or Common Areas as offices for the promotion and sale of Lots and/or dwellings and/or for the development, construction, completion and improvement of Lots and/or dwellings, and installing sales and construction trailers for such purposes; however, the Declarant, Developer or builder is not obligated so to do. The use and location of any construction trailer shall be subject to the approval of the Architectural Review Committee or the Board of Directors as well as the governing authority having jurisdiction for regulating land use. The Declarant and each Associate of the Declarant are each expressly permitted and authorized to locate, place, use, stock, store and maintain on any portion of the Property any and all equipment, tools and vehicles (including without limitation construction equipment and construction machinery) as may be reasonably appropriate, necessary, required, convenient or incidental to such development, construction, completion, improvement, promotion and sale.

ARTICLE III

REQUIREMENTS FOR DWELLINGS

Section 1. Conformance with Requirements of Governing Authorities Having Jurisdiction. All size, height, yard, coverage and other requirements of the zoning ordinance and other pertinent regulations, building codes and ordinances duly adopted by any governing authority having jurisdiction and applicable to the construction and erection of dwellings in Waverly which are in effect on the date of this Declaration, together with any subsequent amendments thereto or variances thereof, shall be adhered to by any Member constructing or erecting a dwelling unless the requirements declared herein are in excess thereof, in which event the greater or more restrictive requirements of this Declaration shall control. The Architectural Review Committee and/or Board of Directors shall not be responsible for the interpretation, enforcement or administration of the regulations, codes and ordinances of any such governing authority. Any decision or approval of the Committee, regardless of whether such decision or approval is in conformance or is in conflict with such regulations, codes and ordinances, shall not relieve the Member from conformance or compliance with such regulations, codes and ordinances. Any decision or approval of the Committee or Board that, knowingly or unknowingly, is in conflict with such regulations, codes and ordinances shall not obligate the Association, its officers, directors or Committee members in any manner.

Section 2. Size Requirements for Dwellings. Any dwelling constructed, erected, placed or maintained on any Lot shall contain at least nineteen (1900) square feet of heated floor space, exclusive of open porches and garages. For two story dwellings, the floor at street grade shall contain at least one-half (1/2) of the minimum square footage herein specified for the dwelling, which square footage shall be exclusive of open porches and garages. If any dwelling having more than one story consists in part of a story situated below the natural grade of the Lot at the dwelling's front exterior wall, the floor space in such story, whether heated or not, shall not be considered in determining whether the dwelling complies with the requirements of this Section. Any of the above stated size requirements for dwellings may be changed for dwellings within a specific part of Waverly if such different requirement(s) is(are) set forth in the Supplementary Declaration annexing such part to the Property, and such different requirement(s) shall be applicable only to dwellings in such part.

For a specific Lot on a case by case basis, should the Architectural Review Committee or Board of Directors determine that due to reasons or for purposes which are not inconsistent with the purposes of this Declaration it would be inadvisable or inappropriate to enforce specifically the above stated minimum size requirements, the Committee may approve special deviations to such minimum size requirements in those instances and situations where the Committee believes such deviations would not be detrimental to the preservation of values and amenities in Waverly. The Committee may reduce such minimum size requirements as the Committee deems advisable and appropriate.

Section 3. Yard (Setback) Requirements for Dwellings.

Unless a greater yard or setback is required for a particular Lot as delineated on the Plat or is required because of the existence and location of any easement and/or implementation of

special concepts for locating dwellings shown on the Master Plan for Waverly, each dwelling shall be located and constructed with the following required minimum yards and setbacks.

Any dwelling on a Lot shall be so constructed, erected, placed and maintained so that no part of the face of the front exterior wall is located closer than twenty (20) feet to the street right-of-way line forming the Lot's front boundary.

Any dwelling on a Lot shall be so constructed, erected, placed and maintained so that no part of the face of each of its side exterior walls is located closer than five (5) feet to a boundary of the Lot.

Any dwelling on Corner Lots shall be so constructed, erected, placed and maintained so that no part of the face of any of its side exterior wall is located closer than fifteen (15) feet to a street right-of-way line.

Any dwelling on a Lot shall be so constructed, erected, placed and maintained so that no part of the face of the rear exterior wall is located closer than twenty-five (25) feet to the rear boundary, which rear boundary, except for Corner Lots shall be the boundary opposite the street right-of-way line forming the Lot's front boundary. There is no requirement under this Declaration for a rear yard on Corner Lots, but such may be required by the governing authority having jurisdiction.

The side and rear boundaries for Corner Lots shall be the boundaries of the Lot so designated on the Plat by the setback lines shown thereon for the Lot. With the approval of the Architectural Review Committee or Board of Directors, the side and rear boundaries of any of these Lots may be reversed due to the orientation of the dwelling proposed for construction thereon.

Roof eaves, gutters and downspouts may extend across a setback line without such being considered an encroachment. Fireplaces which offset from, but are an integral part of the exterior wall of a dwelling, with the approval of the Architectural Review Committee or Board of Directors, may extend as much as two and one-half (2.5) feet across the rear setback lines defined above without such extension being considered a violation of the provisions of this section, but such may be required by the governing authority having jurisdiction. Fireplaces may not extend beyond the setback on a side wall unless the side setback exceeds seven and one-half (7.5) feet.

For a specific Lot on a case by case basis, should the Architectural Review Committee or Board of Directors determine that due to reasons or for purposes which are not inconsistent with the purposes of this Declaration it would be inadvisable or inappropriate to enforce specifically the above stated setback requirements, the Committee or Board may approve special deviations to such required-yard/set-back requirements in those instances and situations where the Committee or Board believes such deviations would be beneficial to a specific Lot, an adjacent Lot, a dwelling on a Lot, or a dwelling on an adjacent Lot. The Committee or Board may increase such required-yard/setback requirements or reduce such requirements as the Committee or Board deems advisable and appropriate. Such approved deviations shall not constitute approval by the governing authority having jurisdiction of a variance permitting same,

but evidence of such approval shall constitute the Association's joinder in a Member's request for such variance.

Section 4. Height and Roof Pitch Requirements for Dwellings. No dwelling shall exceed thirty-five (35) feet in height measured vertically from the natural ground surface at the front exterior wall of the dwelling. The main roof structure on the front of a dwelling extending to the ridge shall have a minimum slope of 8' vertical to 12' horizontal, or its pitch shall be 8'V:12'H or steeper, or such minimum slope as may be promulgated as acceptable or permitted by the Architectural Review Committee or Board of Directors.

Section 5. Minimum Elevation of Lowest Habitable Floor. The elevation of the lowest habitable floor in any dwelling on a Lot within Waverly shall be determined after taking in account existing and reasonably anticipated storm water and irrigation water run-off patterns within the Lot or on adjoining or proximate Lots as well as the potential of flooding from adjacent or nearby streams and drainage channels and facilities. Except in the absence of special topographic circumstances, the elevation of the lowest habitable floor in any dwelling on a Lot within Waverly shall not be lower than

a. The elevation or grade necessary to ensure proper drainage away from the dwelling and/or to reasonably ensure passage of on-site and off-site storm water and irrigation water runoff without inundation of the dwelling during or following the 100-year storm or a storm event whose intensity and duration is so severe that its probability of occurrence during any year is one (1) per cent or less; or

b. The elevation or grade necessary to ensure that the adjacent ground surfaces can be filled and/or graded to cause rainwater flowing from the roof of the dwelling to flow directly to a street or approved drainage channel or facility; or

c. The elevation designated on the Plat as the required lowest habitable floor elevation for the dwelling to be constructed on the Lot; or

e. Such elevation as may be required by the Architectural Review Committee or Board of Directors.

Section 6. Orientation of Dwellings. All homes shall be of a "Courtyard" style in design and shall have a courtyard driveway. Any dwelling on a Lot shall be so constructed, erected, placed and maintained so that it faces the street on which it abuts. The orientation of a dwelling on each Corner Lot shall be toward the street that the Architectural Review Committee or Board of Directors in the sole discretion of either shall so determine.

Section 7. Material Requirements for Dwellings. Roofing shingles shall be an Architectural shingle of such brand(s), style(s) and color(s) promulgated as acceptable or permitted by the Architectural Review Committee or Board of Directors. Exterior surfaces shall be constructed principally of brick veneer, stucco or Hardiplank or as otherwise promulgated as acceptable or permitted by the Committee or Board. Exterior brick shall be the one, or one of the acceptable, brick type(s), size(s), color(s) and texture(s) as may be promulgated as acceptable or permitted by the Committee or Board. The use of vinyl is prohibited for siding or cornice.

Windows in the exterior walls of a dwelling shall be the type or one of the types of windows promulgated as acceptable or permitted by the Architectural Review Committee.

Section 8. Exterior Color Requirements. Trim colors shall be one of the brand(s) and color(s) of paint or stain within a palette of colors promulgated as acceptable or permitted by the Architectural Review Committee or Board of Directors. Stucco and approved exterior finishes similar to stucco shall be one of the brand(s), type(s), color(s), and texture(s) for non-brick exterior surfaces promulgated as acceptable or permitted by the Committee or Board.

Section 9. Neighborhood Perimeter Fence. All fencing must be submitted, prior to installation, for approval by the Declarant or the Board of Directors. The Neighborhood Perimeter Fence, if required by the governing authority having jurisdiction, the Declarant or the Board of Directors, shall be a "GoodNeighbor" style fence with 6X6 Hex top post and shall be the type of fence meeting the style, dimensions, material, fabrication, finish, location, installation and appurtenant landscaping requirements promulgated as acceptable or permitted by the Architectural Review Committee or Board of Directors for the Neighborhood Perimeter Fence. For any other Lot abutting the perimeter of the Neighborhood, should such builder or Owner be required or desire to erect a fence along such perimeter, such builder or Owner must erect along such perimeter a Neighborhood Perimeter Fence. The maintenance, repair, restoration and replacement of a Neighborhood Perimeter Fence and its appurtenant landscaping shall be the responsibility of the Owner of the Lot. As a condition of fencing rear yards, drainage swales may not be obstructed. Any fence crossing a drainage swale or running parallel to and in the swale must be raised so as not to impede the flow of any surface water. All fence must be a minimum of two (2") inches above the finished yard after sod.

Section 10. Interior Fences. All fencing must be submitted, prior to installation, for approval by the Declarant or the Board of Directors. Should the builder of a dwelling or an Owner of a Lot desire to erect a fence around the perimeter of the Lot (other than so much of such perimeter which is also the perimeter of the Neighborhood), such fence running parallel to the front of the home or in the case of a corner lot the street the home faces and the side street shall be a "GoodNeighbor" style fence with 6X6 Hex top post and shall be the type of fence meeting the style, dimensions, material and finish requirements promulgated for Neighborhood Perimeter Fences or promulgated as acceptable or required by the Architectural Review Committee or Board of Directors for differing interior fences. For a Lot abutting the perimeter of the Neighborhood, should such builder or Owner desire to erect a differing interior fence along such perimeter, such builder or Owner must first erect a Neighborhood Perimeter Fence and erect such differing interior fence inside the Lot at the location approved by the Committee or Board. The erection, installation, construction, maintenance, repair, restoration and replacement of an interior fence, whether it be the same as or different than a Neighborhood Perimeter Fence, shall be the responsibility of the Owner of the Lot. As a condition of fencing yards in Waverly, drainage swales may not be obstructed. Any fence crossing a drainage swale or running parallel to and in the swale must be raised so as not to impede the flow of any surface water. All fence must be a minimum of two (2") inches above the finished the finished sodded yard. All rear and side fence must be within two (2") inches of the property line. No rear or side fence may be built more than two (2") inches from the property line.

Section 11. Driveways, Parking Spaces and Garages. Off-street parking, adequate to accommodate the parking needs of the Owner, members of his immediate family who reside with him, and two (2) guests shall be provided within each Lot. Each dwelling shall be designed, located and constructed to permit at least four (4) full-size automobiles to be parked, maneuvered, loaded or unloaded entirely or completely on such Lot. Each dwelling shall have a minimum of two (2) permanent garaged parking spaces and a minimum of two (2) off-street guest parking spaces either within the driveway or upon a permanent motor court. Except for emergency or unusual circumstances, an Owner of a Lot must keep the automobiles belonging to him and the members of his family who reside with him parked in his garage or parked in his driveway or motor court. Automobiles may not be parked on a street or parked in any manner that blocks use of a sidewalk or street.

Each dwelling shall have a garage for at least two (2) full-size automobiles. Garages must have doors equipped with automatic garage door openers. All garage doors, which when closed can be seen from a street, shall be kept closed except during periods of the actual use thereof. Unenclosed garages and carports shall not be permitted.

Each dwelling shall have as an appurtenance thereto a concrete driveway leading from the street to its garage. The concrete surface of the driveway shall be finished as approved by or as promulgated as acceptable or permitted by the Architectural Review Committee or Board of Directors. The grade and slope of the driveway from the street curb to the street right-of-way line shall be such that storm water from the street shall not flow toward or into the garage or toward or into any area other than a drainage way suitable for the relief of excess storm water. The grade and slope of the driveway from the street curb to the garage shall be such that a full-size automobile can maneuver thereon without any part of the vehicle scraping the street, gutter, curb, sidewalk or driveway.

Section 12. Sidewalks. Each dwelling shall have as an appurtenance thereto a four (4) foot wide concrete "front" sidewalk along the entire frontage of the street(s) on which the Lot abuts. Such sidewalk shall be placed two (2') behind the back of curb or as shown on the Plat or otherwise permitted or approved by the Declarant, Architectural Review Committee, Board of Directors and the governing authority having jurisdiction. Should it be necessary to curve the sidewalk away from (or toward) the curb so as to avoid a fire hydrant, street sign, street light pole or other obstruction; and if such is necessary, the sidewalk shall be curved smoothly, uniformly and attractively around the obstruction so that neither the obstruction or the sidewalk shall be a hazard to persons using the sidewalk. The grade of the 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 and shall facilitate drainage of surface water. Should it be necessary or advisable, the builder of the dwelling shall have each and any manhole or inlet frame or water valve box falling within a proposed sidewalk to be adjusted as necessary to ensure the uniform sidewalk grade herein required. The sidewalk shall be tooled, finished, reinforced and scored for crack control as promulgated as acceptable or permitted by the Architectural Review Committee or Board of Directors.

Should the front sidewalk be constructed on a Lot prior to the completion of the dwelling on such Lot and be destroyed, defaced or otherwise broken, cracked or damaged, the builder of

the dwelling shall restore such destroyed, defaced or otherwise damaged sidewalk to a condition substantially the same or better than the sidewalk existing on the Lot prior to his use and occupancy of the Lot for the construction and erection of the dwelling.

The construction and subsequent existence of said front sidewalk shall constitute the granting of permission to use said sidewalk to all persons who have a right to use the adjacent street and who use said sidewalk in a safe and reasonable manner consistent with the Neighborhood Rules. Should a sidewalk break apart, settle, dip, shift, be damaged, or become a danger or impediment to persons using the sidewalk appurtenant to a Lot, the Owner of the Lot, at the Owners expense, shall promptly repair or replace so much of the sidewalk as is necessary to remove the danger or impediment.

Each dwelling shall have as an appurtenance thereto a sidewalk leading to the front entrance of the dwelling from either the front sidewalk or the driveway appurtenant to the dwelling. Such sidewalks and any exposed exterior steps shall be finished as promulgated as acceptable or permitted by the Architectural Review Committee or Board of Directors.

Section 13. Lot Grading and Shaping. The builder of the dwelling and the Owner of the Lot are each obligated and required to provide for satisfactory and appropriate drainage of rain water or irrigation water runoff from the Lot to the adjoining street(s) and/or designated or established drainage ways by properly and appropriately grading and shaping each and all parts and/or areas within the Lot. The builder of the dwelling and the Owner of the Lot shall as needed excavate, fill, grade and shape to drain each and all paved and unpaved areas, landscaped beds and lawn areas within the Lot in a manner and direction which follows the natural topography and/or drainage patterns of the premises. Lot grading and shaping shall be accomplished substantially in accordance with the drainage patterns of the premises as same may be directed by the Architectural Review Committee, Board of Directors or by the governing authority having jurisdiction. Such drainage patterns shall provide whenever such is practicable that surface water drain within the Lot to an abutting street or a designated or established drainage way.

Such grading and shaping on upslope Lots shall take into account the existing topography and drainage patterns of improved adjacent down-slope Lots and/or shall take into account the reasonably likely prospective drainage patterns of unimproved adjacent down-slope Lots and lands after such are improved. Such grading and shaping of down-slope Lots being improved shall take into account the existing drainage patterns of improved adjacent upslope Lots and/or the reasonably likely prospective drainage patterns of unimproved adjacent upslope Lots and lands after such are improved.

No builder of the dwelling or Owner of a Lot may at any time unreasonably change, diminish, obstruct (including permit or contribute to the obstruction of), or retard the direction or flow of surface water runoff in any drainage easement, storm drain, culvert, pipe, swale or channel unless permitted or directed otherwise by the Architectural Review Committee or by the governing authority having jurisdiction.

Section 14. Storm Water Pollution Prevention. The construction of any dwelling in Waverly shall include the implementation of Best Management Practices for the prevention of storm

water pollution, specifically the minimization of erosion and subsequent deposition of eroded sediments on downstream properties and/or in drainage ways and streams. Any requirement and/or special or general condition of any permit issued to the Developer by a governing authority having jurisdiction, in particular the Certificate of Permit Coverage under the State of Mississippi's Large Construction Storm Water Construction General Permit issued for Waverly by the Mississippi Department of Environmental Quality (MDEQ), is by reference included as a requirement and condition imposed by this Declaration. Each person who becomes an owner of a Lot comprising part of Waverly, by acquiring title to, by taking possession of, by accepting a deed or lease to or by accepting a similar instrument of conveyance transferring to him the right to use or occupy an unimproved Lot, whether or not said instrument shall so state, shall be obligated to complete and execute a MDEQ "Registration Form for Residential Lot Coverage," to submit same to MDEQ as provided in said permit, to carry forward all erosion control measures applicable to such Lot set forth in the approved Storm Water Pollution Prevention Plan for Waverly, and to develop, implement and keep at such Lot a storm water pollution prevention plan intended to reduce pollutants in storm water discharges from such Lot during construction activities.

At any appropriate time during the construction of the dwelling on a Lot, the Declarant and/or Committee may require the builder of a dwelling or the Owner of the Lot to promptly and sufficiently erect, place, establish and/or maintain silt fences, hay bales, erosion control fabrics and/or seasonal or permanent grass, including solid sod, on any disturbed ground surfaces; to come into compliance with any duly issued permit or approval; and/or to promptly remove eroded sediments likely emanating from the Lot which have settled on or in downstream properties, drainage ways and streams.

Section 15. Landscaping. The builder of the dwelling on a Lot shall plant shrubs, lawn grass sod or other conventional landscaping components on all non-paved areas within the Lot, including without limitation the area within the street right(s)-of-way abutting the Lot. Each lots shall have a minimum of one (1) Nuttall Oak tree planted in the front yard. Such trees, shrubs, lawn grass, and landscaping components shall be placed in accordance with a landscape plan which is approved by or meets in every respect the requirements therefor which may be set or promulgated by the Architectural Review Committee or Board of Directors. The Committee or Board may specify a certain species of lawn grass and certain types and species of permitted and not-permitted shrubs and trees. The Committee or Board must expressly approve any lawn ornament or yard decoration.

The builder of the dwelling on a Lot, or the Owner thereof shortly after the construction of said dwelling, shall establish permanent vegetative cover on all disturbed ground surfaces not otherwise paved or landscaped.

Existing trees having a diameter of six inches (6") and larger, measured at four feet (4') above the ground, shall be preserved and protected. The approval of construction plans for a dwelling shall be considered the Architectural Review Committee's or Board of Directors' approval for the removal of any and all such trees located inside the perimeter of the dwelling, within fifteen (15) feet of the perimeter of the dwelling, and within any area to be paved, excavated or filled as shown on such plans, unless such plans direct or indicate otherwise.

Section 16. Mailboxes. Unless and until the Board of Directors or the U.S. Postal Service determines to have a Neighborhood Mailbox, each dwelling shall have as an appurtenance thereof the mailbox that is promulgated by the Architectural Review Committee. The Architectural Review Committee shall require its purchase from the Association, the Developer, or a specific manufacturer or vendor.

Section 17. Other Requirements for Dwellings.

a. Each dwelling shall have as an appurtenance a fenced or screened area to serve as a service yard for garbage receptacles, storage receptacles, firewood, permitted antennae, and unsightly objects. At all times, such items must be installed, placed or stored in such service yard in a manner which causes same to be screened from public view.

b. Each dwelling shall have affixed thereto its street address number which shall be clearly visible from the street which abuts the Lot, which numerals shall be approved by or meet in every respect the requirements therefor which may be set or promulgated or permitted by the Architectural Review Committee, Board of Directors or governing authority having jurisdiction.

c. Any private residential swimming pool and/or spa unit shall be constructed in the rear yard and screened from public view. The actual pool or spa (not surrounding patio or deck) may not be built closer than ten (10) feet from either side yard lot line or ten (10) feet from the rear property line. A secure restrictive fence no less than six (6) feet high shall enclose the pool or spa area.

d. Garden structures, gazebos, storage buildings, basketball goals, batting cages, pool houses and similar facilities and structures require prior approval of the Architectural Review Committee or Board of Directors before their erection and, unless the Committee or Board permits and/or conditions otherwise on a case-by-case basis, must be located behind the dwelling.

e. All telephone, electrical, cable television and other similar lines located outside of any dwelling shall be underground and shall conform to existing governmental codes.

Section 18. Deviations to Requirements for Dwellings. For a specific Lot on a case by case basis, should the Architectural Review Committee or Board of Directors determine that due to reasons or for purposes which are not inconsistent with the purposes of this Declaration it would be inadvisable or inappropriate to enforce specifically the above stated requirements set out in this Article, or it would be advisable or appropriate to enforce a reasonably greater or higher requirement, the Committee may approve special deviations to such requirements or may mandate greater or higher requirements in those instances and situations where the Committee believes such deviations or mandates would not be contrary to or detrimental to the purposes of this Declaration or would better preserve the values and amenities in the Neighborhood. The above to the contrary notwithstanding, the authority hereby given to the Committee or Board to mandate and/or enforce greater or higher requirements shall not apply to minimum size of dwellings in any event and shall not apply to any other requirement of this Article unless a substantial majority of the dwellings existing within Waverly meet or exceed such requirement. The Committee or Board may for cause reduce, modify or eliminate such

requirements as the Committee or Board deems advisable and appropriate on a uniform and equitable basis provided such reduction, modification or elimination is not in conflict with any law, ordinance, regulation or decree of the governing authority having jurisdiction.

Section 19. Reconstruction after Fire or Other Casualty Loss. In the event any dwelling is partially or completely destroyed by fire or other casualty, and in the absence of a resolution to the contrary by the Board of Directors, the Owner of such dwelling shall promptly clear the Lot or restore or reconstruct such dwelling, at no expense to the Association, in accordance with the original plans and specifications or with such amended plans and specifications as may be approved in writing by the Architectural Review Committee or Board on the request of such Owner. The provisions of this Section shall not apply when in conflict with any law, ordinance, regulation or decree of the governing authority having jurisdiction.

Section 20. Maintenance of Sound Condition and Quality Appearance. Each Owner shall maintain at all times the condition and appearance of his Lot, the dwelling thereon, and any appurtenances thereto, including but not limited to all exterior dwelling walls and surfaces, trees, shrubs, lawn grass and other landscaping components, mailbox, fence, sidewalk, driveway, and other improvements exposed to public view, in a sound condition and high-quality appearance. Each Owner of an improved or an unimproved Lot shall be responsible for the proper seeding, fertilization, watering, mowing, trimming, removal of debris and/or litter and such other maintenance of such Lot as the Board of Directors may from time to time require. If fill is placed on a Lot or if the vegetative cover of ground surfaces is disturbed, erosion control and sedimentation mitigation facilities, as same may be deemed necessary or advisable by the governing authority having jurisdiction, the Declarant, the Board of Directors and/or the Architectural Review Committee, shall be promptly erected and maintained in order to prevent the deposition of eroded sediments on other lots, streets, or drainage ways until such vegetative cover is re-established.

Section 21. Right to Remove or Correct Violations. In the event any violation or attempted violation of any of the requirements, covenants, conditions or restrictions contained in this Article shall occur or be permitted to remain on any Lot, or in the event there shall occur any other conduct in violation of any of the provisions and requirements of this Article, then such violation shall be considered to have been undertaken in violation of this Article and without the approval of the Architectural Review Committee or Board of Directors. Upon written notice from the Committee or the Board, such violation shall be promptly constructed, corrected, removed, remedied, terminated or abated. In the event the requirement is not constructed or the violation is not corrected, removed, remedied or otherwise terminated or abated, within fifteen (15) days (or within such shorter period as may be reasonably required in such notice) after notice of the violation is mailed, delivered or transmitted to the Owner of the Lot upon which such violation exists, or to the Member responsible for such violation if the same shall be omitted, committed or attempted on premises other than a Lot owned by such Member, then the Association shall have the right, through its agents and employees (but only after the Board of Directors by resolution has so directed) to enter upon such Lot or premises and to take such action as may be necessary to construct, correct, remove, remedy or otherwise terminate or abate such violation, and the cost thereof may be assessed against the Lot upon which such violation occurred, or against any Lot owned by the Member responsible for such violation, as a

Damage Assessment permitted in Section 4 of Article VII of this Declaration, and, when so assessed, a statement for the amount thereof shall be rendered to the Owner of such Lot, at which time the assessment shall become due and payable and shall be secured by a continuing lien upon such Lot, and shall be a binding personal obligation of the Owner of such Lot.

ARTICLE IV

ARCHITECTURAL REVIEW

Section 1. Architectural Review Committee. The Association shall establish, designate, maintain and permit to function an architectural review committee. The Architectural Review Committee shall be appointed by the Declarant as long as or during any period in which the Declarant owns of record any Lot, Parcel or Annexable Land comprising part of the Property or until the Declarant relinquishes to the Board of Directors such right of appointment. At other times the Architectural Review Committee shall be appointed by the Board of Directors. The Declarant may from time to time and at any time relinquish his right to appoint the Architectural Review Committee for such periods, and/or for such parts, and/or with such conditions as the Declarant may so declare by giving written notice thereof to the President of the Association. In lieu of an Architectural Review Committee per se, the Board of Directors may retain the authorities, privileges, duties and responsibilities of the Committee as enumerated herein. The authorities, privileges, duties and responsibilities enumerated herein to both the Architectural Review Committee and Board of Directors shall be discharged and administered solely by the Committee if one has been duly designated and is functioning for the purposes described, subject to the provisions hereof of the right of any person aggrieved by a decision of the Committee.

At and during any period in which a Licensed Builder owns a lot in Waverly the Committee shall be composed of one (1) or more individuals designated from time to time solely by the Declarant. At such time that no lots are owned by a Licensed Builder the Committee shall be composed of by three (3) or more individuals duly designated or appointed by the Board of Directors. Such individuals shall serve at the pleasure of the Declarant or Board of Directors, respectively, and may be removed at any time with or without cause. The affirmative vote of a majority of the members of the Committee shall be required in order to adopt or promulgate the Design Guidelines and any other rule or regulation, or to make any finding, determination, requirement, ruling or order, or to issue any permit, consent, authorization, approval or the like pursuant to the authority of the Committee contained in this Declaration. However, the Board of Directors may from time to time authorize the designation of one member of the Committee to act for the Committee and to make on behalf of the Committee any such finding, determination, requirement, ruling or order, or to issue any such permit, consent, authorization or approval, which is reasonably deemed routine. For the purposes of architectural review as required herein, the acts or omissions of the Declarant or an Associate of the Declarant duly appointed and authorized so to act for the Committee and/or Board of Directors shall be deemed to have been made while representing and acting on behalf of the Committee and/or Board and not while representing or acting on behalf of the Declarant, unless the approval is otherwise expressly indicated and marked as being made by or on behalf of the Declarant.

Section 2. General Requirements. All Owners who wish to construct a dwelling in Waverly must hold a valid Residential Builders License issued by the State of Mississippi or contract a builder with a valid Residential Builders License issued by the State of Mississippi in order to construct a dwelling.

Except for purposes of proper maintenance and repair reasonably requiring immediate attention, no dwelling, residence, building, fence, wall, driveway, sidewalk or other improvement or structure shall be commenced, constructed, placed, moved, altered or within Waverly, nor shall any exterior addition to or change (including any change of color) or other alteration thereupon be made until the complete plans showing the location, nature, shape, height, material, color, type of construction and any other characteristic or particularity therefor (including, without limitation, any specifications and/or other information specified by the Architectural Review Committee or Board of Directors) shall have been submitted to and approved, in writing, as to harmony of external design, compatibility of color and materials, location in relation to surrounding structures and topography, and conformity with the design concept for Waverly set by the Committee or Board of Directors.

Until after compliance with the review process of this Article and approval of the relevant and complete plans by the Architectural Review Committee or Board of Directors, it shall be prohibited to install, erect, place, attach, apply, paste, hinge, screw, nail, guild, alter, remove or construct any dwelling or other structure or any part thereof, including but not limited to a slab, driveway, sidewalk, road, curb, gutter, drainage facility, patio, balcony, porch, lighting fixture, shade or screen awning, patio cover, exterior decoration or ornament, fence or wall, aerial, antenna, radio or television broadcasting or receiving device, mailbox or basketball goal, or to make any change or otherwise alter (including any alteration of color) in any manner whatsoever to the exterior of any dwelling or other improvement constructed upon any Lot or upon any of the Common Areas or Neighborhood Facilities, or to combine or otherwise join two or more dwellings, or to partition the same after combination, or to remove or alter any window or exterior door of any dwelling, or to make any change or alteration within any dwelling which will affect the property, interest or welfare of any other Member, materially increase the cost of operating or insuring any Common Area or Neighborhood Facility, or impair any easement, until the complete plans showing the location, nature, shape, height, material, color, type of construction and any other characteristic therefor (including, without limitation, any other specifications and/or information specified by the Committee or Board of Directors) shall have been submitted to and approved in writing as to harmony of external design, compatibility of color, location in relation to surrounding structures and topography, and conformity with the design concept for Waverly set by the Committee or Board of Directors. Such plans shall provide that all workmanship and materials be first class and meet or exceed the standards and requirements of all pertinent codes and ordinances of the governing authority having jurisdiction.

The Architectural Review Committee and Board of Directors shall have the authority to require, limit, condition, or prohibit the use of specific colors, materials and styles of roofing; gutters; window, entrance doors, garage doors, and other exterior trim; brick, siding, exterior walls, ceilings, floors and decks; exposed flat-work for porches, patios, walks, driveways, and parking places; mailboxes; gas or electric exterior lighting lamps and fixtures; trees, shrubs,

grass, and other landscape components; fences; and such other components of the exterior of the dwelling or appurtenances thereto as the Committee or Board may deem necessary and proper. No requirement or decision by the Committee or Board that waives, decreases, negates or adversely alters any requirement imposed on Waverly by the governing authority having jurisdiction shall be effective without such requirement first being similarly waived, decreased, negated or altered by official action of such governing authority.

The Architectural Review Committee and Board of Directors shall have the authority to prohibit, limit or condition the employment of any person as a builder, designer, general contractor, subcontractor or supplier after such person demonstrates, in Waverly and/or in any other similar residential development, an inability or unwillingness to comply with any of the following requirements or in the alternative at the Committee's or Board's discretion, require the posting of bond(s) in sufficient amount(s) to enforce such compliance:

a. To construct or ensure construction in accordance with the plans approved by the Committee or Board (or architectural review authority for any other similar development);

b. To comply with the covenants, conditions and restrictions of this Declaration and the policies, guidelines, standards, requirements, conditions, rules and regulations of the Design Guidelines (or corresponding documents promulgated for other similar developments);

c. To employ, follow or implement measures, standards and practices customary in the trade area for construction of residential dwellings in a first-class manner and in full compliance with applicable laws, regulations, rules, codes and ordinances of governing authorities having jurisdiction; or

d. To promptly correct, remove, remedy or otherwise terminate or abate violation(s) or omission(s) of any of same.

The Architectural Review Committee or Board of Directors may require that a builder and or contractor provide proof of general liability insurance and, if required by law, worker's compensation coverage. The Committee may set reasonable limits and restrictions of any nature on vehicles and equipment of the builder and his contractors, subcontractors, employees, agents and suppliers using and/or parking on public and private streets. The Board of Directors, or the Committee with the approval of the Board of Directors, may require prior to such use that the Owner of a Lot or such builder provide deposits, bonds or other sureties sufficient in amount to cover the prospective costs of repair or reconstruction following potential inordinate use and damage of streets, Common Areas and Neighborhood Facilities and/or the costs of ensuring or enforcing compliance with the plans approved by the Committee or Board and/or the standards, requirements, conditions, rules and regulations of the Design Guidelines.

Section 3. Review Process. A Developer, builder, or Owner proposing to construct an improvement or otherwise undertake an activity subject to the requirements of this Article, at no expense to the Association, Board of Directors or Architectural Review Committee, shall complete and submit to the Committee or Board three (3) complete sets of plans for the Committee's or Board's review. Specific requirements of the plans submitted shall be

established from time to time by the Committee or Board and be promulgated in the Design Guidelines. The requirements of plans so submitted may include the following:

a. Building plans, at a reasonable scale, and building specifications, which shall include the location, nature, shape, height, materials, type of construction, floor plans and elevations, gross square footage and other characteristics of the improvements; and

b. A site plan, at a reasonable scale, which will include an accurate grading and drainage plan and which shall show the location on the Lot of each and all site improvements and activities subject to the requirements of this Article, each and all proximate existing or proposed utility service lines and facilities, the points of discharge from the Lot of all surface storm and irrigation water run-off, the areas within the Lot to be disturbed or remain undisturbed, and those best management practices to be implemented to control erosion; and

c. A landscaping plan, at a reasonable scale.

Within thirty (30) days (other than days in the month of December) after receipt of complete plans and all other information required by the Architectural Review Committee or Board of Directors, all in proper form and order, together with any reasonable fee imposed to defray expenses of the review process, the Committee or Board shall review same and shall either approve or disapprove all or any portion thereof. Written notice of such decision shall be given to the applicant, and such notice shall specify the reasons for any disapproval.

If any portion of the plans and other information are not approved and the applicant seeks to continue with the proposed improvements or activities, the applicant shall amend and modify the plans and such information to conform to the requirements of, and to cure any objections made by, the Architectural Review Committee or Board of Directors. Upon the completion of each amendment and modification, the plans and specifications shall be resubmitted to the Committee or Board for review and approval or disapproval. The Committee's and Board's right to disapprove the amended and modified plans and specifications shall be limited to (i) the portion of the plans and specifications not previously approved, (ii) new matters not disclosed by or included in the plans and other information previously submitted, or (iii) matters which do not satisfy the requirements of this Article or other provisions of this Declaration and/or the Design Guidelines.

The applicant must obtain written approval of his plans from the Architectural Review Committee or Board of Directors prior to commencement of any on-site construction, installation, clearing, grading, paving or landscaping, except the applicant may receive written permission from the Committee or be permitted by the Design Guidelines to engage in any or some of such activities prior to approval of his plans under conditions which may be set forth in the Design Guidelines relevant thereto.

If the applicant desires to materially modify or change his plans after the Architectural Review Committee's or Board of Directors' approval of same (but not including modifications or changes of or to the interior design), prior to making such modification or change the applicant shall submit two complete copies of such proposed changes to the Committee or Board for review and approval or disapproval.

Section 4. Approval by the Architectural Review Committee or Board of Directors. The Architectural Review Committee or Board of Directors may charge and collect a reasonable fee for the examination of any plans submitted to it for approval pursuant to the provisions of this Article. Upon approval by the Committee or Board of any plans and specifications submitted pursuant to the provisions of this Article, two (2) copies of such plans, as approved and bearing a notation of such approval, shall be returned to the applicant submitting same.

The Architectural Review Committee's and Board of Directors' right to disapprove plans shall be limited to the following:

a. The failure of the applicant to include information required by, or otherwise satisfy the requirements of, this Article or other provisions of this Declaration, the Design Guidelines or the Neighborhood Rules;

b. The failure of the plans and other information to indicate improvements which in any matter or manner is less than that required by this Declaration or the Design Guidelines;

c. Objections to the design, location, general massing or appearance, colors, materials or the like of any proposed dwelling, structure, appurtenance, landscape element or other improvement or facility which the Committee or Board determines to be incompatible with the surrounding structures and topography or not in conformance with the design concept for Waverly;

d. Objections that the plans do not provide for first-class workmanship or materials;

e. Any other reason or reasons which are not arbitrary or capricious, including, but not limited to, aesthetic considerations.

In the event the Architectural Review Committee or Board of Directors fails to approve or disapprove any plans in good order which may be submitted to it pursuant to the provisions of this Article within thirty (30) days after such plans (and all other information required by the Committee or Board) have been submitted to it in writing, then this Article will be deemed to have been complied with fully and the required Committee or Board approval shall be deemed to have been granted.

In the absence of any evidence to the contrary, any element subject to submission to, review by and approval of the Architectural Review Committee or Board of Directors, which was shown or should have been shown on said plans or was or should have been detailed in said plans and other information submitted to the Committee, other than landscaping, mailboxes and the like, which has been completed for one (1) year shall be deemed to have been approved by the Committee or Board. Should any such element be a violation or breach of any covenant, condition, restriction, requirement or provision of this Declaration, the Design Guidelines or Neighborhood Rules, then after said two (2) year period, such element shall no longer be deemed a violation or breach subject to enforcement by the Association or any beneficiary of this Declaration notwithstanding to the contrary the provisions of Section 4 of Article XII of this Declaration unless the reasonable cost to correct such violation or remedy such breach to be

paid by the Member or assessed against his Lot shall be less than the then current Annual Operating and Maintenance Assessment for a Lot.

The decisions of the Architectural Review Committee shall be final except that any Member who is aggrieved by any action or forbearance from action by the Committee (or by any policy, standard or guideline established by the Committee), during any period which the members of the Committee are appointed by the Board of Directors rather than the Declarant, may appeal the decision of the Architectural Review Committee to the Board of Directors, and upon written request, such Member shall be entitled to a hearing before the Board of Directors. The decisions of the Board of Directors shall be final.

Section 5. Limitations on Committee or Board Approved Construction. Construction or alterations in accordance with plans approved by the Architectural Review Committee or Board of Directors pursuant to the provisions of this Article shall be commenced within one (1) month following the date upon which the same are approved by the Committee or Board (whether by affirmative action or by forbearance from action) and shall be substantially completed within twelve (12) months following the date of commencement, or within such other period as the Committee or Board shall specify in its approval. In the event construction is not commenced within the period aforesaid, then approval of the plans by the Committee or Board shall be conclusively deemed to have lapsed and compliance with the provisions of this Article shall again be required. There shall be no substantial deviation from the plans approved by the Committee or Board without the prior consent in writing of the Committee. Approval of any particular plans, specification or design shall not be construed as a waiver of the right of the Committee or Board to disapprove such plans, specification or design, or any elements or features thereof, in the event such plans, specification or design is/are subsequently submitted for use in any other instance.

Section 6. Design Concept for Waverly. The Design Concept for Waverly embraces the following concepts to the extent they may be feasibly, reasonably, and practically effected, as such adverbs may be interpreted and applied by the Architectural Review Committee or Board of Directors on the topography within the subdivided lot boundaries:

a. The exterior appearance of each and all dwellings shall conform to the style of exterior appearance prevalent among single-family dwellings of comparable size in recent subdivisions in the vicinity of Rankin County, Mississippi, as such style is interpreted and/or modified by the Architectural Review Committee or Board of Directors.

b. The exterior appearance of a dwelling shall not substantially duplicate the exterior appearance of another dwelling within view. However, the collective exterior appearance of adjacent dwellings and their appurtenances and the collective exterior appearance of all dwellings and their appurtenances shall blend and/or certain elements thereof may match due to the implementation of the standards, requirements and conditions of the Design Guidelines and/or other standards, requirements and conditions imposed by the Architectural Review Committee or Board of Directors.

c. The front yards (and Corner Lot, street side yards) of dwellings shall be well landscaped to achieve a natural homogeneous appearance along Neighborhood streets. No fence, wall, or

other apparent device shall be erected or permitted to remain within the area between street pavements and dwellings fronting thereon which patently designates street right-of-way line or a boundary between adjoining Lots unless for good cause such is approved by the Architectural Review Committee or Board of Directors. The yards of dwellings shall have the species of lawn grass as may be promulgated by the Committee or Board. To facilitate the achievement of the natural homogeneous appearance mentioned herein, the Committee may require or limit the species, size, color, spacing or arrangement of permitted trees and shrubs in the front yards of dwellings. Proposed compliance with the requirements of this subparagraph shall be clearly shown on the landscaping plan prior to construction of such.

d. The area between a dwelling and the rear property line may be improved to provide appurtenant to the dwelling a private yard for the exclusive use of the Owner. Such area may be screened from public view in a manner approved by the Architectural Review Committee or Board of Directors.

Section 7. Design Guidelines and Other Rules Pertaining to Architectural Review. With the approval of the Declarant or the Board of Directors, the Architectural Review Committee, or with approval of the Declarant, the Board of Directors, may from time to time adopt, promulgate, amend, modify, publish and/or file for record such policies, guidelines, standards, requirements, conditions, rules and regulations regarding the construction or alteration of any dwelling, structure or improvement and the form and content of plans and specifications to be submitted to it for approval. With the approval of the Declarant or Board of Directors, the Architectural Review Committee, or with approval of the Declarant, the Board of Directors, may from time to time also establish criteria relative to architectural styles or details, colors, size, materials or other matters relative to architectural control, landscaping, protection of the environment (including the use and application of fertilizers, pesticides and other chemicals), preservation of trees and other natural resources and wildlife, and preservation of aesthetic values, characteristics and amenities as the Committee may reasonably consider necessary, advisable, convenient or appropriate. Such policies, guidelines, standards, rules, regulations, statements, criteria or the like may be adopted and promulgated for all or any part of Waverly, provided such is not arbitrary or capricious. Such policies, guidelines, standards, requirements, conditions, rules, regulations, statements, criteria or the like may serve as a reference tool and decision-making guide for dwelling construction, alteration and/or maintenance. However, no such policies, guidelines, standards, requirements, conditions, rules, regulations, statements, criteria or the like shall be construed as a waiver of any provision of this Declaration. Any Member who is aggrieved by any policy, guideline, standard, requirement, condition, rule or regulation established by the Committee, during any period that the members of the Board of Directors are elected by Members rather than appointed by the Declarant, may appeal the promulgation thereof to the Board of Directors, and upon written request, such Member shall be entitled to a hearing before the Board of Directors.

The provisions of this Section to the contrary notwithstanding, the Association, its Architectural Review Committee or its the Board of Directors, or the Declarant may not modify any criteria, revise any policy, change any guideline, lower any standard, relieve any requirement, waive any condition or otherwise change any element pertaining to or affecting architectural styles or details, colors, size, materials or other matters relative to architectural

control to something that effects or permits the construction and maintenance of dwellings with lesser character and/or of lower quality than that represented in the Design Guidelines for Waverly approved by and on file with the Declarant without such being a violation of these covenants, conditions and restrictions enforceable as provided in Sections 4 and 5 of Article XII of this Declaration.

Section 8. Incumbencies on the Developer, Lot Owner and Builder. It is incumbent on the purchaser of any Lot, prior to purchasing any Lot, to request and review a copy of this Declaration, any pertinent supplements and amendments thereto, and the Design Guidelines. If such purchaser be other than the builder of the dwelling contemplated on the Lot, it is incumbent on such purchaser to provide a copy of each of these documents to the prospective builder of the dwelling. If such purchaser be a builder, it is incumbent upon such builder, prior to entering into any contract for the sale of the Lot and dwelling thereon, to provide a copy of each of these documents to the prospective purchaser of the Lot and dwelling. The requirements of this Section pertaining to the provision of a copy of each of the documents to the first purchaser of the Lot, to the builder of the dwelling or to the prospective purchaser of the Lot and dwelling shall be deemed so provided if, instead of these documents, such persons are provided an accurate Uniform Resource Locator (URL) of one or more sites on the Internet where these documents may easily be read, downloaded and printed. Each person who becomes an owner of a Lot comprising part of Waverly, by acquiring title to a Lot, by taking possession of a Lot, by accepting a deed or lease to a Lot, or by accepting a similar instrument of conveyance transferring to him the right to use or occupy a Lot, whether or not said instrument shall so state, shall have the obligation to provide, prior to entering into any contract for the subsequent sale, lease, conveyance or transfer of the Lot, a copy of each of these documents, or in lieu thereof an accurate URL, to a prospective purchaser of the Lot. The provision of such documents or URLs after the date of the recording of this Declaration and pertinent supplements and amendments thereto shall be copies of the instruments recorded in the office of the Chancery Clerk and bearing notations evidencing such recordation.

It is incumbent upon the Owner of the Lot and the builder of the dwelling thereon to ensure that the plans for a dwelling are properly prepared and submitted and that sufficient information is clearly shown thereon or submitted therewith to ensure that the proposed dwelling complies with the covenants, conditions and restrictions of this Declaration and the policies, guidelines, standards, requirements, conditions, rules and regulations of the Design Guidelines. It is incumbent upon the Owner of the Lot and the builder of the dwelling thereon to ensure that in all respects the construction of the dwelling complies with the approved plans, the covenants, conditions and restrictions of this Declaration and the policies, guidelines, standards, requirements, conditions, rules and regulations of the Design Guidelines.

It is incumbent upon the Owner of the Lot and builder of the dwelling to determine the elevation of the lowest habitable floor for a dwelling. It is not, and no provision herein shall be interpreted to imply that it is otherwise, the responsibility, obligation or duty of the Declarant or any director or officer of the Association or any member of the Architectural Review Committee to make such determination. Such elevation as determined by such Owner and builder shall be shown on the Site Plan which is a part of the plans submitted for Committee or Board approval. Although it is not the responsibility, obligation or duty of the Declarant or any director or officer

of the Association or any member of the Committee to ensure that the elevation so determined for the dwelling and shown on the plans therefor has been met, the Committee or Board may in its discretion on a case by case basis require such Owner and builder to obtain and furnish to it, as a condition of its approval of such plans, before such lowest habitable floor slab or structure is poured or erected, a certificate signed by a Professional Engineer or Professional Land Surveyor setting forth that the elevation(s) of the batter boards or floor joists as erected is(are) as indicated on the approved plans and/or is at or above any or all of the elevations identified in Section 5 of Article III. On finding that such elevation is not at or higher than the elevation the Committee or Board deems is necessary or advisable for the dwelling, the Owner of the Lot and the builder of the dwelling thereon shall make such adjustments as may be necessary or advisable, and if the Owner of the Lot and builder thereon fail so to do, such shall be a violation of the covenants, conditions and restriction of this Declaration and the Committee or Board of Directors may take any and all such action as is permitted in Section 20 of Article III in order to correct, remove, remedy or otherwise terminate or abate such violation.

Section 9. Incumbencies on a Prospective Purchaser of a Dwelling Constructed by Others. It is incumbent upon the prospective purchaser of a dwelling constructed by others to ensure that the dwelling and all appurtenances thereto comply with the approved plans, the covenants, conditions and restrictions of this Declaration and the policies, guidelines, standards, requirements, conditions, rules and regulations of the Design Guidelines. The absence of notice to the contrary and the issuance of a certificate of occupancy by the governing authority having jurisdiction shall be indicative of such compliance, except for such deficiencies as may have been created by movement of foundation soils, by failure of previous owner(s) to ensure and maintain proper drainage, by failure of previous owner(s) to perform routine maintenance and make repairs, or as a result of the normal aging of the dwelling. It is incumbent upon the prospective purchaser of a dwelling constructed by others to ensure that reasonable investigations and professional home inspections are made to identify such deficiencies and to identify drainage patterns and potential for flooding from rain water or irrigation water runoff emanating either from uphill properties or proximate drainage courses and streams. It is not, and no provision herein shall be interpreted to imply that it is otherwise, the responsibility, obligation or duty of the Declarant or any director or officer of the Association or any member of the Architectural Review Committee to make such investigations and identifications.

It is incumbent upon the seller of a Lot to provide to the purchaser prior to the closing of the sale of the Lot a copy of this Declaration and any applicable supplements and amendments thereto pertinent to said Lot or, in lieu thereof, an accurate Uniform Resource Locator (URL) of one or more sites on the Internet where these documents may easily be read, downloaded and printed.

Section 10. Disclaimer. The Declarant, an Associate of the Declarant, the Board of Directors, the Architectural Review Committee, each officer of the Association, each director and each member, agent and employee of the Architectural Review Committee and/or the Association shall not be liable to any Owner or to any other person on account of any claim, liability or expense suffered, incurred or paid by or threatened against such Owner or other person arising or resulting from or in any way relating to the subject matter of any reviews, acceptances, inspections, permissions, consents or required approvals which must be obtained from the

Architectural Review Committee or Board of Directors or governing authorities having jurisdiction, whether given, granted or withheld. Each person who becomes an owner of a Lot comprising part of Waverly, by acquiring title to a Lot, by taking possession of a Lot, by accepting a deed or lease to a Lot, or by accepting a similar instrument of conveyance transferring to him the right to use or occupy a Lot, whether or not said instrument shall so state, shall be deemed to have waived the right to, and to have agreed not to, assert any claim against the Association or any of its then past or current directors, officers, agents, employees or committee members, individually or collectively, for any action or determination duly taken or made, or for failure to take any action or make any determination, unless such action, determination or failure was as a result willful misrepresentation, fraud or deceit.

No approval of plans nor any provision of the Design Guidelines shall be construed either to represent, guarantee or imply that such plan is in compliance with said guidelines, will result in a properly designed or constructed dwelling or other improvement, or to represent, guarantee or imply that any dwelling or other improvement will be built or constructed in a good, workmanlike manner or will not be subject to flooding or other hazards.

Approval of any particular plans and other information shall not be construed as a waiver of the right of the Architectural Review Committee or Board of Directors to disapprove all of any portion of the same or similar plans and information if such are subsequently submitted for use in any other instance.

ARTICLE V

RIGHTS OF MEMBERS AND THE ASSOCIATION

Section 1. Members' Right of Enjoyment. Except as otherwise herein provided, every Member shall have a right and easement to use, enjoy, and benefit from each and all, if any, Common Areas and Neighborhood Facilities, and to expect and rely on the Association to administer and enforce reasonably, equitably and uniformly the covenants, conditions and restrictions of this Declaration, which right and easement shall be appurtenant to and shall pass with title to the Lot owned by such Member. However, such right and easement shall be subject in every case to the rights of other Members specifically set forth in this Declaration and subject to the rights and authorities of the Declarant, an Associate of the Declarant or the Association specifically set forth in this Declaration, including, without limitation, the rights of the Association hereinafter enumerated in Section 2 of this Article.

Section 2. Rights of the Association. Members' rights of enjoyment are subject to the superior rights hereinafter enumerated and hereby authorized and granted to the Association as well as those rights and authorities of the Association specifically set forth elsewhere in this Declaration.

a. The right of the Association, in accordance with its Charter of Incorporation and/or Bylaws, to borrow money for the purpose of improving any Common Areas and Neighborhood Facilities held and maintained by the Association in a manner designed to further the purposes of this Declaration and enhance the enjoyment and welfare of the Members, and in aid thereof to mortgage any Common Area, Neighborhood Facility or personal property of the Association

which is not a part of a Lot, provided, however, that no such borrowing shall be done and no such mortgage shall be executed unless and until same has been approved by the vote of at least two-thirds (2/3) of the then Class A Members and the then Class B Members of the Association, each class voting separately.

b. The right of the Association, acting by and through its Board of Directors, to levy reasonable admission and other fees for the use of a Common Area and/or Neighborhood Facility (other than those within public street rights-of-way and those that any provision of this Declaration or an amendment or supplement hereto expressly declare otherwise) by Members, their families and their invited guests; provided, however, that any such fees shall be charged on a uniform basis for each Member.

c. The right of the Association, acting by and through its Board of Directors, to take such action as is reasonably necessary to protect each and every, if any, Common Area, Neighborhood Facility, and/or item of personal property of the Association against mortgage default and foreclosure; provided, however, that any such action is taken in conformity with the other provisions of this Declaration.

d. The right of the Association, acting by and through its Board of Directors, to adopt and promulgate as Neighborhood Rules reasonable standards, conditions, rules and regulations governing the use of Common Areas and Neighborhood Facilities, respecting the discharge of any responsibility of the Association or the provision of any service rendered by the Association, or effecting the furtherance of any purpose of this Declaration provided such standards, conditions, rules and regulations are not inconsistent with the provisions of this Declaration. The Board of Directors may require deposits, bonds or other sureties sufficient in amount to cover the prospective costs of repair or reconstruction following potential inordinate use; may set limits and restrictions of any nature on vehicles and equipment using Service Driveways, , sidewalks and any Common Areas and Neighborhood Facilities; and may limit the number of guests of Members who may use a Common Area or Neighborhood Facility.

e. The right of the Association, acting by and through its Board of Directors, or in lieu thereof, the Architectural Review Committee, to adopt and promulgate as Design Guidelines reasonable policies, guidelines, standards, rules or regulations regarding the construction or alteration of any dwelling, structure or improvement and the form and content of plans and specifications to be submitted to it for approval, and to establish and promulgate criteria relative to architectural styles or details, colors, size, materials or other matters relative to architectural control, landscaping, protection of the environment (including the use and application of fertilizers, pesticides and other chemicals), preservation of trees and other natural resources and wildlife, and preservation of aesthetic values, characteristics and amenities, which are not inconsistent with the provisions of this Declaration.

f. The right of the Association, acting by and through its Board of Directors, Management Agent or Rental Compliance Agent, to permit or deny a Member's request to rent his Lot and dwelling and/or allow its occupancy by persons other than the Member and members of his family.

g. The right of the Association, acting by and through its Board of Directors, to suspend any Member's voting rights and any Member's right to use any and/or all Common Areas and/or Neighborhood Facilities (except as hereinafter provided) for any period during which any assessment remains unpaid, or for any period not exceeding sixty (60) days for any infraction of any duly adopted and published Neighborhood Rule, except such right of the Association shall not be exercised to suspend or terminate the legal right of an owner, Mortgagee or Contract-Purchaser of a Lot of ingress and egress in, upon, over and across Service Driveways; however, the Association has the authority to seek or act to suspend or terminate by any lawful means the privilege and/or opportunity of any individual to drive vehicles upon, operate equipment upon or otherwise use public and/or Service Driveways, Service Driveways and sidewalks after such individual repeatedly demonstrates an inability or unwillingness to comply with those duly adopted and promulgated standards, conditions, rules or regulations respecting the use of said streets, sidewalks and driveway.

h. The right of the Association, acting by and through its Board of Directors, to sell, dedicate, transfer or otherwise convey its interest in all or any part of any Common Area or to sell, dedicate, transfer or otherwise convey its interest in all or any part of any Neighborhood Facility to the governing authority having jurisdiction, to the Declarant, to any person, or to any public agency or utility company for any purpose deemed by the Board of Directors to be consistent with and in furtherance of the purposes of the Declaration, and subject to such conditions as may be agreed to by the Board and subject further that the Declarant join therein as provided in Section 7 of Article I of this Declaration; provided, however, except for the grant of licenses, rights-of-way and easements as hereafter provided in subparagraph (i) of this Section, that no such dedication or transfer or determination as to purpose or as to conditions, shall be effective unless a majority of each class of the then Members of the Association consent to such sale, dedication, transfer or conveyance, purpose and conditions, at a special meeting of the Members duly called for such purpose.

i. The right of the Association, acting by and through its Board of Directors, to grant licenses, rights-of-way and easements in, upon, over and across any Common Area for access or for the construction, reconstruction, maintenance and repair of any utility main, cable, line or appurtenance, whether public or private, to the governing authority having jurisdiction, to the Declarant, to any public agency, authority or utility company, or to any other person, provided, however, that no such licenses, rights-of-way or easements shall be unreasonable and permanently inconsistent with the right of the Members to the use and enjoyment of any Common Area and provided further that the Declarant join in any such grant in order for same to be effective as provided in Section 7 of Article I of this Declaration. This right of the Association shall be applicable to any Neighborhood Facility to the extent of the Association's interest therein.

j. The right of the Association, acting by and through its Board of Directors, to open Common Areas and Neighborhood Facilities, or any portions thereof, to a wider group of persons, all for such purposes and on such terms and conditions as the Board of Directors may from time to time consider appropriate.

k. The right of the Association, acting by and through its Board of Directors, to restrict the use and enjoyment of certain parts of any Common Areas and/or Neighborhood Facilities in accordance with specific provisions of this Declaration, for any purpose consistent with the purposes of the Declaration, or with a prior reservation scheduled by the Management Agent or duly authorized officer of the Association.

l. The right of the Association, acting by and through its Board of Directors, to accept vacated or closed public streets as Service Driveways.

m. The right of the Association, acting by and through its Board of Directors, to operate electronically actuated gates and equipment to monitor and/or control pedestrian or vehicular access to and from Waverly or to and from any Common Area or Neighborhood Facility.

n. The right of the Association, acting by and through its Board of Directors, to operate electronic devices to monitor the use of Common Areas or Neighborhood Facilities.

o. The right of the Association, acting by and through its Board of Directors, to maintain a web site accessible via the Internet containing such information that the Board considers advances any purpose of this Declaration or aids in the promulgation and dissemination of information helpful to Members and their guests and other persons promoting and marketing Lots and dwellings within Waverly.

p. The right of the Association, acting through its directors, officers, agents, employees or committee members duly authorized so to do, having reasonable belief that such exists, to enter upon and inspect any Lot at any reasonable time for the purpose of ascertaining whether any violation of this Declaration exists on such Lot; and neither the Association nor any such director, officer, agent, employee or committee member shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

q. The right of the Association, acting by and through its Board of Directors, to enter upon any Lot or premises and to take such action as may be necessary to correct, remedy or otherwise terminate or abate any violation or attempted violation of the covenants, conditions and restrictions of this Declaration, and to assess the cost of such action taken against the Lot upon which such violation occurred, or against any Lot owned by the Member responsible for such violation.

r. The right of the Association, acting by and through its Board of Directors, to restrict the use and enjoyment of any Common Area and/or Neighborhood Facility in order to comply with the provisions of the comprehensive liability insurance policy obtained and maintained in favor of the Association or to comply with any lawful ordinance or decree.

Section 3. Other Limitations on Members' Right of Enjoyment. Members' rights of enjoyment are also subject to those relevant limitations and conditions specifically set forth elsewhere in this Declaration, including, without limitation, the reservations by the Declarant set forth in Section 7 of Article I of this Declaration, and to following:

a. Those limitations and conditions which may be stated in any document of record accepted by the Association transferring to the Association an interest in any Common Area or Neighborhood Facility; and

b. Those limitation and conditions which are appurtenant to any Village Restricted Common Area and/or any Village Restricted Neighborhood Facility; and

c. Those limitations and conditions which may be stated in any policy of insurance carried by the Association; and

d. The right of the Owners of Lots adjacent to Common Areas and/or adjacent to or containing Neighborhood Facilities to easements over and upon reasonable portions of any of such Common Areas and Neighborhood Facilities for such portions of their dwellings that may overhang or otherwise encroach upon any of such Common Area or Neighborhood Facility, for support, for the purpose of necessary repair, maintenance and reconstruction, and for reasonable ingress and egress to and from any dwelling; and

e. The circumstance that domestic water supply and wastewater collection services are furnished, respectively, by the City of Florence, each of which have a duly issued Certificate of Public Convenience and Necessity from the Mississippi Public Service Commission authorizing each such entity to render the particular service for which it is so certificated. The Declarant, as Developer of Waverly, and said Association have entered into an Agreement respecting certain particulars related to the rendition of such services by the Association. Connection by the builder of a dwelling to Association and/or City or County facilities through which water or sewer service is provided, and the use of either of these services by the builder, Owner or tenant of a Lot and dwelling thereon, are subject (i) to payment of tap and/or connection fees, meter deposits, supplemental fees, service availability charges or "impact fees," special assessments, minimum periodic charges for service, and periodic consumption and use rates and charges and (ii) to compliance with the ordinances, resolutions, rules, regulations, requirements, conditions, policies and/or procedures that the Association or City or County may each uniformly impose on its customers in the Subdivision and require to be paid in advance and/or periodically.

Section 4. Delegation of Members' Right of Enjoyment. Any Member of the Association may delegate his right to use and enjoy any Common Area and Neighborhood Facility to the members of his family residing permanently with him, and to any bona fide tenant. All guest of such Member shall be accompanied by the Member. These, from time to time, may be regulated, restricted and conditioned by the Board of Directors. All persons who thereby enjoy such right shall be subject to such reasonable standards, conditions, rules and regulations as the Association, acting by and through its Board of Directors, may from time to time duly adopt and promulgate among the Members. The Mortgagee or Contract-Purchaser of any Lot is hereby delegated the right of enjoyment of the Member who is the Owner of the Lot to which its collateral or pending purchase is appurtenant.

ARTICLE VI

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. The Members of the Association shall be and consist of every person who is, or who hereafter becomes, an owner of a Lot within Waverly. When more than one person owns a Lot, all such persons shall be considered a Member of the Association, subject to the provisions of this Article that only one vote may be cast for each Lot.

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

Section 3. Voting Rights. For the election of officers, a Member shall have one vote for each Lot he owns for each officer of the Association. Election of officers shall not be by class of membership. For all other purposes, the voting rights of the Members shall be by class of membership, and shall be as follows, to wit:

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

b. Class B Members. Each of the persons herein defined as "Developer," and the nominee or nominees, if any, of each such person who becomes the Owner of a Lot, shall be Class B Members of the Association. Class B Members shall be entitled to four votes for each Lot that such person owns.

No Class A Member who is shown by the books of the Association to be more than sixty (60) days delinquent in any payment due the Association shall be eligible to vote, either in person or by proxy, and no such delinquent Member shall be eligible to be elected to the Board of Directors or as an officer of the Association.

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

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

a. The 180th day after the day on which (i) the Declarant no longer owns of record any Lot or Parcel subject to this Declaration or any Annexable land and (ii) the total number of Lots owned of record by Class A Members is equal to or greater than four times the total number of Lots owned of record by Class B Members; or

b. If no Lots or any Annexable land subject to this Declaration are owned of record by the Declarant, the 180th day after the day on which the total number of Lots owned of record by Class A Members is equal to or greater than four times the total number of Lots owned of record by Class B Members; or

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

d. The date of December 31, 2043

Upon the termination of the Class B memberships as provided in this Section, each and all persons herein defined as a Developer thereafter shall be and remain a Class A Member as to each and every Lot which he owns unless and until Class B memberships are reinstated as provided hereinafter.

Section 6. Reinstatement of Class B Memberships. If on any one or more occasions all Class B memberships should terminate as provided in Subsections a., (b) or (c) of Section 5 of this Article, and if after any such termination, the Declarant, by annexation to the Property in accordance with the provisions of Section 5 of Article I of this Declaration, should annex additional parcels of land to the Property, then on each such occasion the status of the Declarant, and each of the persons herein defined as "Developer," and the nominee or nominees, if any, of the Declarant and each such person, as a Class B Member shall be fully reinstated, and following each such occasion, the Declarant, each of the persons herein defined as "Developer," and the nominee or nominees, if any, of the Declarant and each such person shall continue to be Class B Members until such time as Class B memberships shall again terminate as provided in Section 5 of this Article. At such time, the Class B membership resulting from such addition shall cease and be converted to Class A memberships as so provided in said Section 5 of this Article. Following each such reinstatement of Class B memberships, for so long thereafter as the Class B memberships shall continue to exist, the Declarant, and the nominee or nominees, if any, of the Declarant, shall have all rights and powers of Class B membership as herein provided.

Section 7. Other Voting Provisions. Only one vote may be cast with respect to any one Lot. Any person qualifying as a Member of more than one voting class of membership may exercise the votes to which he is entitled for each such class of membership. If a particular Lot is owned of record by more than one person, the vote appurtenant to such Lot may be exercised by any one of the owners of such Lot, unless the other owner or owners of such Lot shall object prior to the completion of voting upon the particular matter under consideration. In the case of any such objection, the vote appurtenant to said Lot shall not be counted.

Section 8. Board of Directors. The affairs of the Association shall be managed and controlled by a Board of Directors consisting of the number of individuals from time to time prescribed by

the Bylaws, which number, however, shall not be less than three (3) nor more than seven (7). Directors need not be Members of the Association. From and after the first annual Members' meeting, and for so long as there is a Class B Member, the Board of Directors shall consist of Appointed Directors and Elected Directors. When there are no Class B memberships, all Directors shall be Elected Directors.

Section 9. Appointed Directors. Appointed Directors shall be selected and appointed by the concurrence of a majority of the Class B Members and shall serve at the pleasure of a majority of the Class B Members. The initial Board of Directors shall consist of three individuals, all of whom shall be Appointed Directors, and unless earlier replaced, said initial Directors shall serve until the first annual meeting of Members. From and after the first annual meeting of Members, and for so long as there is a Class B Member, the number of Appointed Directors at all times shall be equal to two-thirds (2/3) of the total number of Directors prescribed from time to time by the Bylaws, or if at any time the total number of Directors prescribed by the Bylaws is not evenly divisible by three, then the number of Appointed Directors shall be equal to the whole number next larger than two-thirds (2/3) of the total number of Directors prescribed by the Bylaws.

Section 10. Elected Directors. Elected Directors shall be elected by the Class A Members at annual or special meetings of Members. Each director so elected shall serve until his successor is elected and qualified in accordance with the Bylaws.

Section 11. Quorum. The presence, either in person or by proxy of Members having at least five percent (5%) of the votes held by all Members in each then outstanding class of membership (each class of membership to be considered separately) shall constitute a quorum for the transaction of business at any meeting of Members. If, at any particular meeting of Members, the number of Members present should be less than or should fall below the number required for a quorum with respect to any one or more of the then outstanding classes of membership (considered separately), and if such deficiency is brought to the attention of the presiding officer by a proper call for a determination of quorum (which call and the results thereof shall be shown on the minutes of the meeting), then no further business may be transacted at such meeting until a quorum is present.

If at any meeting of Members, a quorum shall not be present, either before or after the meeting has begun, the Members who are present may adjourn the meeting to another designated time not less than forty-eight (48) hours or more than thirty (30) days from the time originally scheduled for the meeting.

ARTICLE VII

DETERMINATION OF ASSESSMENTS

Section 1. Authority to Levy Assessments. The Association, acting by and through its Board of Directors, shall have the right to levy assessments against Lots within Waverly for defraying the Association's expenses, for administering and enforcing the covenants, conditions and restrictions of this Declaration, for carrying out the powers and duties mentioned herein, for

operating, repairing, reconstructing, replacing, improving, insuring or otherwise maintaining any Common Area or Neighborhood Facility, and for otherwise fulfilling the purposes of this Declaration or of the Association, all in accordance with the terms and provisions of this Article of this Declaration. The Board of Directors may levy any or all of the following types of assessments:

- a. Annual Operating and Maintenance Assessments, including for Lots within a Village, Village Operating and Maintenance Assessments;
- b. Special Assessments, including for Lots
- c. Damage Assessments;
- d. Service Assessments;
- e. Drainage Fund Assessments

The Association may levy any and all of these types of assessments concurrently for the purposes hereinafter specified or implied, as and when hereinafter provided and conditioned, in the amounts hereinafter determined and limited, and against each and all of those Lots hereinafter identified. Each and all of these assessments properly levied shall become a lien against each, any or all such Lots which is enforceable by the Association.

Section 2. Annual Operating and Maintenance Assessments. Each Assessment Year, the Association shall levy an Annual Operating and Maintenance Assessment against all Lots owned by a Class A Member. The amount of the Annual Operating and Maintenance Assessment shall be the amount required by the Association, as estimated by the Board of Directors, to meet the Association's Annual Expenses during the Assessment Year, including Reserves for Replacements, and reduced by Anticipated Class B Contributions, if any, divided by the total number of Lots owned, at the time of such estimate, by Class A Members. Annual Operating and Maintenance Assessments shall be levied equally and uniformly against each of said Lots owned by a Class A Member. The amount of such Annual Operating and Maintenance Assessment levied against a Lot owned by a Class A Member shall be the Annual Operating and Maintenance Assessment for that Assessment Year.

Each person, excluding the Declarant, who becomes an owner of a Lot comprising part of Waverly, by acquiring title to a Lot, by taking possession of a Lot, by accepting a deed or lease to a Lot, or by accepting a similar instrument of conveyance transferring to him the right to use or occupy a Lot, whether or not said instrument shall so state, shall be deemed to covenant and agree to pay the Association each month, in advance, a sum equal to one-twelfth (1/12) of the Annual Operating and Maintenance Assessment, as same from year to year may be determined and set. Declarant may exempt each Class B Member from the obligation of paying such sum for as long as such person remains a Class B Member, or the date two (2) years after acquiring a Lot, whichever occurs first.

The Declarant shall be exempt from the obligation of paying such sum for any Lot he owns for as long as he owns such Lot without regard to his classification as a Class B or Class A Member.

Each Class A Member owning a Lot at the beginning of an Assessment Year shall be responsible for paying during the Assessment Year the full amount of the Annual Operating and Maintenance Assessment levied against his Lot. Each Class A Member acquiring a Lot during an Assessment Year and each Class B Member becoming a Class A Member during an Assessment Year shall be responsible for paying during the remainder of the Assessment Year a pro-rated amount of the Annual Operating and Maintenance Assessment, unless such assessment levied against his Lot has been fully paid.

Section 3. Special Assessments. The Association, acting by and through its Board of Directors, may levy during any Assessment Year one or more Special Assessments, applicable to that year only, for the purpose of paying in whole or in part the costs of any preventative, routine, ordinary or extraordinary maintenance, any reasonable or inordinate repair, any replacement, any improvement, any construction and/or any reconstruction of all or any one or more components, fixtures or items of personal property constituting part of any Common Area and/or Neighborhood Facility or for such other purposes as the Board of Directors may deem appropriate. Without limitation, such purposes may include the maintenance of additional or special street lighting fixtures and/or the maintenance of specific components or elements of Neighborhood entrance(s) or street median(s). At any time when there are no Class B Members, a Special Assessment may include the cost of first providing all or any part of such components, fixtures and items.

Special Assessments may be a one-time assessment levied only for a particular Assessment Year or may be a recurring assessment levied annually by the Board of Directors. Prior to first being levied any one-time Special Assessment or any recurring Special Assessment shall be approved by at least two-thirds (2/3) of the then Class A Members and, if any, at least two-thirds (2/3) of the then Class B Members, each class voting separately at a meeting of the Members duly called for the purpose of approving the Special Assessment, or with proper notice that consideration of a Special Assessment will be a matter of new business, at a regular or annual meeting of the Members.

Each person, excluding the Declarant, who becomes an owner of a Lot comprising part of Waverly, by acquiring title to a Lot, by taking possession of a Lot, by accepting a deed or lease to a Lot, or by accepting a similar instrument of conveyance transferring to him the right to use or occupy a Lot, whether or not said instrument shall so state, shall be deemed to covenant and agree to pay the Association each month, in advance, a sum equal to one-twelfth (1/12) of any such Special Assessment. Each Member owning a Lot at the beginning of an Assessment Year shall be responsible for paying in monthly installments during the Assessment Year the full amount of such Special Assessment levied against his Lot. Each Member acquiring a Lot during an Assessment Year shall be responsible for paying in monthly installments during the remainder of the Assessment Year a pro-rated amount of any such Special Assessment, unless such Special Assessment levied against his Lot has been fully paid.

Section 4. Damage Assessments. In the event the Declarant, or in lieu thereof should the Declarant be unable or unwilling to act the Board of Directors of the Association, determines that a Member has failed or refused to discharge properly his obligations with respect to the installation, erection, placement, construction, maintenance, repair or replacement of any element or item comprising any part of the exterior of the dwelling, including but not limited to landscaping, grassing, perimeter fencing and/or erosion control devices, for which the Member is responsible or finds that a Member is responsible wholly or partially for damage to the Neighborhood entrance or component thereof, any street or component thereof, any culvert, channel, swale or drainage way or component thereof, any Common Area or Neighborhood Facility or component thereof, or any area or element which is the responsibility of the Declarant or the Association, the Declarant, or in lieu thereof should the Declarant be unable or unwilling to act the Board of Directors, acting for and on behalf of the Association, shall give the Member written notice of the intent to provide the necessary installation, erection, placement, construction, maintenance, repair or replacement at the Member's cost and expense, which notice shall set forth with particularity the installation, erection, placement, construction, maintenance, repair and replacement deemed necessary, and which notice shall be delivered, mailed or otherwise transmitted in a manner providing written acknowledgment of receipt. The Member shall be given the time indicated in the notice (which time shall be reasonable and begin on the date of the receipt of the notice) to complete the maintenance, repair or replacement directed or to appear before the Board of Directors to contest its determination against him. If the Member fails in this obligation, or should the Declarant, or in lieu thereof should the Declarant be unable or unwilling to act the Board of Directors, determine for cause that such should be undertaken not by the Member but by the Association or by the Declarant for the Association, the Declarant and/or Association may provide such installation, erection, placement, construction, maintenance, repair and replacement at the Member's expense and all or any part of the costs thereof, including but not limited to any fines or penalties imposed on the Declarant or Association arising from the Member's failure or refusal, shall be levied as a Damage Assessment against one or more of the Lots of which the Member owns.

Section 5. Service Driveway Maintenance Assessments and/or one or more Service Driveway Maintenance Assessments. The Association, acting by and through its Board of Directors, shall levy during any Assessment Period one or more Service Driveway Maintenance Assessments and/or one or more Service Driveway Maintenance Assessments, applicable to that period only, for the purpose of paying in whole or in part the incurred or reasonably anticipated costs of any extraordinary maintenance, inordinate repair, replacement, improvement or reconstruction of any Service Driveway or Service Driveway or for the purpose of funding in whole or in part any reserve therefor. Service Driveway Maintenance Assessments other than for such streets that are within a Village Restricted Common Area shall be levied uniformly against all Lots. Service Driveway Maintenance Assessments for such streets that are within a Village Restricted Common Area and Service Driveway Maintenance Assessments shall be levied uniformly against only those Lots within the Village to which the Service Driveway or Service Driveway is appurtenant or to only those Lots benefited or served by such Service Driveway or Service Driveway.

The Association, acting by and through the Board of Directors, may levy Lawn and Landscaping Maintenance Assessments provided that at least once annually and at least thirty

(30) days prior to such assessments being levied, written notice of such prospective assessment shall be given to all Members who own an Improved Lot within the Village. Should two-thirds (2/3) or more of the prospectively affected Members object thereto, either in writing by letter to the Board of Directors or at a Village Meeting or a meeting of the prospectively affected Members duly called for the purpose, which meeting shall not be unreasonably scheduled, delayed or denied if three (3) of such prospectively affected Members request the Association President to call such meeting, such lawn and landscaping maintenance shall not be provided and such Lawn and Landscaping Assessments shall not be levied. The amount assessed for Lawn and Landscaping Maintenance Assessments shall be the amount required by the Association, as estimated by the Board of Directors, to provide lawn and landscaping maintenance within the "open" and "designated" areas of Improved Lots within a Village. The amount of the Lawn and Landscaping Assessment to be levied against an Improved Lot shall be determined by the Board of Directors in a reasonable, equitable and uniform manner which proportions the total amount required to provide such maintenance among all Improved Lots based on the estimated relative amount of cost, time and/or effort anticipated to perform such maintenance. Lawn and Landscaping Maintenance may include maintaining, cutting, pruning, treating, fertilizing, and caring for (but not furnishing, planting, installing or replacing) trees, shrubs, lawn grasses, and other components (excluding the irrigation system) of lawns and landscaped and/or open areas located within those areas of an Improved Lot which are "open" or are "designated." Open Areas on an Improved Lot shall include all the unenclosed area of a Lot which is situated between the dwelling and the street pavement edges that is within public view. Designated Areas shall include any land on an Improved Lot within a Village that is designated by a majority of the Owners of the Lots within the Village, or by the Board of Directors of the Association, as needing collective lawn and landscaping maintenance in order to preserve or enhance the values and amenities of the Village. Should a Member fail to provide or replace when damaged, dead or dying any tree, shrub or lawn grass required by the provisions hereof or shown on the latest Landscape or Site Plan approved by the Architectural Review Committee or fail to provide or replace when broken or inoperable any necessary or required component of his irrigation system, the Association may provide, repair or replace same under the provisions of Section 4 of this Article.

Section 6. Annual Expenses. The Association's annual expenses shall include but in no way shall be limited to the following, to wit:

a. The costs of operating, maintaining, and preserving any Common Areas and/or Neighborhood Facilities, including the costs incurred for reasonably necessary management and administration; and

b. The costs of maintaining, repairing, improving, replacing, cutting, pruning, treating, fertilizing, caring for and irrigating trees, shrubs, lawn grasses, and other landscape and irrigation system components located within any Common Areas and/or Neighborhood Facilities, including the rights-of-way of public streets within or bordering Waverly; and

c. The costs of maintaining, replacing and repairing the components of the Neighborhood entrance and appurtenant structures, components and fences and the costs of such equipment required therefor; and

d. The costs of maintaining, replacing and repairing streets and sidewalks including pavements, curbs, gutters, storm sewers, inlets, street lights, utility fixtures, and the costs of such equipment required therefor, as, when and to the extent the Board of Directors shall determine is necessary and proper to fulfill the purposes of this Declaration although the primary responsibility for such maintenance, replacement and repair is not that of the Association or any of its Members; and

e. The amount of all taxes and assessments levied against Common Areas and Neighborhood Facilities or otherwise levied against the Association; and

f. The costs of fire and extended coverage and comprehensive general liability insurance on Common Areas and Neighborhood Facilities and the costs of such other insurance as the Association may place in force with respect to Common Areas and Neighborhood Facilities; and

g. The costs of street lights, utilities and other services which may be provided to the Association or for its Members, whether for public and private streets within Waverly as well as Common Areas or Neighborhood Facilities, including the Neighborhood entrance(s); and

h. The costs of funding all reserves established by the Association, including, when appropriate, a general operating reserve and a reserve for replacements; and

i. The cost of monitoring and/or controlling pedestrians or vehicles entering and leaving Waverly and entering and leaving any Common Area and Neighborhood Facilities and the cost of monitoring the use of Common Areas and Neighborhood Facilities; and

j. The cost of operating, maintaining, repairing and replacing gates at the Neighborhood and/or Village entrance(s); and

k. The cost of maintaining a web site accessible via the Internet;

l. The costs of administering and enforcing the provisions, covenants, conditions and restrictions of this Declaration, including the costs incurred for reasonably necessary management and administrative services paid to any Management Agent or Rental Compliance Agent.

Section 7. Reserve for Replacements. The Association shall establish and maintain a reserve fund for replacements of any Common Areas and/or Neighborhood Facilities and their components and equipment. The Association shall allocate and pay monthly to such reserve fund whatever amount may be designated from time to time by the Board of Directors. Amounts paid into such fund shall be conclusively deemed to be a common expense of the Association, and all such amounts may be deposited in any banking institution, the accounts of which are insured by any agency of the United States, or, in the discretion of the Board of Directors, may be invested in obligations of, or obligations fully guaranteed as to principal by, the United States. The reserve for replacements of Common Areas and Neighborhood Facilities may be expended only for the purpose of affecting the replacement of Common Areas and Neighborhood Facilities, for major repairs to the components thereof, for equipment replacement, and for start-up expenses and operating contingencies of a non-recurring nature

relating to Common Areas and Neighborhood Facilities. The Association may establish such other reserves for such other purposes as the Board of Directors may from time to time consider to be necessary or appropriate. The proportional interest of each Member in any such reserves shall be considered an appurtenance to his Lot, and shall not be withdrawn, assigned or transferred separately from or otherwise than as an appurtenance to the Lot to which it appertains, and shall be deemed to be transferred with such Lot.

Section 8. Assessment Year and Other Assessment Periods. The Board of Directors from time to time may fix and change the beginning and ending dates of the annual period (herein called the "Assessment Year") to be used in calculating and dealing with assessments, but unless and until the Board of Directors shall prescribe a fiscal year, the calendar year shall be used as the Assessment Year. The Board of Directors shall determine the amount of assessments for each Member annually but may do so at more frequent intervals should circumstances make such appropriate. Upon resolution of the Board of Directors, installments of assessments payable by Members may be levied and collected on a quarterly, semi-annual or annual basis, rather than on the monthly basis. Any Member may prepay one or more installments of any assessment, without premium or penalty.

Section 9. Preparation of Annual Operating Budget. The Board of Directors shall prepare, or cause to be prepared, an annual operating budget. The Board of Directors shall make reasonable efforts to fix the amount of each and every assessment against each Lot for each Assessment Year at least thirty (30) days in advance of the beginning of the period, and shall, at the same time, prepare a roster of the Lots and the assessments applicable thereto, which roster shall be kept in the office of the Association or Management Agent, as the Board of Directors may from time to time determine, and shall be open to inspection by any Member at any reasonable time during normal business hours. At the same time, written notice that assessments have been made and are available for inspection shall be sent to the Members. The omission by the Board of Directors, before the expiration of any Assessment Year, to fix the amount of the Annual Operating and Maintenance Assessment for that or the next Assessment Year, shall not constitute a waiver or modification in any respect of the provisions of this Article, and shall not constitute a release of any Member from the obligation to pay his proportionate share of the Association's Annual Expenses, or any installment thereof, for that or any subsequent Assessment Year, but the Annual Operating and Maintenance Assessment fixed for the preceding Assessment Year shall continue to be the Annual Operating and Maintenance Assessment payable by Class A Members until a new Annual Operating and Maintenance Assessment is fixed. No Class A Member may exempt himself from liability for Annual Operating and Maintenance Assessments by the abandonment of any Lot or by the abandonment of his right to use and enjoy any Common Area and/or Neighborhood Facility.

Section 10. Maximum Annual Operating and Maintenance Assessments. Anything herein to the contrary notwithstanding, the initial maximum Annual Operating and Maintenance Assessment for each of the Lots to which Class A membership is appurtenant shall not exceed the sum of Four Hundred Eighty and no/100ths Dollars (\$480.00) per annum, except to the extent that Annual Operating and Maintenance Assessments may be increased or decreased in accordance with Section 11 of this Article.

Section 11. Increase in Maximum Annual Operating and Maintenance Assessments.

For each Assessment Year beginning on or after January 1, 2024, the maximum Annual Operating and Maintenance Assessment for Class A Members, each as hereinabove provided for, may each be increased by the Board of Directors, without a vote of said Class A Members, by an amount equal to fifteen percent (15%) of the maximum assessment for the preceding year plus each Class A Member's (or specific Owner's) proportionate share of the amounts by which any ad valorem property taxes and any casualty, comprehensive general liability and other insurance premiums payable by the Association have increased over the amounts payable for the same or similar items in the preceding Assessment Year.

For each Assessment Year beginning on or after January 1, 2024, the maximum Annual Operating and Maintenance Assessment for Members may be increased above that permitted by the above prior paragraph if, and only if, any such increase shall first be approved by the affirmative vote of at least two-thirds (2/3) of the then Class A Members and the affirmative vote of at least two-thirds (2/3) of the then Class B Members, each class voting separately. A meeting of the Class A and Class B Members shall be duly called for this purpose. Any increase properly approved pursuant to this paragraph shall be effective for the next succeeding Assessment Year and for each succeeding Assessment Year thereafter, unless the then Class A Members, by the affirmative vote of at least two-thirds (2/3) of the then Class A Members, and the then Class B Members, by the affirmative vote of at least two-thirds (2/3) of the then Class B Members, shall otherwise specify, each class voting separately.

Section 12. Commencement of Liability for Assessments. Each Member's liability to pay monthly installments of assessments shall commence on the date a deed, lease or similar instrument conveying or transferring the ownership or right to use or occupy the Lot to which such membership is appurtenant shall be filed for record in the office of the Chancery Clerk or delivered to the Member named as grantee, assignee or owner in such instrument. The first such monthly installment for each Member shall be paid for the balance of the month during which such instrument is either first delivered to the Member or filed for record in the office of the Chancery Clerk and shall be due and payable within ten (10) days thereof or the first day of the succeeding month, whichever first occurs. Except as is herein elsewhere provided, all monthly installments of assessments shall be due and payable on the first day of each successive month.

Section 13. Anticipated Class B Contributions. For as long as the Declarant owns any Lot, Parcel or Annexable land or for as long as there are Class B Members of the Association, each Assessment Year during the preparation of the Association's Annual Operating Budget, the Declarant and each Class B Member shall be obligated to provide promptly to the Treasurer a schedule of the prospective voluntary contributions each will make during the next Assessment Year. In preparing the Association's Annual Operating Budget and setting the Annual Operating and Maintenance Assessment for the next Assessment Year, the Board of Directors may rely on receiving said contributions in accordance with such schedule(s).

Section 14. Maintenance of Dwellings. Except for Lots and dwellings approved for rental and except as may be specifically provided herein or by amendment hereto, this Declaration does not contemplate that the Association shall have responsibility for the maintenance or

repair of any dwelling or its appurtenances. Expenditures for the maintenance and repair of Lots and dwellings approved for rental shall be first taken from funds acquired from the Owner of the Lot and dwelling and then from funds available to the Association from letters of credit, certificates of deposits or bonds issued by sureties posted by the Owner of the Lot and dwelling. If such funds are insufficient, the insufficiency shall be assessed against any Lot owned by the Member as a Damage Assessment determined, levied, collected and enforced in accordance with the provisions of Section 4 of this Article.

Section 15. Payment of Patronage Refunds. In the event the Board of Directors determines that funds derived from assessments are more than necessary to meet all reasonably foreseeable needs of the then current Assessment Year, the Board of Directors may authorize payment of patronage refunds.

Section 16. Assessments Are Not Dues. The assessments herein mentioned are not intended to be, and shall not be construed as being, in whole or in part, dues for membership in the Association. The assessments herein mentioned shall only be expended to effect the purposes of this Declaration and Association as specified herein, and shall not be expended to affect or influence any municipal, county, state or federal election or policy, regulatory or administrative decision which does not directly affect the administration, operation, maintenance, repair, improvement, reconstruction or preservation of the Common Areas and Neighborhood Facilities within Waverly or the preservation or enhancement of the values and amenities within Waverly. Notwithstanding the provisions of this Section to the contrary, the Board of Directors may from time to time authorize the support and/or patronage of the Association in legitimate political activity intended to promote the welfare or promulgate the views of a substantial majority of the Members; provided, however, that any funds expended directly or indirectly in such support or patronage are solicited and collected on a timely and voluntary basis among all Members, that such support or patronage is withdrawn or not rendered if such solicitation does not result in a majority of the Members freely contributing thereto, and that such funds be solicited, collected, deposited, held, expended and accounted for separately from assessments.

Section 17. Assessments Are Personal Obligations. Any assessment levied against a Member pursuant to this Declaration shall be the personal obligation of such Member. It shall be the personal obligation and duty of every Member to pay all assessments levied against his Lot, and such assessment shall remain his personal obligation for the full statutory period permitted by law.

Section 18. Exempt Property. No portion of any Common Area or Neighborhood Facility shall be subject to assessment of any kind by the Association. The existence of a Neighborhood Facility or a component of Neighborhood Facilities on or within a Lot shall not permit the Owner of such Lot from claiming the exemption provided for herein; it being the intent of this provision to preclude the Association from levying an assessment against any real property within Waverly other than real property which constitutes a Lot under this Declaration.

ARTICLE VIII

ENFORCEMENT OF ASSESSMENTS

Section 1. Delinquent Assessments. Any assessment levied against a Lot pursuant to this Declaration, or any installment of any such assessment, which is not paid on the date when due, shall be delinquent and, together with interest thereon and the cost of collection thereof, as hereinafter provided, shall thereupon become a continuing lien upon the Lot or Lots against which such assessment is levied, and shall bind such Lot or Lots in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. Any assessment levied pursuant to this Declaration, or any installment thereof, which is not paid within ten (10) days after it is due, shall bear interest from the date due until paid at the maximum rate permitted by law, and, in addition, there shall be added to any such delinquent assessment whatever late charges the Board of Directors may from time to time prescribe.

Section 2. Remedies for Non-Payment of Assessments. To effect and secure payment of a delinquent assessment, the Association may bring an action at law against the Member personally obligated to pay such assessment, or the Association may foreclose the lien provided in Section 1 of this Article against any Lot or Lots then belonging to said Member in the manner now or hereafter provided for foreclosure of mortgages and other liens on real property in the State of Mississippi containing a power of sale, or the Association may do both. A suit to recover a money judgment for non-payment of any such assessment, or any installment thereof, may be maintained without foreclosing or waiving any lien herein created to secure same. Any such foreclosure by the Association shall be subject to the same requirements, both substantive and procedural, as are prescribed from time to time by the laws of the State of Mississippi applicable to foreclosure of mortgages and other liens on real property containing a power of sale. In any event, reasonable attorney's fees and reasonable costs of collection shall be added to the amount of each delinquent assessment. In the event any proceeding to foreclose the lien for any assessment due the Association pursuant to this Declaration is commenced with respect to any Lot, then the Owner of such Lot, upon resolution of the Board of Directors, may be required to pay reasonable rental for such Lot, and the Association shall be entitled to the appointment of a receiver to collect same.

Section 3. Posting Delinquencies. The Board of Directors may post a list of Members who are delinquent in the payment of any assessments or other fees that may be due the Association, including any installment thereof, in any prominent location upon the Property.

Section 4. Assessment Certificates. The Association shall upon demand at and within a reasonable time furnish to any Member liable for any assessments levied pursuant to this Declaration (or any other person legitimately interested in the same) a certificate in writing signed by an officer of the Association, setting forth the status of said assessments, i.e., whether the same are paid or unpaid. Such certificate shall be conclusive evidence of the payment of any assessment therein stated to have been paid. The Association may collect a reasonable uniform charge, in advance or at any later time, for each certificate so requested or delivered.

Section 5. Acceleration of Installments. Upon default in the payment of any one or more installments of any assessment levied pursuant to this Declaration, the entire balance of said

assessment thereupon shall be and become due and payable in full, unless the Board of Directors, in its discretion, shall otherwise direct.

Section 6. Priority of Lien. As to each Lot subject thereto, the lien to secure payment of an assessment, as established by this Declaration, shall have preference over any other liens, assessments, judgments or charges of whatever nature, except the following:

a. General and special assessments for ad valorem property taxes on such Lot; and

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

Section 7. Subordination to Mortgages. Notwithstanding any other provision of this Declaration to the contrary, the lien upon any Lot to secure any assessment levied pursuant to this Declaration shall be subordinate to the lien of any duly recorded first mortgage on such Lot made in good faith and for value received, and the lien hereunder shall in no way affect the rights of the holder of any such first mortgage; provided, however, that such subordination shall apply only to assessments, and installments thereof, which have become due and payable prior to the sale or transfer of such Lot pursuant to a foreclosure of any such first mortgage, or prior to the execution of any deed, assignment or other proceeding or arrangement in lieu of foreclosure. Any holder of any such duly recorded first mortgage made in good faith and for value received who comes into possession of such Lot pursuant to a foreclosure of the mortgage, or pursuant to the execution of any deed, assignment or other proceeding or arrangement in lieu of foreclosure, and any purchaser at a foreclosure sale, as well as any transferee under any deed, assignment or other proceeding or arrangement in lieu of foreclosure, shall take the Lot free of any claims for unpaid assessments levied against the Lot which accrued prior to the time such holder comes into possession of the Lot, or prior to the foreclosure sale or prior to the execution of any deed, assignment or other proceeding or arrangement in lieu of foreclosure, as the case may be, except for claims for a proportionate share of such unpaid assessments resulting from a reallocation of such unpaid assessments among the various Lots upon the Property. However, such foreclosure, deed, assignment or other proceeding or arrangement in lieu of foreclosure shall not relieve the mortgagee in possession or the purchaser at foreclosure or the transferee under any deed, assignment, or other proceeding or arrangement in lieu of foreclosure from any liability for any assessment(s) thereafter becoming due, or from the lien herein created to secure the payment of any such assessment(s), which lien, if it be asserted as to any such assessment(s) thereafter becoming due, shall have the same effect and be enforced in the same manner as is provided herein.

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

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

Section 8. Additional Default. Any recorded first mortgage encumbering a Lot within Waverly shall provide that any default by the mortgagor in the payment of any assessment levied pursuant to this Declaration, or any installment thereof, likewise shall be a default under such mortgage, but failure to include such a provision in any such mortgage shall not affect the validity or priority thereof, and the protection extended to the holder of any such mortgage (or the indebtedness secured thereby) by Section 7 of this Article shall not be altered, modified or diminished by reason of any such failure.

ARTICLE IX

EASEMENTS

Section 1. Reservation of Easement Rights by the Declarant. The Declarant, for itself and its assigns, hereby reserves a non-exclusive easement and right-of-way in, through, over and across any area designated or shown on the Plat as a utility or drainage easement, and any Common Area and/or Neighborhood Facility for any or all of the purposes of locating, installing, constructing, operate, use, maintaining, repairing, replacing, changing the size of and removing streets, driveways, parking areas, sidewalks, sanitary sewers and services, water mains and services, irrigation facilities, electrical wires or cables, telecommunication wires or cables, gas lines, storm drains, underground conduits, and related appurtenances to any of same, and for all other purposes reasonably related to the completion of construction of the infrastructure of Waverly and/or the provision of utility services, whether public or private, to Waverly and to other real property in the vicinity of Waverly. The Declarant hereby reserves a non-exclusive easement in, through, over and across any Common Area and/or Neighborhood Facility for the purpose of storing building supplies and materials. The Declarant hereby reserves a non-exclusive easement in, through, over and across any part of Common Area, Neighborhood Facility or Lot which is a part of a lake shore for the purpose of constructing, improving, maintaining, repairing or regulating the detention basin/lake to which the area is appurtenant and any component thereof. The easement rights so reserved in this Section expressly include the rights (i) to cut any trees, bushes, or shrubbery, (ii) to grade proximate ground surfaces, and (iii) to take any other action necessary, required, convenient, incidental or advisable in connection therewith in the sole judgment of the Declarant.

Each instrument of conveyance made by the Declarant to the Association with respect to any of any Common Areas and/or Neighborhood Facility shall be conclusively deemed to incorporate this reservation, whether or not specifically set forth in such instrument. At the request in writing of the Declarant, the Association shall from time to time execute, acknowledge, and deliver to the Declarant such further assurances of this reservation or easement rights as may be necessary or helpful.

Section 2. Construction, Repair and Maintenance Easements. The Association, acting by and through the Board of Directors, shall have the right, but not the duty, to subject temporarily a reasonable part of any Lot (except where the dwelling sits thereon), or a reasonable part of any Common Area or Neighborhood Facility, to a construction easement for the benefit of the Association and/or the Owner of an adjoining or nearby Lot and/or abutting dwelling. Such construction easement shall be either (i) to permit the safe and proper construction, repair or

maintenance of a street, the entrance or a dwelling or appurtenance thereto situated on the adjacent Lot or (ii) to correct, remove or otherwise remedy any violation of these covenants, conditions and restrictions. Such construction easement may be conditioned by any reasonable terms and provisions, including limitations as to duration, as the Board of Directors may determine to be necessary or appropriate. The beneficiary of any such construction easement shall solely bear responsibility for damages to or disturbance of (caused by the beneficiary's exercise of any right herein enumerated) improvements or ground surfaces on the Lot, Common Area or Neighborhood Facility which is subjected to such easement. The failure of the beneficiary to promptly repair or restore such damaged or disturbed improvements and surfaces shall be considered a violation of these covenants, conditions and restrictions. Upon written notice from the Board of Directors, such violation shall be promptly corrected, removed or remedied. In the event the violation is not corrected, removed or remedied, within fifteen (15) days (or within such shorter period as may be reasonably required in such notice) after notice of the violation is mailed, delivered or transmitted to the Member who is the beneficiary of such construction easement, then the Association shall have the right, through its agents and employees (but only after the Board of Directors by resolution has so directed) to take such action as may be necessary to correct, remove or otherwise remedy such violation, and the cost thereof may be assessed as a Damage Assessment against any Lot owned by the Member who is the beneficiary of such construction easement. When so assessed, a statement for the amount thereof shall be rendered to the benefited Member, at which time the assessment shall become due and payable and shall be secured by a continuing lien upon such Lot and shall be a binding personal obligation of the Owner of such Lot, in the same manner and subject to the same limitations as are provided in Section 4 of Article VII and in Article VIII of this Declaration.

Section 3. Maintenance and Support Easements. Any Common Area and/or Neighborhood Facility, and each Lot (except where the dwelling sits thereon), for the benefit of the Association and/or the Owner of the adjoining Lots and abutting dwellings, shall be and hereby is hereby subjected to irrevocable easements for the maintenance and lateral support of adjoining and abutting dwellings, buildings and improvements, for the maintenance and unobstructed and uninterrupted use of any and all underground pipes, ducts, flues, chutes, conduits, cables and wire outlets and utility lines of every kind; and for the walks and sidewalks serving adjoining and abutting areas.

Section 4. Conveyance of Easements by Board of Directors for Utilities, Drainage and Related Purposes. Subject to the requirement for joinder therein by the Declarant as provided in Section 7 of Article I of this Declaration, the Association, acting by and through its Board of Directors, is authorized and empowered to grant (and shall from time to time grant) such other easements, licenses, and rights-of-way over any utility or drainage easement, and any Common Area and/or Neighborhood Facility for the installation, operation and maintenance of sanitary sewers and services, water mains and services, irrigation facilities, electrical wires or cables, telecommunication wires or cables, gas lines, storm drains, underground conduits, and related appurtenances to any of same, for any and all purposes benefiting Waverly and other real property in the vicinity of Waverly as may be considered necessary or appropriate by the Board of Directors for the orderly maintenance, preservation and enjoyment of any Common Area and/or Neighborhood Facility and/or for the preservation and/or enhancement of the health,

safety, convenience, and welfare of the Members, the owners or owners of other real property in the vicinity of Waverly, or of the Declarant.

Section 5. Public Utility Easements.

For the purpose of rendering a utility service to the Owners of Lots and Parcels within Waverly, for the benefit of, severally, itself and its assigns, the Association, each governing authority that renders a utility service within Waverly, and each utility company named or otherwise included within the definition of "Utility Company" in Section 1 of Article I of this Declaration (unless a utility company is excepted from being a beneficiary of said easement rights by virtue of other provisions of this Section), the Declarant hereby reserves and grants non-exclusive, assignable easement rights and a right-of-way for same, in, through, over, and across any area shown, identified, designated, declared and/or reserved on a Plat as a public utility easement, in any area that is similarly described, identified, designated, declared and/or reserved in a duly executed and recorded deed, lease or similar instrument, and any area that is similarly described, identified, designated, declared and/or granted for such purpose in a duly executed and recorded easement, covenant or other instrument.

A public easement is one that is designated with descriptive wording implying that the easement is not private, for example being designated a " ... Utility Easement" or as a " ... Utility and Drainage Easement" or with similar descriptive wording that would not indicate that the easement is private. In those designations where the term is preceded by a dimension, the dimension given is the width of the strip of land subject to easement rights and such strip of land is the right-of-way for same. In those designations where in place of the word "utility" a word indicating one or more specific utility services (i.e., "Water") the easement rights and right-of-way so reserved are for the benefit of a governing authority and/or utility company certificated or otherwise duly authorized to render the particular utility service(s) named.

This reservation with respect to a public easement for the benefit of a utility company is subject to the requirement that such utility company has heretofore installed or does install within one (1) years of the recording of the Plat or instrument designating same (or within such other time period as may be indicated on the Plat or in the instrument), within any part of a Lot or Parcel burdened by the designation of a utility easement, facilities sufficient for and of use and useful to the rendition of the utility service that the utility company is authorized or permitted to so render.

A utility company failing to so timely install such facilities shall lose any benefit so reserved hereby unless an extension thereof is granted by the Declarant, the Board of Directors or the Owner of the Lot or Parcel subject to such easement rights by such designation.

Notwithstanding the provisions hereof to the contrary, any utility company that requires execution of a specific form of instrument prepared by the company and by the execution of same requires the conveyance of rights and privileges in excess of those rights reasonably necessary or convenient for its rendition of service to customers within Waverly shall not be entitled to any of the rights reserved herein for the benefit of a utility company.

Easement rights for the benefit of a governing authority rendering a utility service and/or for the benefit of a utility company reserved and/or granted by such designation shall include, without limitation, the following rights:

a. The right to locate, install, construct, place, operate, use, maintain, repair, replace, improve, control, patrol, inspect, service, reconstruct, change the size of, or remove any facility, item of equipment or appurtenance thereto, including without limitation pipes, wires, conduits, cables, manholes, valves, meters, transformers, switches, cabinets, regulators, connectors and enclosures for any of same, of use and useful to the company in the rendition of the service it is certificated or otherwise authorized to so provide, subject however, to the limitation that neither a governing authority rendering a utility service nor a utility company shall have the right to place any such facility, item of equipment or appurtenance above ground without the express written permission of the Declarant, or in lieu thereof the Board of Directors, unless such facility or item of equipment is customary and typically placed above ground when the governing authority or utility company provides underground service or unless such facility or item of equipment exists above ground within the area designated prior to the date the Plat or instrument is filed for record. Unless such is patently not practicable, any customary and typical appurtenance to an underground or buried utility facility that must be situated above the ground must be located within three (3) feet of the side lot line or boundary of a Lot, Parcel, Common Area or Neighborhood Facility, or within three (3) of an extension of such lot line to a street, and must be located so that any such appurtenance situated and/or protruding above the ground surface does not, or is not reasonably expected to, interfere with the improvement of said Lot, Parcel, Common Area or Neighborhood Facility or interfere with the contemplated use and occupancy of such Lot, Parcel, Common Area or Neighborhood Facility. For the purposes of this paragraph, any such facility, item or appurtenance, the top of which is customarily or typically set more or less even with the surface of the ground, whether so set either out of necessity or convenience, shall be considered as being placed above ground unless such is capable of being adjusted vertically to accommodate the improvement of the Lot, Parcel, Common Area or Neighborhood Facility and its size and character would not unreasonably interfere with such use and occupancy. Boxes for water meters, water valves and service connections are facilities considered as being capable of being adjusted vertically and being of a size and character that do not unreasonably interfere with the contemplated use of a Lot, Parcel, Common Area or Neighborhood Facility.

b. The right to perform from time to time anything and everything reasonably necessary or appropriate to maintain in proper and adequate operating condition each and all such facilities and items of equipment;

c. The right to remove any obstruction unreasonably hindering or interfering with such purpose or the exercise of any such right; and

d. Without limiting the above, the right of reasonable ingress and egress to any such facility and item of equipment in, upon, over and across any street or other area that is appropriate therefor, including without limitation any area within a required yard of a Lot, provided such right is exercised solely over driveways and ground surfaces that are structurally

suitable therefor and only if driveways, surfaces and other improvements destroyed, damaged or disturbed thereby are promptly replaced, repaired and restored.

Should there be or need to be installed within a Lot, Parcel, Common Area or Neighborhood Facility, outside of an area designated as a utility easement, a facility or item of equipment installed by a governing authority or utility company in order to serve the dwelling or other improvement on the Lot or Parcel, the Owner of such Lot or Parcel shall not interfere with the operation of same and shall cooperate fully with said governing authority or utility company in the installation, maintenance, repair, replacement or removal of same.

Section 6. Private Utility Easements.

For the purpose of rendering a utility service to the Owners of Lots and Parcels within Waverly, for itself and its assigns, the Declarant hereby reserves non-exclusive, assignable easement rights and right-of-way for same, in, through, over, and across any area shown, identified, designated, declared and/or reserved on a Plat as a private street or as a private easement, any area which may be similarly described, identified, designated, declared and/or reserved in a duly executed and recorded deed, lease or similar instrument, and any area which may be similarly described, identified, designated, declared and/or reserved for such purpose in a duly executed and recorded easement, covenant or other instrument.

A private easement is one that is designated with descriptive wording implying that the easement is private and not public, for example being designated a " ... Private Utility Easement" or as a " ... Private Utility and Drainage Easement" or with similar descriptive wording that would not indicate that the utility easement is not available for use by any of the certificated or duly authorized utility companies. In those designations where the term is preceded by a dimension, the dimension given is the width of the strip of land subject to easement rights and such strip of land is the right-of-way for same. In those designations where in place of the word "utility" there is set out the name of the utility company or a word indicating one or more specific utility services (i.e., "Water") the easement rights and right-of-way so reserved are reserved solely for Declarant's use and/or for subsequent assignment to the Association and/or to a governing authority and/or to the named company or to a utility company certificated or otherwise duly authorized to render the particular utility service(s) named.

The reservation hereby made by the Declarant is made in contemplation that the Declarant, from time to time and at any time prior to December 31, 2033, will assign the easement rights and right-of-way so reserved to the Association or to any governing authority rendering a utility service and/or to any one or more utility companies under such terms and conditions as the Declarant may determine as appropriate.

The easement rights hereby reserved on private streets and private easements shall include, without limitation, the same rights hereinabove set out for public streets and easements.

Notwithstanding the provisions hereof to the contrary, any utility company that requires execution of a specific form of instrument prepared by the company and by the execution of same requires the conveyance of rights and privileges in excess of those rights reasonably

necessary or convenient for its rendition of service to customers within Waverly shall not be entitled to any of the rights reserved herein for the benefit of a utility company. Notice is hereby given to a prospective Owner of a Lot or Parcel within Waverly that some utility companies require a Developer to execute an Easement and/or Right-of-Way on a specific form of instrument prepared by the company granting a general easement allowing the company to install its facilities without restriction as to location. Notice is hereby given to the prospective Owner of any Lot or Parcel that the Plat showing said Lot or Parcel does not typically show the location of the company's easement and right-of-way due to the company's facilities customarily being installed after the preparation of said Plat, and that before digging into or performing any grading or shaping of the ground surface on a Lot or Parcel, the Owner and/or builder of a dwelling or improvement thereon should call and ask the local "utility locate" service(s) (i.e. "Mississippi 811") to mark buried utility facilities within the Lot or Parcel. In addition, notice is also hereby given to the prospective Owner of any Lot and builder of the dwelling thereon that Entergy will likely require execution of its form instrument by the Owner of the Lot prior to installing electrical service wires and other facilities that need to be installed to serve the dwelling on the Lot.

Section 7. Drainage Easements.

The Declarant, for itself and its assigns, for the Association and for each governing authority having jurisdiction for storm water drainage and/or management, hereby reserves a non-exclusive easement and right-of-way in, through, over, and across any area shown, identified, designated, declared and/or reserved on a Plat as a public or private street or as a public or private " ... Drainage Easement," " ... Utility and Drainage Easement," or as an easement identified using such similarly descriptive wording for the purpose of permitting jointly or severally the Association, the governing authority having jurisdiction, or the Declarant to perform from time to time anything and everything reasonably necessary or appropriate to maintain proper storm water and irrigation water drainage within Waverly. In those designations where the term is preceded by a dimension, the dimension given is the width of the strip of land subject to easement rights for drainage purposes and such strip of land is the right-of-way for same.

Any area within any part of a Lot or Parcel designated as a utility easement, without regard to whether such easement be public or private, is hereby made subject to the drainage easement rights set out in this Section. Any area within any part of a Lot, Parcel, Common Area or Neighborhood Facility that due to its topography allows the concentrated discharge of storm water or irrigation water run-off is hereby made subject to the drainage easement rights set out in this Section.

The Owner of a Lot or Parcel is responsible for ensuring proper drainage on and across his Lot or Parcel. The easement rights so reserved shall not and do not place upon the Declarant, the Association or a governing authority a duty to effect or ensure proper drainage on any Lot or Parcel, and other than those provisions hereof respecting common areas and Neighborhood Facilities for which the Association is responsible, no provision of this Declaration shall be interpreted is so doing. Such of the easement rights so reserved that may be appropriate therefor shall be exercised by the Association should the Board of Directors determine that

proper drainage can be aided or conditions adversely affecting same can be abated, mitigated or relieved by the installation, construction, maintenance, repair, improvement, replacement or reconstruction of improvements to or on Common Areas and/or on Neighborhood Facilities within a Lot, Parcel or street. Any of the easement rights so reserved may be exercised by any of same from time to time and at any time by the Declarant, Board of Directors and/or governing authority acting jointly or severally should the Declarant, Board of Directors or governing authority determine that under the prevailing circumstances action is necessary or advisable for the preservation of the values and amenities in Waverly or other cause. Should the Board of Directors determine that action by the Association was due to circumstances caused by or as a result of activities of one or more of Members or a builder or other person in the employ of, acting at the request of or otherwise associated with such Member, the Association may assess all or part of the cost of its actions so taken against any Lot owned by the Member as a Damage Assessment determined, levied, collected and enforced in accordance with the provisions of Section 4 of Article VII of this Declaration.

Each Owner or lessee of a Lot or Parcel shall have an affirmative duty to use, maintain and improve any area designated as a Drainage Easement or any area subject to drainage easement rights for purposes of effecting or permitting proper drainage of storm water and irrigation water run-off (or otherwise being necessary or convenient to the establishment and/or maintenance of proper drainage) as such may be apparent or directed by implementation of Design Guidelines and/or Neighborhood or Village Rules or on a case by case basis by the Board of Directors. No Owner of any Lot or Parcel may change, diminish, obstruct, or retard the direction or flow of storm water or irrigation water runoff in any drainage easement or area subject to drainage easement rights without the approval of the Architectural Review Committee or Board of Directors. The provisions of this paragraph shall not be interpreted or construed as relieving the Owner of a Lot or Parcel, including without limitation the Declarant and the Association if either is owner of a Lot or Parcel, from the responsibility of performing all routine cutting, trimming, pruning and upkeep necessary or appropriate to maintain any and all portions of a Lot or Parcel, and the unpaved areas within street rights-of-way abutting his Lot or Parcel, across which storm water or irrigation water runoff may drain.

Easement rights for purposes of effecting or permitting proper drainage within a street, Drainage Easement or area subject to drainage easement rights shall include, without limitation, the following rights:

a. The right to locate, install, construct, place, operate, use, maintain, repair, replace, improve, control, patrol, inspect, service, reconstruct, change the size of, or remove any drainage facility or component or appurtenance thereto of use or useful to establishment and maintenance of proper drainage, such facilities being and including, without limitation, pipes, drains, culverts, sewers, conduits, swales, ditches, channels, inlets, manholes, grates and dissipation structures and materials;

b. The right to perform from time to time anything and everything reasonably necessary or appropriate to maintain in proper and adequate operating condition each and all such facilities, components and appurtenances;

c. The right to remove any obstruction unreasonably hindering or interfering with the function and purpose or any drainage facility, component or appurtenance or the exercise of any drainage easement right; and

d. Without limiting the above, the right of reasonable ingress and egress to any such facility, component or appurtenance in, upon, over and across any street or other area that is appropriate therefor, including without limitation any area within a required yard of a Lot, provided such right is exercised solely over driveways and ground surfaces that are structurally suitable therefor and only if driveways, surfaces and other improvements destroyed, damaged or disturbed thereby are promptly replaced, repaired and restored.

Section 8. Easement of Light, Air and View. There is hereby reserved for the benefit of the Declarant, the Association and each Member, and their respective successors and assigns, the right and easement of light, air and view over and across the area between the front setback line and the front boundary of a Lot.

Section 9. Storm Water Detention and Pollution Prevention Easements. The Declarant, for itself and its assigns, for the Association and for the governing authority having jurisdiction, hereby reserves a non-exclusive easement and right-of-way in, through, over, and across any area shown and designated on a Plat as a "storm water detention easement" and/or "storm water pollution prevention easement" and/or any area designated or reserved on a Plat for "storm water detention" and/or "storm water pollution prevention" or is designated or reserved as a "storm water detention easement" and/or "storm water pollution prevention easement" in the deed from the Declarant for the purposes of (i) detaining therein and thereon excess storm water runoff by permitting the surface thereof to be inundated for a period of time following a rainfall event, (ii) causing therein the deposition or removal from storm water runoff of sediments, debris and other pollutants, (iii) permitting the maintenance, improvement, repair and/or reconstruction of the dam or levee, discharge and/or erosion control structures and facilities therein, and (iv) permitting the excavation and/or removal there from of sediments, debris, pollutants which are diminishing the impoundment, treatment and/or hydraulic capacity thereof. (For the purposes of designating such easements and area[s] subject thereto, it is not necessary that same be identified specifically as stated herein within quote marks but only sufficiently to identify same for such purpose[s].) Each such easement shall permit the Association, the Declarant and/or the governing authority having jurisdiction to perform from time to time anything and everything reasonably necessary or appropriate to achieve such purposes.

Section 10. Tree Preservation Easements. The Declarant, for itself and its assigns, for the Association and for the governing authority having jurisdiction, hereby reserves a non-exclusive easement and right-of-way in, through, over, and across an area shown and designated on a Plat as a "tree preservation easement" and/or any area designated or reserved as a "tree preservation easement" in the deed from the Declarant for the purposes of (i) preserving existing healthy mature hardwood trees of any size and/or (ii) planting, nurturing, irrigating, maintaining (including routine fertilizing and pruning), replacing, restoring or otherwise promoting the growth of new native hardwood trees. Each such easement shall permit the Association, the Declarant and/or the governing authority having jurisdiction to perform from

time to time anything and everything reasonably necessary or appropriate to achieve such purposes. Unless there shall be an agreement otherwise, the purposes of a tree preservation easement shall include allowing indigenous shrubbery (and other objects of natural growth which provide a barrier to or restricts visibility) to begin or continue to grow provided such the growth does not impede or impair the other purposes hereof pertaining to native hardwood trees. The above to the contrary notwithstanding, poison ivy and other vegetation posing a risk to human health must be removed from an area subject to a tree preservation easement. The above to the contrary notwithstanding, if a privacy fence is properly approved and erected within or along the perimeter of an area subject to a tree preservation easement, nuisance indigenous vegetation (i.e., blackberry, honey suckle, kudzu) which provides a barrier to or restricts visibility primarily in sight zones which are blocked by such fence, maybe removed from an area subject to a tree preservation easement.

No healthy hardwood tree six (6) inches in diameter or larger (measured four [4] feet above the ground) shall be removed from any area designated as a tree preservation easement except in accordance with the recommendation of an arborist or landscape architect and with the approval of the Architectural Review Committee and, if within a tree preservation easement shown on a Plat, with the approval of an appropriate officer of the governing authority having jurisdiction.

Any area designated or reserved as a tree preservation easement adjoining the perimeter boundary of Waverly shall be presumed to have been also designated or reserved for the benefit of the owner of each parcel of land adjoining Waverly. Any area designated or reserved as a tree preservation easement adjoining the perimeter boundary of Waverly shall be presumed to have been so designated or reserved with the intent of providing a natural privacy buffer and barrier to unimpeded visibility between the parcel of land adjoining Waverly and the area within a Lot that is improved and routinely occupied and used by the Owner. The Owner of a Lot and the owner of the parcel of land adjoining the Lot may from time to time and at any time make agreements respecting the character, maintenance and use of so much of the area affected by a tree preservation easement which is situated adjacent to the adjoining owner's land, provided the provisions, terms, conditions, rights, privileges, duties, responsibilities and obligations of any such agreement respecting same are generally consistent with said intent or are otherwise agreed to by the Architectural Review Committee of the Association and, if one exists and is functional, with a similar committee of the association of property owners which includes the land of the adjoining owner.

The required rear or side yard of a Lot shall be deemed to be deeper or wider that that required in Section 3 of Article III hereof if necessary to be inclusive of any area of the Lot affected by a tree preservation easement designated or reserved along respectively the rear or side of such Lot.

Section 11. Landscape Easements. The Declarant, for itself and its assigns, for the Association and for the governing authority having jurisdiction, hereby reserves a non-exclusive easement and right-of-way in, through, over, and across any area shown and designated on a Plat as a "landscape easement" and/or any area designated or reserved as a "landscape easement" in the deed from the Declarant for the purposes of planting, nurturing, irrigating, maintaining

(including routine fertilizing and pruning), replacing, restoring or otherwise improving with trees, shrubs, lawn grass and other vegetation the area so designated. Each such easement shall permit the Association, the Declarant and/or the governing authority having jurisdiction to perform from time to time anything and everything reasonably necessary or appropriate to achieve such purposes.

If the landscape easement so designated is for or a part of the Neighborhood Entrance, the Association shall control the improvement, use and landscaping within said area and shall have the right and duty to improve, maintain, repair and replace with trees, fences, columns, walls, signs, shrubs, lawn grass, irrigation facilities and other landscaping and entrance-related components the area so designated in any reasonable manner to effect a tasteful, aesthetically pleasing entrance to Waverly and present a high quality appearance to the public entering Waverly or traveling on adjacent or nearby public or private streets. The Owner of any Lot of which a part is designated as a landscape easement that is a part of the Neighborhood Entrance shall and is hereby prohibited from improving or enclosing all or any part of the area included in said easement that is situated on the street side of the entrance fence or wall. The above notwithstanding, the Association shall have no duty to improve, maintain (including routine cutting, trimming, and pruning), repair or replace any landscaping component or lawn grass situated on the dwelling side of an entrance fence or wall, and the Owner of a Lot affected by a landscape easement that is a part of the Neighborhood Entrance shall have the responsibility and obligation to perform same without reimbursement from the Association or Declarant.

Section 12. Boundary Fence Easements. The Declarant, for itself and its assigns, for the Association, and for the owner of a parcel of land adjoining a Lot affected by a "boundary fence easement," hereby reserves a non-exclusive easement and right-of-way in, through, over, and across any area shown and designated on a Plat as a "boundary fence easement" and/or any area described, designated or reserved as a "boundary fence easement" in the deed from the Declarant for the purposes of locating, erecting, maintaining, repairing, replacing, restoring or otherwise improving (i) the "boundary line" fence existing (or to be erected) therein or nearby which is owned (or will be owned) by the owner of the adjoining parcel, (ii) a Neighborhood Perimeter Fence existing (or to be erected) therein or nearby which is owned (or will be owned) by the owner of the Lot or (iii) a fence meeting the style, dimensions, material, fabrication, finish, location, installation and appurtenant landscaping requirements agreed to by the owner of the adjoining parcel of land and the Declarant, or in lieu thereof should the Declarant be unable or unwilling to act, the Architectural Review Committee. Each such easement shall permit the Association, the Declarant and/or the owner of the adjoining parcel of land to perform from time to time at any reasonable time those activities and actions reasonably necessary or appropriate to achieve such purposes. The regular, periodic maintenance and upkeep of any landscaping component and lawn grass situated within so much of any part of a Lot that is on the opposite side of the fence (or in other words the side of the fence as is the land belonging to the owner of the adjoining parcel) shall be the duty of the owner of the adjoining parcel. The exclusive right to use and occupy so much of any Lot that is on the opposite side of the fence shall be that of such owner; however, such owner shall have no right of or to possession hereunder or thereby and shall have no right to otherwise improve such part of a Lot. The Association shall have the right but not a duty to locate, erect, maintain, repair,

replace, restore or otherwise improve such boundary line fence, and the Owner of a Lot affected by a boundary fence easement shall have these same rights without entitlement to reimbursement from the Association, the Declarant or the owner of the adjoining parcel of land unless there is an agreement otherwise with the owner of the adjoining land.

In order to preserve and/or enhance exiting trees, shrubbery, native vegetation, natural features and/or topography found along the perimeter of Waverly, with the consent of the owner of the adjoining parcel of land, for the benefit of the Declarant, the Association and the Owner of the Lot, a Neighborhood perimeter fence or a boundary line fence can be located nearby but outside of the Lot on the adjoining land owned by such owner. In such event there shall be implied to exist on and burden the adjoining parcel of land a comparable easement for purposes and limitations appropriately similar to those hereto described.

The provisions of this Section to the contrary notwithstanding, if prior to the date of the Plat, deed or agreement establishing an easement for same, a boundary line fence is of such character and age as to give rise to and sustain a claim of adverse possession by the owner of the adjoining parcel of land, without the express acquiescence of such owner, the provisions hereof shall not affect such owner's right, title and interest as to the real property situated within a Lot but on the opposite side the fence (or in other words the side of the fence as is the land belonging to such owner).

The provisions of this Section to the contrary notwithstanding, the provisions, terms, conditions, rights, privileges, duties, responsibilities and obligations found in any pertinent agreement or document of record between the Declarant (or a predecessor in title to the Declarant) and the owner of the adjoining parcel of land (or a predecessor in title to such owner) shall supersede the provisions hereof.

The above to the contrary notwithstanding, the Declarant, or in lieu thereof should the Declarant be unable or unwilling to act, the Board of Directors of the Association, from time to time and at any time, shall have the right to enter into an agreement with an owner of an adjoining parcel of land and establish thereby those provisions, terms, conditions, rights, privileges, duties, responsibilities and obligations respecting boundary line fences and the easements appurtenant thereto, and such provisions, terms, conditions, rights, privileges, duties, responsibilities and obligations thereby agreed to shall supersede the provisions hereof.

Section 13 Public Safety Easement. The Declarant, for itself and its assigns, for the Association and for the governing authorities having jurisdiction, hereby reserves and grants to all of same a non-exclusive easement throughout Waverly for the exercise of police powers and for the provision of services benefiting the health, safety and welfare of persons and protection of property by local, state and federal authorities and bona fide private patrol and/or security companies. The reservation and grant of this easement does not imply that any such powers will be exercised or any such services will be provided by any of same. The reservation and grant of this easement does not imply that the Declarant or the Association has any duty to exercise any such powers or provide any such services unless and until the Association is authorized so to do as provided in Section 5 of Article VII of this Declaration.

Section 14. Damage from Ingress and Egress. Each and all of the easement rights created, reserved or contemplated in this Article of this Declaration is subject to and conditioned upon the beneficiary thereof being obligated to exercise such right with as little inconvenience to the Owner as reasonably practical and such beneficiary being responsible for any physical damage to and/or destruction of any improvement or ground surface destroyed or disturbed by the exercise of such right. In the event of such destruction or disturbance, the beneficiary shall be obligated to restore or replace same promptly. Ingress and egress in, upon, over or across any area subject to such easement rights by an authorized officer, employee, agent or contractor of such beneficiary in the course of such exercise, shall not be deemed to be a trespass. The provisions hereof to the contrary notwithstanding, an improvement made by an Owner after the installation of facilities within an area subject to such easement right, other than the dwelling, driveway, walks and similar structural improvements typically appurtenant to residential properties, which prohibits or unreasonably hinders access to the premises subject to such right and/or the ordinary exercise of such right, shall not be considered an improvement protected by the responsibility and obligation provided for in this section.

ARTICLE X

MANAGEMENT, INSURANCE AND TAXES

Section 1. Management Agent. The Board of Directors may employ for the Association a management agent or manager (the "Management Agent"), at a rate of compensation established by the Board of Directors, to perform such duties and services as the Board of Directors from time to time may authorize in writing. The Board of Directors may employ as the Management Agent the Declarant or any Associate of the Declarant. The Association shall not undertake "self-management" or otherwise fail to employ the Management Agent if the Association owns or leases any improved or unimproved property land whose true value as determined by the Rankin County Tax Assessor exceeds five (5) percent of the total true value of all Lots and improvements within Waverly unless the Association obtains prior written approval of the holders of at least fifty percent (50%) of all eligible mortgage holders. The Management Agent shall perform such duties and services as the Board of Directors shall direct and authorize in writing, which duties and services may include, without limitation, the power and authority in the Management Agent

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

b. To provide for the care, upkeep, maintenance, reconstruction, repair, replacement, improvement, monitoring and surveillance of any Common Area and/or Neighborhood Facility that the Board of Directors may identify or direct;

c. To select, hire, and dismiss such personnel as may be required for the good working order, maintenance, and efficient operation of any Common Area and/or Neighborhood Facility; and

d. To promulgate (with approval and confirmation of the Board of Directors) and to enforce such standards, conditions, rules or regulations and such other restrictions, requirements, Neighborhood Rules, and the like as may be deemed proper respecting the use and care of the Neighborhood Entrance any other Common Area or Neighborhood Facility; and

e. To receive and review for adherence to Board approved standards applications from Owners for the rental or occupancy of Lots and dwellings by persons other than the Owner thereof and members of his family, to approve or disapprove such applications, to promulgate (with approval and confirmation of the Board of Directors) and enforce such standards, conditions, rules or regulations and such other restrictions, requirements, Rental Rules, and the like as may be deemed proper respecting the rental of Lots and dwellings; and

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

g. To make available for inspection, upon written request accompanied by reasonable payment therefor, during normal business hours or under other reasonable circumstances, to Owners and to existing or bona fide prospective owners, lenders, insurers and holders of a first mortgage of record on any Lot, current copies of this Declaration and all amendments and supplements thereto, the Bylaws, Design Guidelines, Neighborhood Rules, and any other rules governing the Association and its Members, the books, minutes, records, and financial statements of the Association; and

h. To prepare and furnish within a reasonable time, upon written request therefor accompanied by reasonable payment therefor, to Owners and to existing or bona fide prospective owners, lenders, insurers and holders of a first mortgage of record on any Lot, the financial statement of the Association for the immediately preceding year.

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

Section 2. Casualty and Physical Damage Insurance. To the extent such is feasibly and reasonably available, the Association shall obtain and maintain for its benefit and pay the premiums upon, as an operating expense, a policy of casualty and physical damage insurance covering all Common Areas, except land, foundation, excavation and other items normally excluded from coverage, including fixtures, service equipment and supplies, and other common personal property belonging to the Association. The policy shall be in an amount equal to one hundred percent (100%) of the current full replacement cost of all Common Areas without deduction or allowance for depreciation but exclusive of land, foundation, excavation and other items normally excluded from coverage. The policy cannot include any limitations which could prevent the Association from collecting insurance proceeds. Such replacement value shall be determined annually by the Board of Directors with the assistance of the insurance company affording such coverage. The policy or policies affording such casualty or physical damage insurance coverage may contain whatever special endorsements the Board of Directors in its

discretion may deem appropriate. The policy or policies affording such casualty or physical damage insurance coverage for Common Areas shall name the Declarant as an additional insured under such policy or policies.

The policy or policies affording such casualty or physical damage insurance coverage must provide (i) that it cannot be cancelled (including cancellation for non-payment of premium) or substantially modified without at least ten (10) days' prior written notice to the President of the Association, to the Management Agent, if one, and to any and all other obligees and insureds named therein; (ii) a waiver of the right of subrogation against Lot Owners individually; and (iii) that the insurance is not prejudiced by any act or neglect of individual Owners which is not in the control of such Owners collectively.

The policy or policies affording such casualty or physical damage insurance coverage shall afford as a minimum, protection against the following: 1) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and 2) all other perils which are customarily covered with respect to Common Areas and Neighborhood Facilities similar in scope, value, location and use, including all perils normally covered by the standard "all-risk" endorsement.

Section 3. Comprehensive General Liability Insurance. To the extent such is feasibly and reasonably available, the Association shall obtain and maintain for its benefit and pay the premiums upon, as an operating expense, a policy of comprehensive general liability insurance covering all Common Areas and Neighborhood Facilities. The policy shall be in an amount and in such form as may be considered appropriate by the Board of Directors in its discretion but in an amount of not less than One Million Dollars (\$1,000,000.00) coverage for all claims for bodily injuries and/or property damage arising out of a single occurrence. The policy shall require coverage to include protection against such risks as are customarily covered with respect to Common Areas and Neighborhood Facilities similar in scope, value, location and use. The policy shall afford coverage with respect to whatever additional and special liabilities the Board of Directors in its discretion may specify, including, but not limited to, hired automobile liability, non-owned automobile liability, liability for property of others, and liability incident to the Association's ownership and/or use of the Common Areas and Neighborhood Facilities or any portion thereof. Coverage under the policy shall include, without limitation, legal liability for property damage, bodily injuries, and deaths of persons in connection with the operation, maintenance or use of any Common Area or Neighborhood Facility, and legal liability arising out of lawsuits related to employment and/or other contracts of the Association. The policy must provide that it cannot be cancelled (including cancellation for non-payment of premium) or substantially modified without at least ten (10) days' prior written notice to the President of the Association, to the Management Agent, if one, and to any and all other obligees and insureds named therein. The policy or policies affording such comprehensive general liability insurance coverage on Common Areas or Neighborhood Facilities shall name the Declarant as an additional insured under such policy or policies. If the Board of Directors in its discretion deems such appropriate, the policy or a separate policy may include a "Legal Expense Indemnity Endorsement," or its equivalent, affording protection for the officers and Directors of the Association for expenses and fees incurred by any of them in defending any suit or settling any claim, judgment or cause of action to which any such officer or Director shall have been made a

party by reason of his services as such. The policy may also include a "Severability of Interest Endorsement" or its equivalent if the Board of Directors in its discretion deems such appropriate.

Section 4. Worker's Compensation Insurance. The Association shall obtain, maintain and pay the premiums upon, as an operating expense, Workmen's Compensation insurance to the extent necessary to comply with any applicable law.

Section 5. Fidelity Insurance and/or Bonds. To the extent such is feasibly and reasonably available, the Association shall obtain, maintain and pay the premiums upon, as an operating expense, insurance affording fidelity coverage against dishonest acts of and/or fidelity bonds for all officers, directors, and employees of the Association and all other persons handling, or responsible for, funds of or administered by the Association. The Management Agent shall also be required to maintain fidelity bond coverage for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. Such fidelity insurance and/or bonds shall name the Association as an obligee and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the Management Agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than the lower of Fifteen Thousand Dollars (\$15,000) or the sum equal to three (3) months' aggregate assessments on all Lots plus reserve funds. Such fidelity insurance and/or bonds shall provide that they cannot be cancelled (including cancellation for non-payment of premium) or substantially modified without at least ten (10) days' prior written notice to the President of the Association, to the Management Agent, and to the other obligees and insureds named therein. Such fidelity insurance and/or bonds shall also provide a waiver by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms of expression.

Section 6. Flood Insurance. The Association shall obtain, maintain and pay the premiums upon, as an operating expense, a policy of flood insurance on any buildings and any other insurable property which is a part of any Common Area located within any flood hazard area identified by the Federal Emergency Management Agency. The Association may obtain, maintain and pay the premiums upon, as an operating expense, a policy of flood insurance on any buildings and any other insurable property which is a part of any Neighborhood Facility located within any flood hazard area identified by the Federal Emergency Management Agency. Each such policy shall be in an amount equal to the lesser of one hundred percent (100%) of the current replacement cost of said buildings and other insurable properties or the maximum coverage available under the National Flood Insurance Program. Each such policy shall provide that it cannot be cancelled (including cancellation for non-payment of premium) or substantially modified without at least ten (10) days' prior written notice to the President of the Association, to the Management Agent, if one, and to any and all other obligees and insureds named therein.

Section 7. Insurance on Dwellings and Personal Property. Each Owner of a Lot, at his own expense and cost, shall

a. keep any dwelling on his Lot insured at all times for its full replacement value against losses due to fire, windstorm, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, and any other perils that may be covered under standard "all risk" endorsement provisions;

b. keep the contents of his dwelling, including decorations, furnishings and personal property therein, insured at all times;

c. maintain personal liability insurance at all times in the minimum amount of Three Hundred Thousand Dollars (\$300,000); and

d. in the event the dwelling on his Lot is placed or classified by regulatory action within or otherwise determined to be located within a flood hazard area identified by the Federal Emergency Management Agency and such dwelling's lowest habitable floor is below the base flood elevation determined for such flood hazard area, maintain at all times a flood insurance policy in an amount equal to the lesser of one hundred percent (100%) of the current replacement cost of his dwelling and other insurable properties or the maximum coverage available to him under the National Flood Insurance Program.

Each Lot Owner shall furnish the Board of Directors proof of such coverages upon request.

Section 8. Ad Valorem Property Taxes. Each Owner shall be responsible for and promptly pay when due ad valorem taxes lawfully assessed against his Lot. Ad valorem taxes assessed against Common Areas and Neighborhood Facilities, if any, shall be an operating expense of the Association and shall be promptly paid when due.

ARTICLE XI

NOTICES TO AND CONSENTS REQUIRED OF MORTGAGEES

Section 1. Eligible Mortgage Holders. Any mortgagee of any Lot who desires notice of certain events as identified and/or provided in this Declaration or the Bylaws and/or who desires to be among those mortgagees from whom collectively a specified percentage must give consent for the Association to take certain actions as identified and/or provided in this Declaration, shall at least once annually notify the Association of such desires and to that effect by any means of communication acceptable to the Management Agent, if one, or Secretary of the Association, or in lieu thereof by Registered Mail - Return Receipt Requested addressed to the Registered Agent. Any such notice shall identify the Lot in which such mortgagee on the date of such notice has a security interest, shall contain the name and address of such mortgagee, and shall the name of the individual at such address to whom such notices and requests for consent should be delivered or directed. A mortgagee so requesting shall be deemed an eligible mortgage holder. The Secretary or Management Agent shall maintain a roster of all eligible mortgage holders entitled to notice and request for consent. Each Member shall keep the Association promptly and fully informed as to the name, address for correspondence, and loan number for each first mortgage or deed of trust made or conveyed by the Member with respect to any Lot. The Secretary from time to time and at any time may make such inquiry or take such action as may be prudent, necessary, convenient or advisable to identify bona fide holders of first

mortgages of record on a Lot, maintain such roster, include on such roster any holder of a first mortgage or record on a Lot, or exclude from such roster any person who no longer holds a first mortgage of record on a Lot; however, unless there is an indication of a misrepresentation, the Secretary shall have no duty to so do. Notices sent the mortgage servicing company to which the Member makes his payments shall be deemed to have been sent to the mortgagee.

Section 2. Notices to Eligible Mortgage Holders. Any other provision of this Declaration to the contrary notwithstanding, neither the Members, nor the Board of Directors, nor the Association, by any act or omission, shall do any of the following things without providing timely written notice to each eligible mortgage holder or to a mortgage servicing company acting on behalf of said eligible mortgage holder:

a. Abandon, partition, subdivide, encumber, sell or transfer any Common Area; provided, however, that the realignment of boundaries, the granting of rights-of-way, easements and the like for utilities, drainage or for other purposes consistent with the use of the affected Common Area shall not be considered an encumbrance, sale or transfer within the meaning of this Subsection; or

b. Abandon or terminate this Declaration;

c. Require, cause, or permit the lapse, cancellation, or material modification of any casualty insurance policy which the Association is required to maintain in force under the provisions of this Declaration;

d. Observe or otherwise acquire knowledge of any condemnation loss or any casualty loss which affects a material portion of the Lot or dwelling thereon as to which the mortgagee is the holder of a first mortgage of record encumbering such Lot;

e. Modify or amend the voting rights of Members;

f. Modify or amend any material or substantive provision of this Declaration or the Bylaws pertaining to the rights of said mortgagee of record;

g. Modify or amend any material or substantive provision of this Declaration or the Bylaws pertaining to the purposes for which any Lot or any part of a Common Area or Neighborhood Facility is abnormally restricted;

h. Substantially modify the method of determining and collecting assessments as provided in this Declaration; or

i. Increase the threshold percentage of appraised values below which the Association is not required to employ a Management Agent.

Section 3. Notice of Delinquency. The Association shall promptly notify the eligible mortgage holder on a Lot as to which any assessment levied pursuant to the Declaration, or any installment thereof, shall become and remain delinquent for a period in excess of sixty (60) days, and the Association shall promptly notify the eligible mortgage holder on any Lot as to

which there is default by the Owner with respect to performance of any other obligation under this Declaration which remains uncured for a period in excess of sixty (60) days following the date of such default. Any failure to give any such notice shall not affect the validity or priority of any first mortgage on any Lot, and the protection extended in this Declaration to the eligible mortgage holder shall not be altered, modified or diminished by reason of such failure. Also, any failure to give any such notice shall not affect the validity of the lien for any assessment levied pursuant to this Declaration, nor shall any such failure affect any of the priorities for liens as specified in Section 6 of Article VIII hereof.

No suit or other proceeding may be brought to foreclose the lien for any assessment levied pursuant to the Declaration except after thirty (30) days' written notice to the eligible mortgage holder, or to the mortgage servicing company acting for the eligible mortgage holder, of the first mortgage of record encumbering the Lot which is the subject matter of such suit or proceeding.

Section 4. Advances by Mortgagee. Any mortgagee of a first mortgage of record encumbering a Lot may advance or pay any taxes, utility bills or other charges levied against a Common Area or Neighborhood Facility which are in default and which may or have become a charge or lien against a Common Area or Neighborhood Facility. Any such mortgagee may pay any overdue premiums on any hazard insurance policy, or secure new hazard insurance coverage on the lapse of any policy, relating to Common Areas or Neighborhood Facilities. Any such mortgagee who advances any such payment shall be due reasonable reimbursement of the amount so advanced from the Association.

Section 5. Notice of Casualty Losses. In the event of substantial damage or destruction to any Common Area or Neighborhood Facility, the Board of Directors shall give prompt written notice of such damage or destruction to the eligible mortgage holders. No provision of this Declaration or the Bylaws shall entitle any Member to any priority over the holder of any first mortgage of record encumbering said Member's Lot insofar as concerns the distribution to said Member of any insurance proceeds paid or payable on the account of any damage to or destruction of any Common Area or Neighborhood Facility.

Section 6. Notice of Condemnation or Eminent Domain. In the event any part of any Common Area or Neighborhood Facility is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by any condemning authority, then the Board of Directors shall give prompt written notice of any such proceeding or proposed acquisition to all eligible mortgage holders. No provision of this Declaration or the Bylaws shall entitle any Member to any priority over the holder of any first mortgage of record encumbering said Member's Lot insofar as concerns the distribution to said Member of the proceeds of any condemnation or settlement relating to taking of any part of any Common Area or Neighborhood Facility.

Section 7. Consents. Any other provision of this Declaration to the contrary notwithstanding, neither the Declarant, Owners, Board of Directors, nor the Association, by any act or omission, shall do any of the following things without the prior written consent and approval of the holders of at least fifty-one percent (51%) [sixty-seven percent (67%) for abandonment and termination] of the eligible mortgage holders:

a. Abandon, partition, subdivide, encumber, sell or transfer any of the Common Areas; provided, however, that the realignment of boundaries, the granting of rights-of-way, easements and the like for utilities or for other purposes consistent with the use of the affected Common Area or Neighborhood Facility shall not be considered an encumbrance, sale or transfer within the meaning of this Subsection;

b. Abandon or terminate this Declaration [requires sixty-seven percent (67%)];

c. Modify or amend any material or substantive provision of this Declaration or the Bylaws pertaining to the rights of any or all holders of a first mortgage of record encumbering any Lot;

d. Materially amend any provisions of this Declaration, or to add any material provisions thereto, which establish, provide for, govern or regulate any of the following:

(1) Voting rights of Members;

(2) Assessments, assessment liens, or subordination of such liens;

(3) Reserves for maintenance and repair and replacement of any Common Areas;

(4) Insurance or fidelity bonds;

(5) Rights to use any Common Areas;

(6) Responsibilities for maintenance and repair of any Common Areas;

(7) Interests in any Common Areas;

(8) Reduction, conveyance, encumbrance, dedication, transfer, or exchange of all or any part of any Common Area;

(9) Leasing or rental of Lots and/or the dwellings thereon;

(10) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his Lot;

(11) Establishment of self-management by the Association;

(12) Provisions of this Declaration and the Bylaws which are for the express benefit of any holder of a first mortgage of record encumbering any Lot; or

e. Restore or repair any Common Area after a partial condemnation or damage due to an insurable hazard except in substantial conformance to the original plans and specifications thereof and in accordance with this Declaration; or

f. Reallocate the interests of the Members in any Common Area partially condemned or partially destroyed.

ARTICLE XII

ADDITIONAL PROVISIONS

Section 1. Incorporation by Reference on Resale. In the event any Owner sells, assigns, transfers or otherwise conveys the title to a Lot or otherwise conveys the right to use or occupy a Lot, any deed, lease or instrument of conveyance purporting to affect such conveyance or transfer shall contain a provision, or shall be deemed to contain a provision, incorporating by reference the covenants, conditions, restrictions, servitudes, easements, charges and liens set forth in this Declaration.

Section 2. Amendment. Subject at all times to all other limitations set forth in this Declaration, this Declaration may be amended as follows:

a. At any time when there is at least one Class B Member: By recording in the office of the Chancery Clerk an instrument of amendment executed by the Declarant and executed by Lot Owners that collectively own at least sixty-seven per cent (67%) of all Lots subject to this Declaration.

b. At any time when there is no Class B Member: By recording in the office of the Chancery Clerk an instrument of amendment executed by Lot Owners that collectively own at least sixty-seven per cent (67%) of all Lots subject to this Declaration; or

c. Until December 31, 2033, provided that such instrument of amendment does not adversely modify or amend any material or substantive provision of this Declaration, by recording in the office of the Chancery Clerk an instrument of amendment executed by the Declarant and, if the Declarant so chooses, by any number of Lot Owners other than the Declarant.

Any amendment to this Declaration effected as provided in subsection (c) of this Section shall so state that the Declarant does not consider such instrument to adversely modify or amend any material or substantive provision of this Declaration. If executed by one or more Lot Owners in addition to the Declarant, same shall be affirmation that these owners do not consider such instrument to adversely modify or amend any material or substantive provision of this Declaration.

Any amendment(s) made by the Declarant for the purpose of facilitating the approval of this Declaration by, and/or to cause the provisions of this Declaration to comply with Seller's Guidelines established by, the Federal National Mortgage Association (or other organization comparable thereto) or any Federal department or agency shall not be deemed to adversely modify or amend a material or substantive provision of this Declaration. However, should the mortgagee of a mortgage created prior to such amendment deem otherwise, the amendment shall not be applicable to the Lot(s) burdened by the lien securing such mortgage until such mortgage is satisfied or foreclosed.

The above to the contrary notwithstanding, should an amendment to any provision of this Declaration materially or substantively affect any requirement imposed on the Declarant by a

governing authority having jurisdiction as a prerequisite for its approval of the development, construction, improvement, use and occupancy of Waverly or any Lot therein, such amending instrument shall first be approved by such governing authority prior to it being effective, which approval must either be filed in the office of the Chancery Clerk or spread among the minutes of the governing authorities.

The above to the contrary notwithstanding, should an amendment to any provision of this Declaration materially or substantively affect any alphabetically designated parcel of land delineated on the Plat and owned by a person other than the Association, such amending instrument shall first be approved by such person prior to it being effective, which approval must be filed in the office of the Chancery Clerk.

The execution by the Declarant of any such instrument of amendment must be acknowledged in a manner provided by law. The execution of any such instrument by a corporation, governing authority, limited liability company, trust, estate or partnership must be acknowledged in a manner provided by law. The execution of any such instrument by a natural person may be attested by a subscribing witness provided such attestation is acknowledged in a manner provided by law.

An amending instrument shall be recorded in the office of the Chancery Clerk and cannot be effective prior to it being so recorded. Unless a later date shall be specified in any such instrument, any amendment hereto shall be effective on the date of recording of the instrument of amendment.

Section 3. Duration. The covenants, conditions and restrictions of this Declaration shall run with and bind the land now and hereafter subject to this Declaration and constituting the Property. The covenants, conditions and restrictions of this Declaration shall inure to the benefit of and be enforceable by the Association, the Declarant and/or the Owner or mortgagee of any Lot, and by their respective legal representatives, heirs, successors and assigns, until December 31, 2048, after which date these covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, unless terminated at the end of any such period by an instrument recorded in the office of the Chancery Clerk at least one (1) year prior to the end of such period. Such instrument terminating the covenants, conditions and restrictions of this Declaration shall be executed, acknowledged and/or subscribed in the same manner as provided herein for an instrument of amendment when there is no Class B Member. However, should such termination be effective prior to December 31, 2040, such instrument of amendment must also be executed by the Declarant and the governing authority having jurisdiction for regulating land use by zoning.

Section 4. Enforcement. The provisions hereof may be enforced, without limitation, by the Association, the Declarant or the Owner or mortgagee of any Lot within Waverly, by his respective legal representatives, heirs, successors, assigns and the Board of Alderman of the City of Florence. If any provision of this Declaration is breached or violated or threatened to be breached or violated by any Owner or other person, then each of the other Owners, the Declarant and/or the Association, jointly or severally, shall have the right, but not the obligation, to proceed 'at law or in equity to compel a compliance with, or to prevent the threatened violation or breach of, any provision of this Declaration. Any person entitled to file or maintain a

legal action or proceeding for the actual or threatened violation or breach of any provision of this Declaration shall be entitled to recover attorneys' 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 herein.

Except as provided hereinafter, the Association, the Declarant or an aggrieved Owner shall have a right of action against the Association or Owner of any Lot for failure to comply with (i) the provisions of this Declaration, (ii) the Bylaws of the Association, or (iii) decisions of the Association which are made pursuant to authority granted the Association in this Declaration or said Bylaws.

If any structure or other improvement located on any portion of the Property, including any Lot, violates any provision of this Declaration, and if the violation is not corrected within fifteen

(15) days after written notice of such violation, then the Declarant and/or the Association (but not an Owner), jointly or severally, shall have the right, but not the obligation, to enter upon any portion of the Property, including any Lot, to correct, remedy, remove or abate such structure or other improvement at the cost and expense of the Owner of the Lot where such structure or improvement is located or at the cost and expense of whoever otherwise causes such violation and/or to deem the existence of such structure or improvement a violation of this Declaration and thereafter authorize such legal proceedings as are herein provided to correct, remedy, remove or abate same. Any such entry to correct, remedy, remove or abate same shall not be or be deemed to be a trespass. Any structure or element thereof, any improvement and any other matter related to a dwelling on a Lot which is found to be in violation of a requirement or other provision of this Declaration and which was approved or otherwise deemed to have been approved by the Architectural Review Committee and which has been continuing or in existence for one (1) year from the initial occupancy of such dwelling or the subsequent completion of such structure, improvement or matter, after such one (1) year period, shall not be deemed to be a violation of this Declaration subject to being corrected, remedied, removed or abated by enforcement hereunder, unless such approval by the Committee was fraudulently obtained.

Enforcement of these covenants, conditions and restrictions may be by any proceeding at law or in equity against any person who breaches or violates or threatens to breach or violate any provision of this Declaration, either to restrain or enjoin violation or to recover damages, or both, and against any Lot to enforce any lien created by this Declaration. Such proceeding may be (i) to recover damages for any such breach or violation, (ii) to collect any amounts payable by any Owner to the Association, 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 in this Declaration, and (iii) to enforce any lien created by this Declaration.

There shall be and hereby is created and declared to be a conclusive presumption that any violation or breach or attempted violation or breach of any of the within declared covenants, conditions or restrictions cannot be adequately remedied by an action at law exclusively for recovery of monetary damages. Each person who becomes an owner of a Lot comprising part of

Waverly, by acquiring title to a Lot, by taking possession of a Lot, by accepting a deed or lease to a Lot, or by accepting a similar instrument of conveyance transferring to him the right to use or occupy a Lot, whether or not said instrument shall so state, shall be deemed to have waived the right to, and agreed not to, assert any claim or defense that injunctive relief or other equitable relief is not an appropriate remedy.

The failure or forbearance for any period of time by the Association, the Declarant or the Owner of any Lot to enforce any covenant, condition, restriction or provision of this Declaration which it is entitled to enforce shall not be deemed a waiver of the right to do so thereafter at any time, including any future time. Such failure or forbearance shall not bar or affect the enforcement of any and all provisions of this Declaration.

Section 5. Enforcement by Governing Authority Having Jurisdiction. Should at any time the governing authority having jurisdiction for regulating land use by zoning find by order or resolution spread on its minutes (a) that the Association has failed to act and is failing to act in furtherance and achievement of the purposes for which the Association was created and organized or (bi) that the Declarant is acting without proper regard for the requirements, standards, purposes and intents set forth herein, the governing authority, in its discretion, may intervene in order to provide for the preservation of the values and amenities in Waverly, to provide for the maintenance of Common Areas and Neighborhood Facilities or to provide for the administration and enforcement of the covenants, conditions and restrictions set forth herein. On such finding the governing authority shall have the same right to enforce the provisions of this Declaration as has the Owner of any Lot. The privilege to enforce the provisions hereof hereby granted the governing authority is in addition to and not in lieu of any authority the governing authority has by law. The exercise of the right to enforce the provisions hereof hereby granted is at the sole discretion of the governing authority having jurisdiction.

Section 6. Limitation of Liability. Neither the Declarant or the Association shall be liable for any failure of any service to be furnished by the Association or paid for out of the common expense fund, or for injury or damage to person or property caused by an activity occurring on or within a Common Area or Neighborhood Facility or arising from a Common Area or Neighborhood Facility, or from any wire, pipe, storm drain, conduit, or the like. The Declarant and the Association shall not be liable to any Member for loss of or damage to any articles, by theft or otherwise, which may happen on or be left or stored upon a Common Area or Neighborhood Facility. No diminution or abatement of assessments, as herein elsewhere provided for, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to a Common Area or Neighborhood Facility, or from any action taken by the Association to comply with any of the provisions of this Declaration or any required insurance policy or to comply with any law, ordinance, order, regulation or directive of any governmental authority having lawful jurisdiction.

Section 7. Successors of Declarant. All or any portion of any and all rights, reservations, easements, interests, exemptions, privileges and powers of the Declarant hereunder, or any part of them, may be assigned and otherwise transferred only and exclusively by the Declarant, with or without notice to the Association. All or any portion of any and all rights, reservations, easements, interests, exemptions, privileges and powers may be assigned by the Declarant to

any successor by recording in the office of the Chancery Clerk an instrument of assignment. Should the Declarant be a natural person and die without assigning or otherwise transferring same, they shall be deemed to have been transferred on his death to the administrator or executor of his estate. Should the Declarant be a corporation, limited liability company, trust, estate or partnership and terminate or dissolve without assigning or otherwise transferring same, they shall (1) transfer with Declarant's ownership of the greater part of any real property within Waverly and/or within lands subject to annexation. Should the Declarant die, terminate or dissolve without having any interest in any real property within Waverly and/or within lands subject to annexation and without assigning or otherwise transferring same, the rights, reservations, easements, interests, exemptions, privileges and powers of the Declarant hereunder shall cease and any provision hereof requiring action or participation by the Declarant shall be interpreted as the Board of Directors of the Association deems best furthers the purposes hereof.

Section 8. Flood Hazard. No part of any Lot within Waverly is situated within a boundary of a regulatory floodway and/or flood hazard area as same are shown on Federal Emergency Management Agency Flood Insurance Rate Map 28089C 0420F dated March 03, 2010. Article III of this Declaration sets forth certain minimum elevations for the lowest habitable floor of dwellings to be erected on Lots within Waverly. Flood plain management and development ordinances and building codes may additionally affect or restrict the construction of dwellings and utilization and maintenance of lands. Other than providing the notice hereby given, neither the Declarant nor the Association makes any representation as to the location of any Lot with respect to any flood prone area and/or any regulatory floodway or flood hazard area which now or hereafter may exist or be designated by any governmental agency or entity.

Section 9. Suitability. Neither the Declarant nor the Association shall be liable for the physical condition or suitability of any Lot for any purpose, including without limitation, the homogeneity, bearing capacity and suitability of soil material thereon.

Section 10. Release of Claims for Damages. Each person who becomes an owner of any Lot within Waverly, by taking possession of a Lot or accepting a deed or similar instrument transferring to him such Lot, whether or not said instrument shall so state, shall be deemed to have released the Declarant and the Association from any and all claims for damages as a result of the location and condition of said Lot, including without limitation, damages which thereafter may be suffered by Owner or his heirs, successors and assigns as a result of movement of soil, the flow of rain water or irrigation water runoff, the overflow of established drainage ways, or the failure to maintain said drainage ways by the persons or agencies responsible therefor, if such persons or agencies are other than the Declarant or Association.

Section 11. Condemnation and Total or Partial Casualty Loss of any Common Area or Neighborhood Facility. In the event of a taking or acquisition of all or any part of any Common Area or Neighborhood Facility by a condemning authority, or in the event of a total or partial casualty loss of any Common Area or Neighborhood Facility, the award or proceeds of settlement or insurance allocable to the Lot interests shall be payable to the Association to be held in trust for Owners and their mortgagees as their interests may appear. The Board of Directors of the Association shall and hereby is deemed as the attorney-in-fact for the

WAVERLY DEVELOPMENT, LLC
A Mississippi limited liability company

By Its Managing Member:
GSM, LLC, a Mississippi limited liability company

By: 
James T. Weaver, Managing Member

ACKNOWLEDGEMENTS AND OTHER RECORDING REQUIREMENTS

State of Mississippi
County of Madison

Personally appeared before me, the undersigned authority in and for said state and county, on this the 19th of July, 2023, within my jurisdiction, the above and within named James T. Weaver, who acknowledged that he is Managing Member of WAVERLY DEVELOPMENT, LLC, a Mississippi member-managed limited liability company and Managing Member of the within named WAVERLY DEVELOPMENT, LLC, a Mississippi member-managed limited liability company, and that for and on behalf of said WAVERLY DEVELOPMENT, LLC, acting in its capacity as Managing Member of said WAVERLY DEVELOPMENT, LLC, and as the act and deed of said GSM, LLC, while acting as Managing Member of said GSM, LLC, he executed the above and foregoing instrument after first having been duly authorized by said WAVERLY DEVELOPMENT, LLC, and said GSM, LLC, so to do.


Notary Public

My Commission Expires: 2/22/26



Association for the purpose of representing the Association and Owners in any condemnation proceeding or in negotiations, settlements and agreements.

Section 12. Notices. Any notice required under the provisions of this Declaration to be sent to the Declarant, to any officer, director or Member of the Association, to the Board of Directors or to a committee of the Association, or to any Owner of a Lot shall be deemed to have been properly served when mailed by regular mail, postage prepaid, with the U.S. Postal Service to the last known address of such person or entity which appears on the records of the Association or among the records of the Chancery Clerk or Tax Collector of Rankin County at the time of such mailing. If such officer, director, Member, Owner or committee chairman maintains a dwelling within Waverly and is known to be residing therein, such notice may be sent to the street address within Waverly of the Lot on which such dwelling is maintained. Any notice delivered by an officer of the Association or its Management Agent or by a bona fide delivery service shall also be considered as a notice properly served. The records of the Association shall be brought current within seven (7) days preceding the mailing or delivery of such notice.

Section 13. Partition. The Common Areas and Neighborhood Facilities shall remain undivided, and no lot owner or any other person shall bring an action for partition or division in whole or in part thereof without the written consent of the number of Lot Owners as required to amend this Declaration pursuant to Section 2 of this Article.

Section 14. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any portion of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

Section 15. Interpretation. The provision of this Declaration shall be liberally interpreted and construed to effectuate the purpose of creating a uniform plan for the development, improvement, use and occupancy of Lots within Waverly.

Section 16. Headings. The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration.

Section 17. 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 so requires, the male shall include all genders and singular shall include the plural.

Section 18. Exhibits. All Exhibits which are referred to in this Declaration are a part of and are hereby incorporated into this Declaration by reference.

IN WITNESS WHEREOF, on this the 19TH day of July, 2023, WAVERLY DEVELOPMENT, LLC, a Mississippi limited liability company, acting through its duly authorized Managing Member, has caused this Declaration to be executed and does deliver this Declaration as the act and deed of said WAVERLY DEVELOPMENT, LLC.

EXHIBIT "A"

Legal Description
For
Waverly Phase 1

A tract or parcel of land containing **14.66 acres**, more or less, lying and being situated in the Northwest 1/4 of Section 33, Township 4 North, Range 2 East, City of Florence, Rankin County, Mississippi and being more particularly described by metes and bounds as follows:

Commencing at a found 1/2 inch iron pin marking the Northeast corner of the Southeast 1/4 of the Northwest 1/4 said Section 33; run thence

South 89 degrees 56 minutes 02 seconds West along the South line of the Gregory property as recorded in Deed Book 763, Page 15 in the Office of the Chancery Clerk of Rankin County, for a distance of 534.77 feet to a found 1/2 inch iron pin marking the Southwest corner of said Gregory property; thence

North 00 degrees 46 minutes 50 seconds East along the West line of said Gregory property for a distance of 132.66 feet to a set 1/2 inch iron pin marking the **Point of Beginning** of the herein described property; thence

South 38 degrees 14 minutes 57 seconds West for a distance of 292.59 feet to a set 1/2 inch iron pin; thence

South 40 degrees 21 minutes 56 seconds West for a distance of 3.04 feet to a set 1/2 inch iron pin; thence

South 46 degrees 52 minutes 00 seconds East for a distance of 130.87 feet to a set 1/2 inch iron pin; thence

South 32 degrees 57 minutes 21 seconds East for a distance of 52.41 feet to a set 1/2 inch iron pin; thence

South 39 degrees 10 minutes 01 seconds East for a distance of 99.44 feet to a set 1/2 inch iron pin; thence

South 51 degrees 59 minutes 13 seconds West for a distance of 132.21 feet to a set 1/2 inch iron pin; thence

South 54 degrees 44 minutes 20 seconds West for a distance of 50.05 feet to a set 1/2 inch iron pin; thence

South 52 degrees 06 minutes 14 seconds West for a distance of 130.00 feet to a set 1/2 inch iron pin; thence

North 37 degrees 53 minutes 46 seconds West for a distance of 72.03 feet to a set 1/2 inch iron pin; thence

North 58 degrees 40 minutes 26 seconds West for a distance of 66.55 feet to a set 1/2 inch iron pin; thence

South 31 degrees 19 minutes 34 seconds West for a distance of 36.12 feet to a set 1/2 inch iron pin; thence

North 58 degrees 40 minutes 26 seconds West for a distance of 94.39 feet to a set 1/2 inch iron pin; thence

North 31 degrees 19 minutes 34 seconds East for a distance of 36.12 feet to a set 1/2 inch iron pin; thence

North 58 degrees 40 minutes 26 seconds West for a distance of 363.10 feet to a set 1/2 inch iron pin; thence

North 30 degrees 48 minutes 02 seconds West for a distance of 327.64 feet to a set 1/2 inch iron pin marking the East right of way of Eagle Post Road; thence

Continue along said East right of way Eagle Post Road as follows:

Northeasterly, along the arc of a curve to the left for a distance of 375.35 feet, said curve having a radius of 660.00 feet, and a deflection angle of 32 degrees 35 minutes 05 seconds, (chord bearing and distance, North 44 degrees 41 minutes 29 seconds, 370.31 feet) to a set 1/2 inch iron pin; thence

North 28 degrees 23 minutes 56 seconds East for a distance of 3.93 feet to a set 1/2 inch iron pin; thence

North 61 degrees 36 minutes 58 seconds West for a distance of 10.00 feet to a found concrete right of way monument; thence

North 28 degrees 23 minutes 56 seconds East for a distance of 316.85 feet to a set 1/2 inch iron pin; thence

Leaving said East right of way Eagle Post Road; run thence

South 62 degrees 49 minutes 31 seconds East for a distance of 130.37 feet to a set 1/2 inch iron pin; thence

South 84 degrees 07 minutes 40 seconds East for a distance of 53.81 feet to a set 1/2 inch iron pin; thence

South 66 degrees 38 minutes 50 seconds East for a distance of 364.01 feet to a set 1/2 inch iron pin marking the West line of said Gregory property; thence

South 00 degrees 46 minutes 50 seconds West along said West line of the Gregory property for a distance of 318.80 feet to the **Point of Beginning**.

Prepared by:
Benchmark Engineering and Surveying, LLC

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EXHIBIT "B"

ANNEXABLE LANDS

Any parcel of land situated in Sections 28 and 33, Township 4 North, Range 2 East, Rankin County, Mississippi, on the east side of Eagle Post Road, which at the time of annexation is owned by the Declarant or an Associate of the Declarant. The designation of any parcel of land as part of the "Annexable Lands" shall not preclude or constrain in any manner the development, improvement and use of such lands for any purpose.

EXHIBIT "C"

INITIAL COMMON AREA

The Declarant hereby designates Parcel "A", "B", and "C" as shown on the plat of Waverly Phase 1 as an "initial common area."

LIKELY FUTURE COMMON AREAS

The Declarant hereby gives notice to all persons that certain parcels of land when so designated by the Declarant in a Supplement to the Declaration shall be common area such as (i) those parcels of land reserved for or improved with amenities and facilities intended for use and enjoyment by Members of the Association, (ii) parcels of land improved or otherwise amendable for use for purposes such as storm water detention and storm water quality treatment, and (iii) those parcels of land encumbered by easements and/or facilities for transmission of electricity or liquid or gaseous minerals, or (iv) set aside or otherwise reserved for the installation, construction, operation, repair, replacement, maintenance of facilities and/or the planting, preservation, tending and nurturing of objects of natural growth which separately or collectively are intended to further of any purpose of this Declaration.

INITIAL NEIGHBORHOOD FACILITIES

The Waverly entrance and right-of-way facilities, including all the components, fixtures, items, pipes, wires and systems comprising or required for the columns, fences, lights, signs, sidewalks, pavements, curbs, gutters, trees, shrubs, grass, irrigation system, and other landscaping components within a median and/or along the street pavement of (outside of the boundaries of a Lot) which exist or may hereafter exist within the right-of-way of Waverly within the right-of-way of Eagle Post Road.

The Waverly pool and cabana to be built on Parcel "B".

The Association shall treat each and all of same as Neighborhood Facilities and shall be responsible for the installation, operation, use, maintenance, improvement, repair, reconstruction and/or replacement of the components and elements of same.



Wm McCoy