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DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
ASBURY PLACE SUBDIVISION

PREPARED BY:  
MICHAEL C. WILLIAMS  
STOKES BARTHOLOMEW EVANS RETIRE  
1000 RIDGEWAY LOOP RD., STE 200  
MEMPHIS, TN 38120  
PH # NA

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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
ASBURY PLACE SUBDIVISION**

**THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR ASBURY PLACE SUBDIVISION**, ("Declaration") is hereby made and is effective as of the 10<sup>th</sup> day of FEBRUARY 2005 by Ivy Trails, LLC, a Tennessee limited liability company ("Developer").

**WITNESSETH:**

**WHEREAS**, Developer, is the owner of Property described on Exhibit "A" attached hereto located in DeSoto County, Mississippi known as Asbury Place Subdivision, ("Subdivision") as shown on the final plat of record in Book 90, Page 36-37, in the office of the Chancery Clerk of DeSoto County, Mississippi ("Final Plat"); and

**WHEREAS**, the Developer hereby adopts these covenants for the purposes set forth hereinbelow.

**NOW, THEREFORE**, Developer hereby declares that the Property defined hereinbelow shall be held, sold and conveyed subject to these covenants, which shall run with the Property and be binding on all parties hereto or acquiring any right, title or interest in the Property or any part thereof, and shall inure to the benefit of each owner of a Lot in the Subdivision.

The recitals are not merely introductory statements but are covenants and agreements of this Declaration.

**ARTICLE I: MEMBERSHIP**

Every Owner of a Lot which is subject to assessment by the Association shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an ownership interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association.

**ARTICLE II: DEFINITIONS**

"Assessments" shall mean those levies and assessments which each Owner of a Lot agrees to pay to the Association pursuant to Articles VI and IX hereof.

"Association" shall mean and refer to Asbury Place Homeowners' Association, Inc., its successors and assigns.

"Board of Directors" shall mean and refer to the Asbury Place Homeowners' Association, Inc., its successors and assigns.

"Common Area" shall mean all real property (including the Improvements thereto) owned by the Association, its successors and assigns for the common use and enjoyment of the Members of the Association, its respective guests and invitees. The Common Area to be owned by the Association originally shall be all of the Property (including any additions thereto) not included in the legal description of the Lots and dedicated roads. To the contrary herein notwithstanding, the Lots shown as 29, 30-A, 30-B, 165 and 176 on the Preliminary Plat attached hereto as Exhibit "B" shall also be Common Area. Likewise, the entry features and/or berms and the 25 foot landscaping easement along Davidson Road upon which they are located as well as the entry features located on Lots 153 and 154 as shown on the Preliminary Plat shall also be maintained by the Association as Common Area. Such easements, entry features and berms shall be referred to herein as Common Area even though contained within the boundaries of said Lots.

"Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions, together with any supplement or amendment hereto recorded in the Chancery Clerk's Office of DeSoto County, Mississippi.

"Fine" shall mean the definition set forth in Article IX, Section 10, below.

"Improvements" shall mean the structures, walls, pavements, plantings, and other additions built or placed on the Lots or Common Area. It is intended that the Improvements reasonably meant for the Owner of a particular Lot will lie entirely within said Lot. In the event that by reason of construction, settlement, reconstruction or shifting of the Improvements, any minor part of the Improvements intended for a particular Lot lies outside that Lot, then the Association may establish an easement of use which shall apply thereto in favor of the Lot on which the Improvements were intended.

"Lot" shall mean and refer to one of the Lots as shown on the Preliminary Plat attached hereto as Exhibit "B", reference being made to the Warranty Deeds conveying individual Lots for an exact description of said Lots. For purposes hereof, Lots shall not include the Lots shown as 29, 30-A, 30-B, 165 and 176 on the Preliminary Plat.

"Member" shall mean and refer to every person or entity who holds membership in the Association.

"Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of fee simple title to any Lot, but excluding those having such interest merely as security for the performance of an obligation ("the Mortgagee"), provided that if the Mortgagee shall succeed to title to a Lot, then the Mortgagee shall be an Owner for purposes hereof.

"Person" means an individual, firm, corporation, partnership, association, trust or other legal entity or any combination thereof.

"Property" shall mean and refer to that certain Property described on Exhibit "A" or such other property as may be added to the Asbury Place Subdivision as Sections B and C as shown on the Preliminary Plat by subsequent final plat and amendment to this Declaration.

### **ARTICLE III: VOTING RIGHTS**

**Section 1. Voting.** The voting rights of the Membership shall be appurtenant to the ownership of a Lot, each Owner of a Lot being entitled to one (1) vote for each Lot owned, except for the Developer, which shall be entitled to ten (10) votes for each Lot owned by it until ninety percent (90%) of the Lots in the Subdivision, including any additions added thereto, have been sold, at which time Developer shall be entitled to only one (1) vote for each Lot owned by it. When more than one (1) person holds any interest in any Lot, all such persons shall be Members and the vote for such Lot shall be exercised as the Owners of such Lot shall determine, but in no event shall there be more than one (1) vote with respect to each Lot except as provided herein.

At every meeting of the Association, the Members shall have the right to cast their votes as specified herein on each question. The votes representing a fifty-one percent (51%) majority of the total votes cast with respect to any question, in person or by proxy, shall decide any question brought before such meeting, unless the question is one upon which, by express provisions of any statute or ordinance or of the corporate Charter or this Declaration or the Bylaws, a different vote is required, in which case such express provision shall govern and control. No Member shall be eligible to vote, either in person or by proxy, or to be elected to the Board of Directors of the Association, whose Lot is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association or more than fifteen (15) days in default under any of the terms, covenants, conditions, restrictions or any other provisions contained herein.

**Section 2. Proxies.** A Member may appoint any other Member or any other person permitted by law or by the Bylaws as his proxy. Any proxy must be in writing and must comply with all requirements imposed by law or by the Association's Bylaws.

**Section 3. Quorum.** The presence, either in person or by proxy, of at least fifty percent (50%) of the total votes of the Property entitled to be cast with respect to any question, shall be requisite for, and shall constitute a quorum for, the transaction of business at all meetings of the Association. If the number of votes eligible to be cast drops below the quorum and the question of a lack of quorum is raised, no business may thereafter be transacted. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

### **ARTICLE IV: PROPERTY RIGHTS AND EASEMENTS**

**Section 1. Owner's Easement of Enjoyment of Common Area.** Every Owner shall have a right and easement of enjoyment in and to the Common Area, each Owner's easement being appurtenant to and passing with the title to each Lot. Such easements shall be subject to such

rules, regulations, rights, and restrictions of use as may be established from time to time by the Association, including but not limited to, the following provisions:

- (a) The right of the Association to limit the number of guests of Members in the use of the Common Area.
- (b) The right of the Association to borrow money for the purpose of improving the Common Area and facilities, and in aid thereof to have the Common Area mortgaged by the Association.
- (c) The right of the Association to have all or any part of the Common Area dedicated or transferred by the Association to any public agency, authority, or utility for such purposes and subject to such conditions as may be determined by the Association.
- (d) The right of the Association to suspend this right and easement of enjoyment and to fine a Member for any period during which any assessment against his Lot is delinquent, or during which a Member is in violation of published rules and regulations adopted by the Association.
- (e) The right of the Association to adopt rules and regulations pertaining to the Common Area for the benefit of the Owners.

Section 2. Delegation of Use. Any Member may delegate in accordance with the Bylaws, his right of enjoyment to the Common Area facilities to the members of his family or contract purchasers, all of whom must reside on the Property.

Section 3. Title to the Common Area. Fee simple title to the Common Area shall be vested in the Association. Title to the Common Area shall be conveyed by Quit Claim Deed from the Developer to the Association at such time as the Final Plat and this Declaration as to Phase A and any subsequent final plat and amendment to this Declaration for Sections B and C are recorded.

Section 4. Easements. The Association shall have the right from time to time to declare, grant and convey utility, telephone, and other easements for the benefit of the Association and Owners over, under, and across the Common Area.

#### ARTICLE V: CONTROL OF IMPROVEMENTS

Section 1. Control of Improvements. No Improvement or change, including, but not limited to, the construction, alteration or erection of any structure or residence, terrain change, fence, driveway, walkway, landscape screening, mailbox, outdoor lighting fixture, any sanitary and/or storm sewer system, underground wiring, swimming pool, or pool deck, shall be commenced, erected, placed or permitted on any Lot until the plans, specifications and specific location (including elevation) of said Improvement or change has been approved in writing, or the requirement for such approval has been waived in writing, by the Architectural Committee

appointed by the Developer or Board of Directors of the Association. Without the prior written approval of the Architectural Committee, no exterior television or radio antenna, disc (except of a size of 24 inches in diameter or less) or other similar device may be erected, placed, allowed or maintained on any Lot or upon any Improvement situated on any Lot. No fencing containing or consisting of chain link or barbed wire shall be permitted. The Architectural Committee is hereby empowered to decide upon and dictate the particular placement and structure of such device as a condition to approval, subject to the provisions of applicable laws, codes, ordinances and regulations. In the event that approval for such devices is granted, all such devices shall be completely screened from the view of other Lots, as well as public streets. Architectural Committee members shall serve at the pleasure of the Association or its assigns. To the contrary, notwithstanding, in the event that the Architectural Committee fails to approve or disapprove such design or location within ten (10) days after said plans and specifications have been submitted to it, the approval will not be required, and this section will be deemed to have been fully complied with. The Architectural Committee reserves the right to require the submission of designs, material selections and layouts of proposed Improvements or changes at different stages of the design process, and further reserves the right to specify the information required therein as well as the format thereof. Such plans and specifications shall be in such form and shall contain such information as may be required by the Architectural Committee, but, in any event shall include (i) a site plan of the Lot showing the nature, color scheme, kind, shape, height, materials and location (including proposed front, rear and side setbacks) of all structures, fences, or barriers, and location of all parking spaces and driveways on the Lot, and (ii) grading, drainage, irrigation and landscaping plans for the particular Lot. The Architectural Committee shall promulgate rules and regulations governing the form and content of plans to be submitted for approval by the Architectural Committee.

If any Improvement or change requiring approval shall be undertaken on a Lot and said approval has not been obtained from the Architectural Committee or waived, or if any Improvement or change which is not in conformance with approved plans and specifications shall be undertaken on a Lot, said Improvement or change shall be deemed to have been undertaken in violation of these covenants; and, upon written notice of the Architectural Committee, any such Improvement or change deemed to be in violation shall be removed or altered so as to extinguish such violation. If, thirty (30) days after the notice of such violation, the Owner of such Lot in question shall not have taken reasonable steps toward the removal or alteration of the same, the Association, its representative, or the Architectural Committee shall have the right, through its agent, to enter said Lot and to take such steps as may be necessary to extinguish such violation and fine the Owner, and all costs, the Fine, expenses and attorney fees pertaining thereto shall be a binding obligation of the Owner as well as a lien on the Lot in question, upon the recording of such with the Chancery Clerk's Office of DeSoto County, Mississippi. Any lien so recorded shall be subordinate to the lien of any existing deed of trust.

For the purpose of ensuring the development of the Lots according to high standards, and to ensure reasonable compatibility of architectural designs, the Association and the Architectural Committee shall have the power to control all Improvements as set forth in this Article, as well as to make such exceptions to this Declaration, and to waive particular violations as either shall deem necessary, appropriate, or proper.



**Section 2. Landscape Treatment of Common Areas.** Any landscape treatment shall be provided by the Association after approval of the plans by the Architectural Committee.

**Section 3. Certificate of Compliance.** Upon completion or alteration of any Improvement on any Lot undertaken and completed in accordance with plans and specifications approved by the Architectural Committee, and on written request of the Owner of such Lot, a Certificate of Compliance shall be issued in a form suitable for recordation. Preparation and recording of such Certificate shall be at the expense of such Owner. Any Certificate of Compliance issued in accordance with the provisions of this Section shall be prima facie evidence of the facts therein stated, and as to any purchaser or encumbrancer in good faith and for value, or as to any title insurer, such Certificate shall be conclusive evidence that all Improvements and/or alterations described therein comply with all requirements of this Declaration.

**Section 4. Compliance with Building Codes.** The applicable building codes in effect at the time of any construction shall apply to all construction.

**Section 5. Non-Liability.** Neither the Developer, the Association nor the Architectural Committee nor any architect or agent thereof shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications. Any agent of the Association or the Architectural Committee may, at reasonable times, enter upon and inspect any Lot and any Improvement thereon for the purpose of ascertaining whether the maintenance of such Lot and the maintenance, construction and alteration of the Improvement thereon are in compliance with the provisions of this Declaration, and no such person shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

#### **ARTICLE VI: PROPERTY MAINTENANCE**

**Section 1. General Maintenance.** The Association shall generally provide for the maintenance of all Improvements located on Common Area. The Association shall establish a budget and Assessments for such expenditures and the disbursement and application of such Assessments.

The Association shall make necessary arrangements to maintain the Common Area and maintain and replace the Improvements on the Common Area, and to pay taxes and all other necessary expenses, including all types of liability insurance in connection with ownership of said Common Areas, which shall be paid by the Association through the Assessments.

Each Owner shall be responsible for the interior and exterior maintenance of his Lot and Improvements, including, but not limited to, all exterior walls of dwellings, doors, windows, roofs, patios, garages, light fixtures, irrigation systems, parking surfaces, landscaping, driveways, painting, streetlights, private drives, plumbing and electrical repairs. In the event an Owner of any Lot shall fail to maintain his or her Lot and the Improvements thereon in a manner reasonably satisfactory to the Association, and/or in keeping with other Lots, the Association shall have the right, through its agents and employees, to enter upon said Lot and to repair,

maintain, and restore the Lot and the Improvements erected thereon. The cost of such repair, maintenance and restoration shall be added to and become part of the Assessment of that Lot. The cost of said maintenance, expenses and attorney's fees shall be a binding obligation of the Owner as well as a lien on the Lot in question, upon recording of such notice with the Office of Chancery Clerk of DeSoto County, Mississippi. Any lien so recorded shall at all times be subordinate to any prior recorded deed of trust. In addition to the costs as set forth herein, the Owner shall be responsible for all court costs, reasonable attorney's fees, and interest from the date of any expenditure at the then maximum legal rate of interest.

Section 2. Damaged or Destroyed Improvement. The right is given to the Association to require the Owner of a damaged or destroyed Improvement on any Lot to make repairs or replacements in order to restore the Improvement to its condition prior to the damage or destruction, including the right to require that insurance proceeds paid to the Owner, because of said damage or destruction, be applied to the repair or replacement.

The Owner of each Lot shall carry and keep in full force and effect, at all times at the expense of the Owner, casualty insurance with limits equal to the replacement value of the Improvements located thereon.

#### ARTICLE VII: USE RESTRICTIONS

The use restrictions set forth herein below shall apply to each Lot to ensure the best use and most appropriate development and improvement of each Lot; to protect each Owner of each Lot against improper use of surrounding Lots as well as depreciation of the value of each Lot; to preserve, as far as practicable, attractive Improvements on such Lots, appropriately located on such Lots; to prevent haphazard and inharmonious Improvements on such Lots; to secure and maintain proper setbacks from streets, and adequate spaces between structures; and, in general, to provide adequately for a high type and quality of Improvements on such Lots, and thereby enhance the value of investments made by Owners of such Lots.

(1) The Board of Directors shall develop and maintain from time to time a set of rules and regulations governing the day to day use of the Lots and Common Area by the Owners thereof. Such rules and regulations may be amended by a majority vote of the Board of Directors.

(2) None of said Lots shall be used for other than single-family residence purposes and all Improvements erected on any Lot shall conform with all applicable requirements promulgated by any public authority having jurisdiction over the Property.

(3) No house, trailer, tent, shack, barn, temporary building, temporary toilet facility, outbuilding, or guest house shall be erected on any of said Lots without approval in writing of the Association. No trailer, basement of any incomplete Improvement, shack, garage or other temporary building or structure of any kind shall be used at any time as a residence, either temporary or permanent, without the prior written approval of the Association.

(4) No Lot shall be subdivided.

(5) All Improvements upon any Lot shall be of new construction and no building or structure shall be moved from other locations onto a Lot.

(6) Setback lines shall be not less than those required by the Final Plat or by governmental authority or by the Architectural Committee.

(7) Residences constructed on the Lots shall contain not less than eighteen hundred (1800) square feet of finished, heated floor area exclusive of open porches, carports and garages for a single story residence; a minimum finished heated floor area of twenty one hundred (2100) square feet with a minimum sixteen hundred (1600) square feet on the first floor for 1 and ½ story residences; and a minimum finished heated floor area of twenty four hundred (2400) square feet with a minimum of twelve hundred (1200) square feet on the first floor for 2 story residences. The required square footage does not include heated porches, garages or other areas not normally considered part of the heated area.

(8) All residences shall be constructed with an exterior comprised of at least seventy-five percent (75%) brick. No plywood sheeting shall be permitted on any finished exterior surface. All roofs shall have a minimum pitch of 6" to 12" for the principal roof and 4" to 12" on porches and overhangs.

(9) Exposed metal fireplace chimneys are prohibited.

(10) No underground or "berm" house will be permitted on any Lot.

(11) All residences must have an enclosed garage for vehicle parking. However, no garage shall be larger than for four (4) cars. Any garage built in a location on the Lot where it can be seen from any public street abutting the Lot must be enclosed and must have a door which, when closed, will screen the interior of the garage from public view from all such public streets abutting the Lot. Garage doors must be kept shut, except during ingress and egress.

(12) The front and side yards of each Lot shall be solid (block) sod and the rear yard shall be sprigged or solid (block) sodded prior to occupancy of a residence.

(13) Building locations, setbacks, landscaping and gardening shall be subject to the following conditions:

(a) All buildings other than a residence, whether permanent or temporary, shall be located to the rear of the residence.

(b) All gardens must be planted to the rear of the residence.

(14) All mailboxes within the Subdivision are to be identical in design, i.e. Halle Design Vertigre Mailbox by Pickle Iron Specialties Company or like-kind approved by Developer, the Association or the Architectural Committee.

(15) All shingle roofs shall be constructed with dimensional shingles.

(16) Building setbacks from all streets shall be required as shown on the recorded Final Plat and/or as required by the zoning ordinances of the proper governmental authorities.

(17) No truck, boat trailer, house trailer, camping trailer, motor home, motorcycle, hobby vehicle, van, boat, commercial vehicle or other similar vehicle shall be stored or parked on any Lot, unless in a closed garage or other enclosed structure approved by the Developer or the Association. No A-frame, motor mount or other similar device may be placed on any Lot. No disabled automobiles or other motorized vehicles may be stored on any Lot or on the street adjacent thereto unless located within an enclosed garage. None of the above may be parked on or adjacent to the street. ✓

(18) No business activity of any kind whatever shall be conducted in any Improvement or on any portion of the Property without the prior written approval of the Board of Directors.

(19) No Owner shall, within any location, place or permit any structures, fencing, plants or other material which may damage or interfere with the installation and maintenance of utilities and/or interfere with the positive natural drainage of the Property. Further, no Owner shall install any Improvements or modify any existing grades in such a manner as would impair the positive, natural flow of water from or onto the Owner's Lot. Any drainage facility on a Lot shall be maintained continuously by the Owner of the Lot. Slope areas within any Lots shall be maintained continuously by the Owner in a neat, orderly and safe condition and in such manner as to enhance the appearance and maintain established drainage courses, prevent erosion, and sliding problems and facilitate the orderly discharge of water through drainage systems.

(20) No noxious or offensive trade or activity shall be carried on upon any Lot nor shall anything be done thereon which may be or become an annoyance or a nuisance to the neighborhood.

(21) In all instances, pets shall be restrained within fenced areas or kept under leash or housed in appropriate structures built for such animals, provided the structure conforms to the restrictions in this Declaration and the plans therefor are approved in advance by the Architectural Committee.

(22) Trash and garbage shall be kept in sanitary containers which must be located to the rear of the residence out of public view and in a location that will not be offensive to other Owners.

(23) No debris, trash, ashes or other refuse may be thrown or dumped on any of the Lots. Debris and trash during the construction of an Owner's Improvements shall be collected by each Owner (or his or her representative) in containers approved by the Architectural Committee and periodically removed so that no unsightly condition occurs on the Lot or adjoining Lots.

(24) No building material of any kind or character shall be placed or stored upon any of said Lots until the Owner of the Lot is ready to commence construction or renovation of Improvements. Building materials shall be kept in an organized and compact manner and appropriate measures taken to prevent unsightliness during construction. Building materials

shall not be placed nor stored in the street or between the curb and property lines.

~~(25) Grass and vegetation on each Lot shall be kept mowed and cleared of any debris at regular intervals by the Owner thereof so as to maintain the same in a neat and attractive manner. Trees, shrubs, vines, debris and plants which die shall be promptly removed from such Lots by the Owner. Until an Improvement is built on the Lot and if the Owner fails to do so after written notice from the Association, the Association may mow the grass and have dead trees and debris removed from such Lot, and the Owner of said Lot shall be obligated to reimburse the Association for the cost of such work. Such cost shall create a valid lien on said Lot which shall be enforceable as a special Assessment against the Lot should the Owner refuse or neglect to comply with the terms of this paragraph.~~

(26) No weeds, underbrush or other unsightly growth shall be permitted to grow or remain upon any Lot, and no refuse pile, unused motor vehicles, or unsightly objects shall be allowed to be placed or to remain anywhere on any Lot. In the event that any Owner or occupant of any Lot shall fail or refuse to keep the premises free from weeds, underbrush, refuse piles, unused motor vehicles, or other unsightly growth or objects, then the agent of the Developer, the Association or the Architectural Committee after written notice to the Owner may enter upon the Lot and remove the same at the expense of the Owner and such entry shall not be deemed a trespass. In the event of such a removal, the Owner shall pay the expenses thereof. Such cost shall create a valid lien on said Lot which shall be enforceable as a special Assessment against the Lot should the Owner refuse or neglect to comply with the terms of this paragraph.

(27) All equipment, building materials, garbage cans, service yards, playgrounds, wood piles, storage areas, clotheslines, portable sheds, and similar type items shall be kept screened by adequate planting or fencing so as to reasonably conceal them from view of neighboring Owners. In no event shall any of said items or uses be permitted in front yards. Corner Lots shall be considered to have a front yard on each side adjacent to the street.

(28) All exterior lighting on each Lot shall be constructed and maintained so as to provide such illumination as is necessary for that Lot only without unreasonably interfering with the peaceful enjoyment of any adjacent Owner.

(29) An Owner's right of use of his Lot is subject to all laws, ordinances, rules and regulations of the applicable municipal and other governmental authorities. In the event of a difference between the use restrictions contained in said ordinances, rules and regulations and laws and the use restrictions set forth in this Declaration, the more restrictive provision shall apply.

(30) No Owner shall permit any use of his Lot or any Improvement thereon for any purposes which shall increase the fire hazard to adjoining Lots, or for any purpose or use in violation of local, state or federal statutes or ordinances.

(31) All exterior speakers are subject to regulation by the Association with regard to decibel levels at Lot boundaries.

(32) Violation of the covenants and restrictions herein contained shall not cause a forfeiture

or reversion of title.

(33) Each Lot owner shall be responsible for any and all erosion control measures that may be required by any governmental authority

#### **ARTICLE VIII: TERM OF DECLARATION**

These covenants, conditions and restrictions are to run with the land and shall be binding upon all parties and all persons claiming under them, until the expiration of thirty (30) years after recordation of this Declaration at which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years unless by a vote of eighty percent (80%) of the then Owners of all Lots, either prior to or at such time it is agreed to terminate said covenants, conditions and restrictions. The termination shall be effective upon recording of such instrument in the Chancery Clerk's Office of DeSoto County, Mississippi. If any of the terms, options, privileges, covenants, restrictions, conditions or rights created by this Declaration shall be unlawful, void or voidable for a violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of any survivor of the now living descendants of the governor of the State of Mississippi, who holds that office as of the date this Declaration is recorded.

#### **ARTICLE IX: COVENANTS FOR ASSESSMENTS**

**Section 1. Creation of the Lien and Personal Obligation for Assessments.** Each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association (1) regular Assessments or charges, to be collected either monthly, quarterly, or annually as the Association shall determine, (2) special Assessments for capital Improvements or other purposes, such Assessments to be fixed, established and collected from time to time as hereinafter provided, and (3) emergency Assessments as may be declared by the Board of Directors. The regular, special, and emergency Assessments, and Fines assessed for the violation of these covenants, together with interest, costs and reasonable attorney's fees, if delinquent, shall be a charge and a continuing lien upon the Lot against which the charge is made until paid in full. Each such Assessment and Fine, together with interest, costs, and reasonable attorney's fees, if delinquent, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment or Fine became due. Fines shall be established and assessed by the Board of Directors.

**Section 2. Purpose of Regular and Special Assessments.** The Assessments levied by the Association shall be used exclusively for the benefit, health, safety and welfare of the residents of the Property and for the construction, renovation, replacement and/or maintenance of any Improvements, Common Areas and easements of the Association located on the Property, including, but in no way limited to, the following:

- A. The cost of all operating expenses of the Association and services furnished; and

- B. The amount of all taxes and assessments levied against the Association or upon any Property which it may own or which it is otherwise required to pay, if any; and
- C. The cost of liability insurance and the cost of such other insurance as the Association may determine; and
- D. The cost of funding all reserves established by the Association, including when appropriate, a general operating reserve and/or reserve for replacements; and
- E. Any professional fees (architectural, legal and engineering) and compensation to the members of the Architectural Committee; and
- F. Compensation for Directors not to exceed Three Hundred Dollars (\$300.00) per calendar year per Director as adjusted for inflation; and
- G. The estimated and/or actual cost of all operating expenses, repairs, replacements, maintenance and replanting of the entry features and other Common Area over which the Association has control; and
- H. The estimated and actual cost of enforcing and policing all the terms, covenants, conditions, restrictions and other duties and obligations contained in this Declaration.

During the period of development, Developer shall pay the aforescribe costs and shall be entitled to apply against such payment any regular Assessments received from Owners of Lots at such time as Developer turns over control of the Association by the election of a Board of Directors by Members of the Association pursuant to Article XI, Section 14 hereinbelow, Developer shall thereafter pay to the Association such Assessments as are made by the Association to any Lots owned by Developer and Developer shall have no further liability for payment of the foregoing expenses.

Section 3. Regular Assessments. The regular Assessment shall be set at an amount sufficient to provide for the requirements hereof. The regular Assessment for each calendar year, and the basis for payment thereof, shall be determined by the Board of Directors. The regular Assessments for a particular calendar year shall become a lien upon the Lots on the first day of such calendar year.

Section 4. Special Assessments. In addition to the Assessments authorized above, the Association may levy special Assessments for such purposes as it may determine, provided that any such Assessment shall have the affirmative vote of at least fifty-one (51%) percent of the total number of votes cast in person or by proxy at a meeting duly called for that purpose. Written notice of such meeting must be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. A special Assessment hereunder shall become a lien upon the Lots upon approval of such special Assessment in accordance with the foregoing.

Section 5. Emergency Assessments. In the event of any emergency situation, condition or occurrence affecting the life, health, safety or welfare of the Owners or property of Owners, or the Property, the Board of Directors, acting pursuant to this section, may declare an emergency Assessment in such amount and payable at such time as the Board of Directors, in its sole discretion, shall deem necessary. Such emergency Assessments, except for the amount and time of payment, shall be governed by all other provisions of this Declaration which pertain in general to all types of Assessments authorized herein. Such Assessments shall be borne uniformly by all Owners. The Board of Directors shall be duly protected and not liable for any mistake in judgment hereunder if the emergency Assessment was made in good faith.

Section 6. Pro Rata Assessment. Regular, special and emergency Assessments shall be pro rata for each Lot constituting a part of the Property based upon the total number of Lots excluding any Lots which are Common Area and may be collected on a yearly, quarterly or monthly basis.

Section 7. Quorum for Any Action Authorized Under Sections 3 and 4. At any annual or specially called meeting for the purposes set out in Sections 3 and 4 hereof, the presence at the meeting of Members or of proxies entitled to cast fifty (50%) percent of all of the eligible votes of Membership shall constitute a quorum. If, however, such quorum shall not be present or represented at the meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 8. Date of Commencement of Annual Assessments-Due Dates. The regular Assessments provided for herein shall commence as to each Lot on the first day of the month following the transfer of a Lot to an Owner. The Association shall, upon request, furnish a certificate in writing signed by a representative of the Association setting forth whether the Assessments on a Lot have been paid. A reasonable charge may be made for the issuance of such certificates. Such certificates shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

Section 9. Effect of Non-Payment of Assessments.

(a) Remedies of the Association Generally. Any Assessments which are not paid when due shall be delinquent. If the Assessment is not paid within fifteen (15) days after the due date, the Assessment shall bear interest from the due date at the rate set by the Association, or if no rate is set, at the highest rate allowed by law, plus a late charge equal to ten percent (10%) of the amount not paid when due. The Association may bring an action at law against the Owner to collect the Assessment or in equity to enforce the lien provided for herein or exercise its right of public sale as set forth herein below if payment is not made within thirty (30) days from the due date. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Area or abandonment of his Lot. The Owner of a Lot on which there are delinquent Assessments shall not be eligible to participate or vote in any meeting of the Association, nor shall the Owner be counted in determining a quorum, and may, along with his guests and the occupants of his Lot, be prohibited by properly adopted resolution of the Board of Directors from using the Common Area or other privileges of membership in the Association.



(b) Enforcement of Lien. For and in consideration of the privileges, protections, mutual enjoyment and use of the Common Area and the premises contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, and any assumption of the obligations by transferees as required hereunder, and to secure the payment of regular, special and emergency Assessments as provided for herein, any Fine, principal, interest and attorney's fees, a lien is expressly retained by the Association on each and every Lot. Such lien may be enforced by an action in a Court of equity for attachment of the Lot and sale pursuant to Order of Court or, in the alternative, the Board of Directors of the Association shall have the authority and power to sell the Lot at public outcry to the highest and best bidder for cash. The Board of Directors is authorized to make such public sale if and only if such sale is made subordinate to any prior recorded lease, mortgage or deed of trust upon the Lot. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien and all reasonable attorney's fees. The Owner shall also be required to pay to the Association the Assessment for the Lot during the period of foreclosure. Any such sale shall be made after first advertising the sale of the Lot for twenty-one (21) days by three (3) weekly publications in some newspaper in the County of DeSoto, State of Mississippi, giving notice of the time and place of such sale of the Lot and posting such notice in the DeSoto County courthouse. Written notice to the Owner is hereby waived and shall not be required. Any sale of a Lot to enforce a lien for delinquent and unpaid Assessments shall be free from equity of redemption, statutory right of redemption, homestead and dower and all other exemptions, all of which are expressly waived by the Owner, and any such sale and the lien enforced thereby shall take precedence over and have priority over any and all other liens of every nature against the Lot except real estate and ad valorem taxes assessed against the Lot and prior recorded leases, mortgages or deeds of trust.

The Board of Directors shall have the power to bid on the Lot at foreclosure sale and to acquire and hold, lease, mortgage and convey same. The proceeds of any such sale shall be applied first to the payment of the expenses of protecting the Lot and the expenses of litigation, attorney's fees, and sales commissions; and second, to the payment of real estate and ad valorem taxes assessed against the Lot and any prior recorded mortgages or deeds of trust; and third, to the payment of all amounts due the Association under the terms of the Declaration and Bylaws; and fourth, to the payment of any other mortgages or deeds of trust; and the balance, if any, according to applicable law. Upon any default in the payment of any Assessment, the Board of Directors shall have the right to all rents, issues, and profits from the Lot in default and shall have the right to secure the payment through notice to those in possession in the same manner as a mortgagee entering into possession following default.

All rights, remedies and privileges granted to the Board of Directors or an Owner, pursuant to any terms, provisions and covenants or conditions of this Declaration and the Bylaws shall be deemed to be cumulative, and the exercise of any one or more remedies shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be granted to such party by this Declaration and the Bylaws or at law or in equity.

The Association may require the Owner of the Lot which is delinquent on any Assessment levied pursuant to this Declaration or is in default in the performance of any other obligation hereunder for a period in excess of sixty (60) days to notify the holder of any and all mortgages and deeds of trust on the Lot of such delinquency or default.

**Section 10. Fine.** The Architectural Committee and/or Board of Directors of the Association shall have the right to impose an initial Fine not to exceed Two Hundred Fifty Dollars (\$250.00) as adjusted annually by Consumer Price Index (or any substitute index) for any one violation of the covenants contained herein. Such a Fine shall be in addition to the remedies set forth previously, and shall not restrain the aforementioned entities from taking any or all of the remedies and actions outlined in this Declaration. A violation which continues after the provision of written notice shall be treated as a continuous violation and shall result in a Fine of Fifty Dollars (\$50.00), adjusted annually by Consumer Price Index, per day until the violation ceases. Fines shall be attributable to each Lot and shall be a personal obligation of the Owner and shall be secured by a lien on such Lot at the time they become payable, pursuant to notice given by the Board of Directors by billing or otherwise (whether or not such notice is received by the Owner), and such lien shall also cover interest and any necessary collection expenses, including attorneys fees, provided, however, that such lien shall be subordinate to real estate taxes and any deed of trust or mortgage to secure a bona fide indebtedness recorded prior to the giving of such notice, or within ten (10) days after receipt of a written acknowledgement from the Association that no charges are outstanding against such Lot.

**Section 11. 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 may be accelerated at the option of the Board of Directors and be declared due and payable in full, fifteen (15) days after written notice of such default is given to the Member.

**Section 12. Subordination of the Lien to Mortgage.** The lien of the Assessments payable by the Owner of a Lot shall be subordinate to the lien of a prior recorded mortgage or deed of trust except for the amount of such Assessments which become due and payable from and after the date on which the mortgagee or beneficiary thereunder either takes possession of the Lot encumbered thereby, accepts a conveyance of any interest therein (other than as security) or forecloses its mortgage or deed of trust. This Section 12 shall not be amended, changed, modified or rescinded without the prior written consent of all mortgagees and beneficiaries of record.

**Section 13. Additional Default.** Any recorded mortgage or deed of trust secured by any Lot shall provide that any default by mortgagor in the payment of any Assessment levied pursuant to this Declaration, or any installment thereof, shall likewise be a default in such mortgage or deed of trust (or of the indebtedness secured thereby), but failure to include such a provision in any such mortgage or deed of trust shall not affect the validity or priority thereof, and the protection extended to the holder of such mortgage or deed of trust (or of the indebtedness secured thereby) by reason of this Article shall not be altered, modified or diminished by reason of such failure.

**Section 14. Exempt Property.** All Properties dedicated to and accepted by a local public authority and the Common Area shall be exempt from the Assessments created herein except as

otherwise specifically provided.

#### **ARTICLE X: ENFORCEMENT OF DECLARATION**

If any Owner, his heirs, personal representatives, successors or assigns shall violate or attempt to violate any of the covenants, conditions and restrictions set forth herein, any Owner, or the Association may prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant, condition or restriction to prevent such violation or attempted violation, may seek specific performance or may recover damages for any such violation. Failure to enforce any of such covenants, conditions and restrictions shall in no event be deemed a waiver of the right to do so thereafter. In the event of such litigation, the party guilty of such violation or attempt to violate shall pay the other party's attorney's fees and costs incurred in enforcing this Declaration.

#### **ARTICLE XI: MISCELLANEOUS PROVISIONS**

**Section 1. Liability of Association.** The Directors of the Association and all members of the Architectural Committee are hereby expressly relieved of any liability to any Owner, and to any other party to the extent permitted by law, for any act of omission or commission in connection with the performance of their functions as Directors of the Association or such member, except for willful misconduct or act of bad faith.

**Section 2. Severability of Covenants, Conditions and Restrictions.** Invalidation of any one or more of the covenants, conditions and restrictions or other provisions herein or hereafter set forth by any Judgment or Court Order shall in no way affect any of the other covenants, conditions and restrictions which shall remain in full force and effect.

**Section 3. Gender and Grammar.** The singular whenever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations, partnerships, or individuals, men or women, shall in all cases be assumed as applicable.

**Section 4. Amendment.** Subject to the limitations and rights contained in Articles III, VIII and IX hereof, these covenants, conditions and restrictions may be amended at any time during the initial term hereof or any extension thereof by an instrument signed by Members having not less than two-thirds (2/3's) of the eligible votes of the Association, with such amendment to be effective upon recording in the Chancery Clerk's Office of DeSoto County, Mississippi. To the contrary herein notwithstanding, no provision herein concerning the rights of the Developer may be amended without the written consent of the Developer until such time as the Developer no longer owns a Lot in the Subdivision or until ten (10) years from the recording of this Declaration, whichever should occur first.

**Section 5. Condemnation, Destruction or Termination of the Common Area.** In the event of loss or damage to the Common Area as a result of condemnation, in whole or in part, or partial or total destruction, the Board of Directors of the Association shall represent the Association in any proceedings, negotiations, settlements or agreements. In representing the

Owners, the Board of Directors of the Association shall serve as the attorney-in-fact for the Owners. Any proceeds from any settlement shall be payable to the Association for the benefit of the Owners.

Section 6. Contract for Property Management. The Association may retain the services of a professional management company to manage and maintain the Common Areas of the Property. Any such contract shall include a right of termination without cause which may be exercised by the Association at any time. There shall be no penalty for the right of termination by the Association and advance notice of termination shall be required of no more than ninety (90) days.

Section 7. Rights of Mortgage Holders, Insurers or Guarantors. The holder, insurer or guarantor of a mortgage on any Lot in the Property shall have the right to timely written notice of the following:

1. Any condemnation or casualty loss that affects either a material portion of the Property or the Lot securing its mortgage;
2. Any sixty (60) day delinquency in the payment of Assessments or charges owed by the Owner of any Lot on which it holds the mortgage;
3. A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; or
4. Any proposed action that requires the consent of a specified percentage of eligible mortgage holders.

To be entitled to receive this information, the mortgage holder, insurer or guarantor must send a written request to the Association, stating both its name and address and the address of the Lot on which it has or insures or guarantees the mortgage.

Section 8. Easements for Utilities and Related Purposes. The Association is authorized and empowered to grant (and shall from time to time grant) such licenses, easements and/or rights-of-way over the Common Area for sewer lines, water lines, electrical cables, telephone cables, television and other communication cables, internal and external wiring and antennae, gas lines, storm drains, underground conduits and/or equipment for such purposes related to the provision of public utilities and other common services to the Property or any Lot(s) as may be considered necessary, appropriate or desirable by the Board of Directors or the Association for the preservation of the health, safety, convenience and/or welfare of the Owners and the Association.

Section 9. Grant of Easement. An easement is hereby granted to all police, fire protection, ambulance, security, garbage collection, and U.S. Postal Service, Federal Express, United Parcel Service or like delivery service, persons to enter upon the Common Areas and any Lots in performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees, and to any management company selected by the Association to enter in or to cross over the Common Areas and any Lot or Improvement on any Lot to perform the duties of maintenance and repair of the Lot, Improvement or Common Area provided for

herein. Should any utility request a specific easement by separate, recordable document, the Association shall have the right to grant such easement on the Common Area without conflicting with the terms hereof. The easements provided for in this section shall in no way affect any other recorded easements on the Property.

**Section 10. Insurance.** The Association shall obtain and maintain at all times, to the extent obtainable, policies of insurance, written with financially responsible and able companies, licensed to do business in Mississippi, covering the risks of:

- A. Bodily injury and property damage liability insurance in such limits as the Board of Directors may from time to time determine; and
- B. Worker's compensation and employer's liability insurance and all other similar insurance with respect to employees, if any, and subcontractors of the Association in the amounts and in the forms now or hereafter required by law; and
- C. Fidelity coverage against dishonesty of employees or any other persons handling funds of the Association, destruction or disappearance of money or securities and forgery and endorsements thereto covering any persons who serve the Association without compensation; and
- D. Insurance against such other risks of a similar or dissimilar nature as the Board of Directors shall deem appropriate with respect to the Property, including insurance on any personal property of the Association located thereon, and Directors and Officers liability insurance with respect to the actions of the Board of Directors and officers of the Association. The types of coverage and limits of all insurance carried pursuant to these provisions or failure to carry adequate coverage shall not be subject to question or claim against the Association or its Board of Directors. Owners may carry other insurance for their benefit and at their expense, provided that the liability of the carriers issuing insurance obtained by the Board of Directors shall not be affected or diminished by reason of such additional insurance carried by any Owner.

**Section 11. Notices.** Any notice required to be sent to any Owner or Member under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the Person or entity who appears as an Owner or Member on the records of the Association at the time of such mailing.

**Section 12. Expansion by Developer.** Developer shall have the right but not the obligation to expand the Subdivision to include Sections B and C as shown on the Preliminary Plat by recording a final plat for each of such Sections and amending this Declaration to incorporate the additional Sections into the Subdivision. At such time as Section B is added to the Subdivision, the entry features on Lots 153 and 154 shall be added as Common Area. At such time as Section C is added to the Subdivision, Lots 165 and 176 and the 25 foot landscape easement along Davidson Road together with the entry features and berms thereon shall be added

as Common Area.

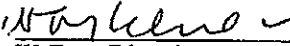
**Section 13. Additional Restrictions.** Developer reserves the right to impose additional specific restrictions upon any Lot in the Subdivision at the time of sale by the Developer of such Lot. Such additional restrictions may be made by appropriate provision in the deed of conveyance, without otherwise modifying this Declaration. Such additional restrictions shall apply to the Lot or Lots to which they are specifically imposed, provided that any such additional restrictions shall be more restrictive than the covenants contained herein.

**Section 14. Term of Developer's Control of the Association.** For a period of ten (10) years from the date of recording this Declaration or upon the sale of one hundred percent (100%) of the Lots in the Subdivision, as it may be expanded pursuant to the terms of this Declaration, whichever occurs first, Developer shall have the right to appoint the Board of Directors of the Association and shall be responsible for the payment of all expenses of the Association with the right to the credit against such expenses as set forth in Article IX, Section 2. Thereafter, Directors shall be elected pursuant to the terms of the Bylaws of the Association.

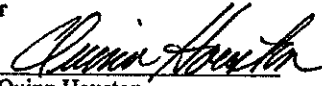
**IN WITNESS WHEREOF**, the Developer has hereby executed this Declaration on the day and year first above written.

IVY TRAILS, LLC

By: EDCO Properties, Inc.,  
Member

By:   
W. Terry Edwards,  
President

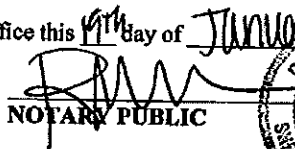
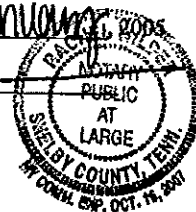
By: Houston Investment, Inc.,  
Member

By:   
Quinn Houston,  
President

**STATE OF TENNESSEE  
COUNTY OF SHELBY**

Before me, a Notary Public of the State and County aforesaid, personally appeared W. TERRY EDWARDS, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence)), and who, upon oath, acknowledged himself to be the President of EDCO Properties, Inc., a Tennessee corporation, as a Member of Ivy Trails, LLC, a Tennessee limited liability company, the within named bargainor, and that he as such President, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself as such President.

WITNESS my hand and Notarial Seal at office this 19<sup>th</sup> day of JANUARY, 2005.

  
NOTARY PUBLIC  


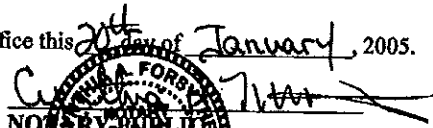

My Commission Expires:

10/19/07

**STATE OF TENNESSEE  
COUNTY OF SHELBY**

Before me, a Notary Public of the State and County aforesaid, personally appeared QUINN HOUSTON, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence)), and who, upon oath, acknowledged himself to be the President of Houston Investment, Inc., a Tennessee corporation, as a Member of Ivy Trails, LLC, a Tennessee limited liability company, the within named bargainor, and that he as such President, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself as such President.

WITNESS my hand and Notarial Seal at office this 20<sup>th</sup> day of January, 2005.

  
NOTARY PUBLIC  


My Commission Expires:

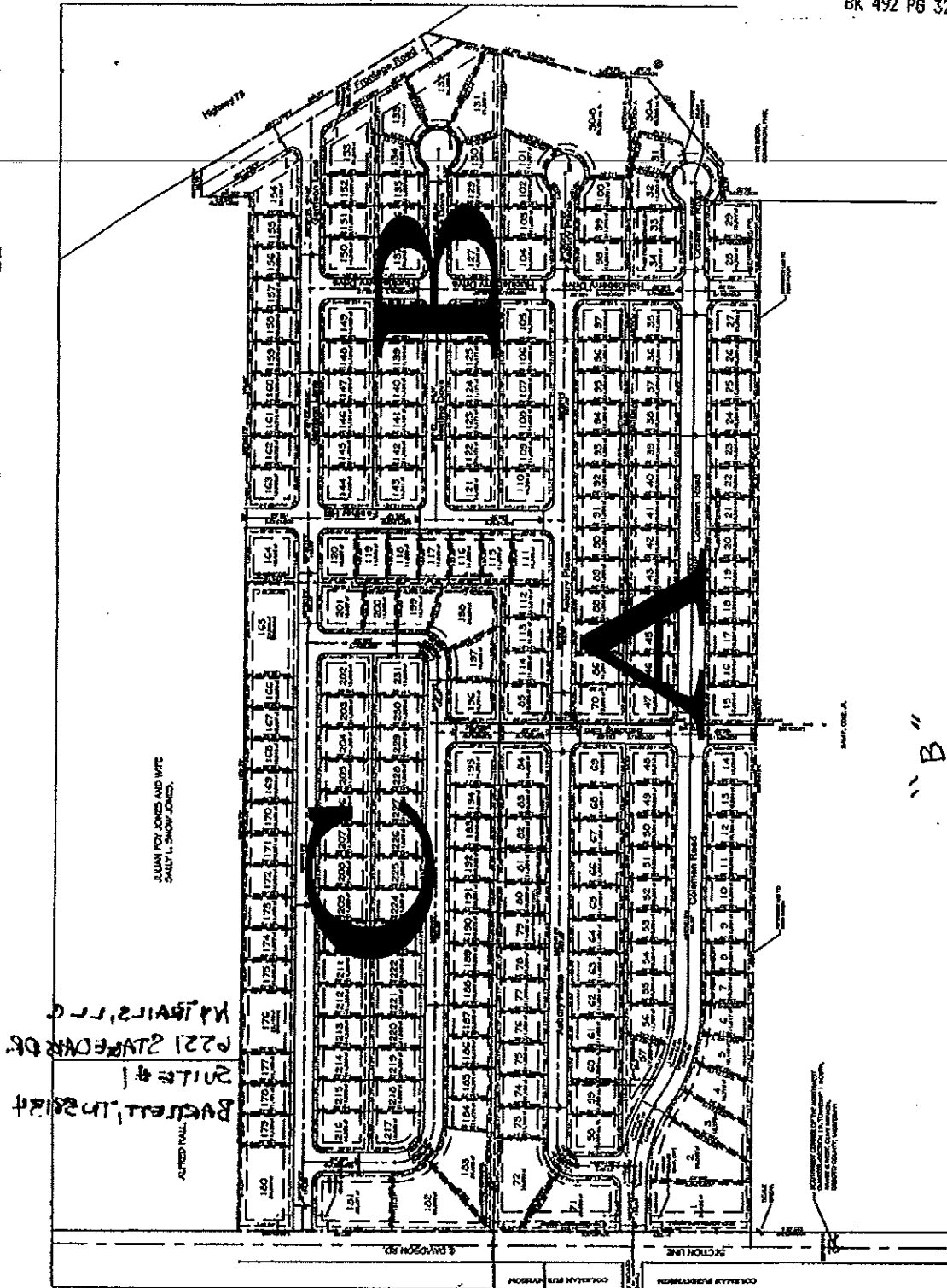
1/28/07

A legal description of a 30.96 acre, more or less, tract of land being known as Section A of Asbury Place Subdivision and being located in the southwest quarter of the northwest quarter of Section 19, Township 1 South, Range 6 West, Olive Branch, DeSoto County, Mississippi and being more particularly described as follows:

Commencing at the southwest corner of the northwest quarter of Section 19; thence North 89 degrees 56 minutes 19 seconds East for a distance of 40.00 feet to a iron pin (found) on the eastern right-of-way of Davidson Road to the True Point of Beginning for the herein described tract of land; thence North 00 degrees 09 minutes 50 seconds West for a distance of 660.14 feet to a iron pin (found); thence South 89 degrees 46 minutes 17 seconds East for a distance of 1,299.80 feet to a iron pin (found); thence South 00 degrees 03 minutes 41 seconds West for a distance of 323.75 feet to a iron pin (found); thence South 89 degrees 56 minutes 19 seconds East for a distance of 1,644.91 feet to a iron pin (found); thence South 03 degrees 07 minutes 29 seconds West for a distance of 41.35 feet to a iron pin (found); thence South 49 degrees 59 minutes 43 seconds West for a distance of 297.01 feet to a iron pin (found); thence South 83 degrees 04 minutes 09 seconds West for a distance of 83.29 feet to a iron pin (found); thence South 00 degrees 13 minutes 35 seconds West for a distance of 90.00 feet to a iron pin (found); thence North 89 degrees 56 minutes 19 seconds West for a distance of 2,629.47 feet to a point to the True Point of Beginning and containing 1,348,632 square feet or 30.96 acres, more or less, being subject to all codes, regulations and restrictions, rights of way, and easements of record.

" A "





"B"