STATE OF MISSISSIPPI
PEARL RIVER CO.
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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR APPLE SOUTH SUBDIVISION PHASE II

This Declaration of Covenants, Conditions and Restrictions for Apple South Subdivision Phase II ("Declaration") is made on this the 28th day of October, 2004, by Robert Applewhite Phase 2, L.L.C., a Mississippi limited liability company ("Declarant") (see Paragraph 13 for the meaning of certain capitalized words).

The Declarant desires to create and develop on the property as described in Exhibit A attached hereto ("the Property") and certain additional property described in Exhibit B ("Additional Property"), a residential community on the Property which shall have designated common areas ("Common Areas") and common facilities ("Common Facilities") for the benefit of Apple South Subdivision Phase II ("Apple South").

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

1. PROPERTY SUBJECT TO DECLARATION

1.01. The Property. The real property which is and shall be owned, leased, held, transferred, assigned, sold, conveyed, rented, used occupied, hypothecated or encumbered, and improved subject to this Declaration is the Property which is located in Section 1, Township 5 South, Range 17 West, Pearl River County, Mississippi, and is more particularly described in Exhibit A and such portions of the Additional Property which may be annexed to the Property from time to time as provided by Paragraph 1.03 hereof.

1.02. Common Areas. The designation of any portion of the Property as a Common Area shall not mean that the public at large acquires any easement of benefit and enjoyment in or to the Common Areas.

1.03. Annexation of Additional Property. At any one or more times prior to December 31, 2010, and without the assent of the Class A members, the Declarant or any other person with the written assent of the Declarant, shall have the right, privilege or option to annex to the Property any of the Additional Property. Any such annexation shall have the effect of making the annexed property part of the Property and extending the scheme of the within covenants and restrictions to such annexed property. However, no such annexation shall occur until same has been accomplished in the manner herein prescribed.

Any annexations of additional real property to the Property shall be made by recording a Supplement to the Declaration in the land records in the office of the Chancery Clerk of Pearl River County, which Supplement to the Declaration shall extend the scheme of the within covenants and restrictions to the annexed additional property therein described. Such Supplement shall be executed by the Owner of the fee simple title to the additional property being annexed, and if such owner is other than the Declarant, shall be

executed also by the Declarant. Such Supplement to the Declaration may contain whatever complimentary additions and modifications to the provisions of the Declaration as may be appropriate to reflect the different character or use, if any, of the annexed additional property, including, but not limited to setback lines, total square footage to be contained within any residence, easements, and degree of care and assessments for any care not rendered to all of the Property; provided, however that in no event shall any such addition or modification be substantially inconsistent with the provisions of this Declaration.

1.1 PEARL RIVER COUNTY ENFORCABLE ITEMS

1.101 Building Permit

No building permit shall be issued before the Mississippi State Board of Health approves the sewerage and water systems. Whenever the subdivision is served by community (central water system) no private water supply may be drilled or otherwise constructed on any lot for the purpose of supplying potable water to any building or structure, except for the purpose of irrigation, and in no event shall there be a physical connection between any such source and any element of the community water system.

1.102 Prohibited Construction

Construction of any nature is prohibited in County drainage easements or streets right-of-way.

1.103 Rubbish or Junk

No lot shall be used for the storage of or maintained as a dumping ground for rubbish or junk. The accumulation of rubbish or junk on any lot, for any reason whatsoever, is expressly prohibited. Rubbish and junk are herein defined as, but not limited to, abandoned or dilapidated automobiles, trucks, tractors, and other such vehicles and parts thereof, scrap building material, scrap equipment, old washing machines, dryer tanks, cans, barrels, boxes, drums, piping, tin, bottles, glass, old iron, machinery, rugs, paper, beds or bedding and old tires.

1.104 100-year Floodplain

No structure of any type may be built or located within the designated 100-year flood plain (Zone A) or wetland as designated on the final plat. Lots 10,11,12,13,23,24,25 and 26 must locate all structures within the buildable area as designated on the final plat in compliance with Pearl River County Floodplain Management Ordinance.

1.105 Resubdivision of Lots

No lots shall be subdivided without prior written approval of the Board of Supervisors and Chancery Court of Pearl River County, Mississippi. Notwithstanding the foregoing, the minimum size for any lot on which a dwelling may be constructed shall be one (1) acre.

1.106 Driveway Location

Driveways on corner lots shall not be located any closer that sixty (60) feet from a corner of said property closest to the intersection as measured from the corner of the property where the said two street rights-of-way intersect.

2. ARCHITECTURAL CONTROL

2.01 Establishment of the Architectural Review Committee. There is hereby established the Apple South Subdivision Phase II Architectural Review Committee (referred to herein as "Architectural Review Committee"). As long as the Declarant owns any of the Property or Additional Property, said Architectural Review Committee shall be appointed by the Declarant. Thereafter, the Architectural Review Committee shall be appointed by the Board of Directors.

2.02. Architectural Review Committee. The initial members of the Architectural Review Committee shall serve until the Declarant has sold all Lots in the Property and the Additional Property, thereafter the Architectural Review Committee shall consist of not less than three nor more than five individuals who shall be appointed or designated from time to time by the Board of Directors, who may be, but are not required to, be Members, and who shall serve at the pleasure of the Board of Directors, and who may be removed at any time by the Board of Directors with or without cause. The affirmative vote of a majority of the members of the Architectural Review Committee shall be required to make any finding, determination, ruling or order or to issue any permit, consent, approval or disapproval under this Declaration, including this Paragraph 2 and the approval or disapproval of all or any portion of any Plans, or to recommend that the Board of Directors adopt any rule or regulation relating to the provisions of this Paragraph 2.

2.03. General Requirements.

(a) Non-Buildable Area. The plat of the subdivision sets forth certain areas on some Lots upon which no improvements shall be built or located. Improvements shall only be constructed upon the buildable area, as shown on the plat.

(b) Building Sizes and Locations.

(i) The living area of the main house or residential structure constructed as a one-story residence on any Lot, exclusive of porches and garages, shall be not less than 1700 square feet. In the case of any residence of more than one story, the requirements as to living area shall be at least 2000 square feet for both stories with not less than 1200 square feet on the ground level.

(ii) No residential building or other structure shall be erected on any Lot nearer than forty feet (40') from the front lot line, thirty-five feet (35') from a side or rear lot line. This restriction shall not apply to drive ways, mailboxes or fences.

(iii) For some Lots in Apple South it may be impossible or inadvisable to enforce the above stated set-back requirements or those set forth in this Paragraph 2.03 due to the natural terrain, lot configurations and/or proximity of adjacent structures. Therefore, notwithstanding anything else herein to

the contrary, the Architectural Review Committee may approve specific deviations to said setback requirements which it believes to be beneficial to a specific homesite or to adjacent homesite.

(iv) Lots contiguous to U. S. Highway 11 shall not be permitted to directly access said Highway from the Lot, but must use the dedicated road as depicted on the Subdivision Plat for access.

(c) Tree Removal. No trees, of any kind, may be removed without the written approval of the Architectural Review Committee. Approval for the removal of trees located within the main dwelling or accessory building or within ten (10) feet of the approved site for such building will be granted unless such removal will substantially decrease the beauty of the Property.

(d) Mailboxes. The design and placement of all mail boxes must be approved in advance by the Architectural Review Committee.

(e) Outbuildings. Lots in excess of five (5) acres may have one (1) outbuilding for storage of farm equipment, provided said outbuilding is not visible from the street or from adjacent lots. Building plans for the outbuilding must be approved by the Architectural Review Committee prior to construction.

(f) Prior Written Approval Required. Except for the purposes of proper maintenance and repair, no improvement, including, but not limited to, buildings, fences, walls or other structures, and no exterior addition, change or alteration to any improvement, including any change or alteration of color, shall be commenced, erected, constructed, placed, altered, moved, maintained or permitted to remain on any portion of the Property, including any Lot, until after compliance with the review process of this Paragraph 2 and approval of the Plans by the Architectural Review Committee. Any Developer or other builder, including any Owner or lessee of a Lot shall not remodel or alter existing improvements on any Lot until written approval has been granted by the Architectural Review Committee. The Developer or other builder, at its expense, shall complete and submit to the Architectural Review Committee two complete sets of Plans for review by the Architectural Review Committee. The Plans shall provide for a first class structure, workmanship and materials. Specific requirements of the submittals shall be established by the Architectural Review Committee.

2.04. Disclaimer. The Board of Directors, the Architectural Review Committee, each director and each officer of the Association, each member of the Architectural Review Committee and the Association and, if applicable, the Declarant shall not be liable to any Owner 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 public authorities, whether given, granted or withheld. No approval of Plans and no publication of architectural standards or bulletins shall be construed either to represent, guarantee or imply that such Plans or architectural standards will result in a properly designed Dwelling or other improvement, or to represent, guarantee or imply that any Dwelling or other structure or improvement will be built or constructed in a good, workmanlike manner. Approval of any particular Plans shall not be construed as a waiver of the right of the Architectural Review Committee to disapprove all of any portion of the Plans if such Plans are subsequently submitted for use in any other instance.

2.05. Rules and Regulations. Upon the recommendation of the Architectural Review Committee, from time to time the Board of Directors may (i) adopt and promulgate such rules and regulations regarding

the construction or alteration of any structure or improvement and the form and content of Plans to be submitted to the Architectural Review Committee for review and approval or disapproval, and (ii) publish and/or file for record such statements of policy, standards, guidelines, and establish such criteria relating to architectural styles or details, colors, size, set-backs, materials or other matters relating to architectural control, protection of the environment, including the use and application of fertilizers, pesticides and other chemicals, and the preservation of such aesthetic values and characteristics and amenities, as may be considered necessary and appropriate. No such rules, regulations, statements or criteria shall be construed as a waiver of any provision of this Paragraph 2 or any other provision of requirement of this Declaration.

2.06. Limitations. Construction in accordance with approved Plans shall be commenced within six months after approval, whether by affirmative action or by forbearance from action, and shall be substantially completed either within six months after construction commences, or within such other period as the Architectural Review Committee shall specify in the approval of the Plans. If construction is not commenced or is not completed as required in this Paragraph 2.06, then approval of the Plans shall be conclusively deemed to have lapsed and compliance with the provisions of this Paragraph 2 shall be required again.

3. EASEMENTS

3.01. Utility Easements. The Declarant, the Association, and each utility providing service to the Property shall have and is granted or reserved non-exclusive easements and rights-of-way in through, across, on, over and under the portions of the Property which are not improved with Dwellings, buildings or other structures, including full rights of ingress and egress, for the installation, operation, use, maintenance, repair and removal of utilities and drainage facilities and floodway easements located in utility or drainage easements, which easements are hereby reserved and established along the rear and street boundary lines of all Lots, said easements being fifteen feet (15') in width, and/or as shown and designated on a Plat, and the right to remove any obstruction in any utility or drainage easement which may interfere either with the use of any utility or drainage easement or with the installation, operation, use, maintenance, repair and removal of such utility or drainage facility.

The Declarant shall have non-exclusive easements and rights-of-way in, through, across, on, over and under the portion of the Common Areas which is not improved with the buildings or structures to store building supplies and materials, install, construct, maintain, reconstruct and repair sewers, water pipes, irrigation pipes, electrical wires or cables, telephone wires or cables, gas lines, storm drains, television cables, underground conduits, and any related improvements or appurtenances and for all other purposes reasonably related to the completion of construction, and the provision of public or private utility services to any portion of the Property. Any and all conveyance documents from the Declarant to the Association with respect to the Common Areas and Common Areas shall be conclusively deemed to incorporate the provisions of this Paragraph 3.01, whether or not specifically contained in such conveyance documents or assignments. At the Declarant's request, the Association shall from time to time acknowledge, and deliver to the Declarant such documents the Declarant considers it necessary to implement the provisions of this Paragraph 3.01.

The reservation and rights in this Paragraph 3.01 expressly include the right to (i) cut any trees, bushes, or shrubbery, (ii) make any gradings of the soil, and (iii) take any other similar action reasonably necessary to provide economical and safe utility and drainage facility installment, repair and maintenance and to maintain reasonable standards of health, safety and appearance.

3.02. Damage from Ingress and Egress. Any entry by the Declarant, the Association, or any utility upon any Lot for the purposes permitted or contemplated by this Paragraph 3 shall be made with as little inconvenience to the Owner as reasonably practical, and all physical damage to any Lot or improvement on a Lot resulting from or caused by such entry shall be promptly repaired and restored. Said repairs will be at the expense of the party causing the damage.

3.03 Walkway Easements. Declarant hereby creates for the Owners of all Lots, a perpetual non-exclusive easement for pedestrian traffic over and across the walkway as shown by the Plat of Apple South Subdivision, Phase I and any Plat of any portion of the Additional Property annexed to this Declaration as herein provided.

4. USE AND OTHER RESTRICTIONS AND REQUIREMENTS

4.01. Use of Lots and Dwellings. Except (i) for the activities of a Developer or other builder during the construction and development of a Lot or the Common Areas (ii) for activities and uses expressly permitted and not substantially inconsistent with the provisions of this Declaration (iii) as may be necessary or appropriate in connection with reasonable and necessary repairs or maintenance to any Dwelling or other improvements on a Lot, the Common Areas and (iv) as permitted by Paragraph 4.03, each Lot and Dwelling shall be used for residential purposes only, and no trade and business of any kind or nature may be conducted on or in such Lot or Dwelling. The use of a portion of a Dwelling as an office by the Owner or his tenant shall not be considered to be a violation of this Paragraph 4.01 if such use does not create regular or continual customer, client, or employee traffic. In no event shall any Lot or Dwelling or other improvements on a Lot be used as a storage area for any building contractor or real estate developer, except as specifically permitted by this Declaration.

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

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

4.04. Easement Interference. No structure, planting or other material shall be placed or permitted to remain upon any Lot which may damage or interfere with any easement for the installation or maintenance

of utilities, or which may unreasonably change, diminish, obstruct, or retard the direction of flow of surface water runoff in any drainage easement, swale or channel.

4.05. Reconstruction after Fire or Other Casualty Loss. If a Dwelling is partially or completely destroyed by fire or other casualty, the Owner of such Dwelling shall promptly clear the Lot or restore or reconstruct such Dwelling, at his own expense, in accordance with the original Plans or as otherwise approved by the Architectural Review Committee in accordance with the procedure for obtaining such approval as provided in Paragraph 2 hereof.

4.06. Vacant Lot Maintenance. Each owner shall be responsible for the proper seeding, fertilization, watering, mowing, removal of litter and maintenance of such Owner's Lot (s) which is undeveloped (including that portion of the street right of way adjacent to the front lot line and extending to the curb of the paved street in front of such Lot). If fill is placed on the Lot and the construction of the improvements is not promptly commenced and completed, then the Owner will be required to maintain such Lot. In the event an owner fails to maintain such owner's Lot, the Association is authorized to cut the grass and perform such maintenance upon the Lot as it deems prudent under the circumstances and may assess the Lot and the owner thereof at a rate of not less than $200.00 for each cutting up to twelve (12) cuttings per year and for all cost and expense thereof as provided in Paragraph 7.04(b) hereof.

4.07. Signs. Except as may be required by legal proceedings, no signs, advertising or ornaments of any kind shall be placed, maintained or permitted on a Lot or within any windows or on the exterior of any Dwelling or other structure located on any Lot by any Person, including the Owner, without the approval of the Declarant and/or the Architectural Review Committee. The approval of any signs and posters, including name and address signs, shall be upon such conditions the Declarant and/or the Architectural Review Committee shall determine from time to time, and approval may be arbitrarily withheld. Any approved sign or advertising device, except for the entrance sign, shall only contain one name and/or one number plate which shall not exceed 450 square inches, and, if advertising the Lot or Leasehold Interest and/or Dwelling "for sale" or "for lease," such sign shall not exceed six (6) square feet in area and shall be subject to the Architectural Review Committee's right to restrict color and content. The restrictions of this Paragraph 4.07 shall not apply to the Declarant. The Board of Directors shall have the right to erect reasonable and appropriate signs on any portion of the Common Areas and Common Facilities and within easement areas established by this Declaration.

4.08. Lot Division and Addition. No residential lot, except as provided in Paragraph 12 hereof, shall be further subdivided and no more than one single-family dwelling shall be constructed or permitted on each lot. It is important that the visual appearance and street scape quality not be altered by decreasing the density of residential units in Apple South. Any such changes as might occur by placing one house on two residential lots must be approved by the Declarant until all Declarant's lots are sold and thereafter by the Board of Directors and the Architectural Review Committee.

4.09. Signage, Antenna, etc. No Owner or occupant of any residential lot may allow anything to be hung from windows or displayed from the outside wall of any residence other than the American Flag, plants, or similar items. No sign, basketball goal, radio, or television antenna or dish, except small antenna or dish less than twenty four inches (24") in diameter, the size, shape and location of which shall have been approved by the Architectural Review Committee, may be affixed to an exterior wall or roof of any structure, or permanently mounted in the yard. Each residence may contain a built-in concealed T.V., antenna or cable system if desired. Except as permitted in Paragraph 4.07, no "For Rent" signs may be displayed by individual

owners or their agents. The location, size and material of any free standing basketball goal must be approved by the Architectural Review Committee.

4.10 Exterior Appearances. (a) Except for maintenance areas within the Common Areas and those fences erected by Declarant or the Association, no chainlink fences shall be permitted within the development unless approved by the Architect Review Committee.

(b) No foil, sunscreens, or other reflective materials shall be permitted.

(c) When not in use, all garage doors shall be kept closed.

(d) No projections of any type shall be placed or permitted above the roof of any improvement except approved chimneys, vents, small antenna or dish as described in Paragraph 4.09 above and such other objects as may be approved by the Architectural Review Committee.

(e) No clothes line shall be constructed or placed on any Lot.

(f) Each Property Owner shall provide a screened area to serve as a service yard and an area in which garbage receptacles or similar storage receptacles, electric and gas meters, air conditioning equipment and other unsightly objects must be placed or stored in order to conceal them from view from the road and adjacent properties. Plans for such screened area delineating the size, design, texture, appearance and location must be approved by the Architectural Review Committee prior to construction. Garbage receptacles may be located outside of such screened areas only if located underground.

(g) No above ground swimming pools shall be allowed, placed or constructed upon any Lot.

(h) No flag, flagpole, fence, or any other or similar type of structure or improvement shall be allowed on any Lot without the prior written approval of the Architectural Review Committee. If said structure or improvement is so allowed by the Architectural Review Committee, the Architectural Review Committee may impose certain requirements as to the location, size and material of any such improvement.

4.11. Pets. No animals, livestock or poultry of any kind, shall be raised, bred, kept, staked or pastured on any Lot or on portion of the Common Areas, except dogs, cats, birds or other household pets for non-commercial purposes and which are kept in Dwellings and are not a source of annoyance or a nuisance to the Property or any Member. The Board of Directors shall have the right, but not the obligation, to prohibit or bar certain dogs or breeds of dogs or other household pets from any Lot or Dwelling or other structure on the Lot or any portion of the Property. Pets shall be attended at all times and shall be registered, licensed and inoculated as required by law. Pets shall not be permitted upon the Common Areas unless accompanied by an adult individual and either carried or leashed. The Board of Directors shall have the right to adopt such additional rules and regulations regarding pets from time to time as considered necessary or appropriate, including more restrictive "leash" regulations.

4.12. Vehicle Use and Storage. 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. Inoperative motor vehicles are strictly prohibited from the subdivision except for emergency situations. Off-street parking, adequate to accommodate the parking needs of the Owner and Occupants shall be provided by the Owner of each lot. The intent of this provision is to eliminate the need for any on-street

parking; provided, however, that nothing herein shall be deemed to prohibit short-term on-street parking of employees' or visitors' vehicles.

No motor vehicle may be repaired (except for emergency repairs) on any lot, street, or Common Areas within the subdivision except where such repairs are made on a vehicle owned by an Owner and are done within such Owner's enclosed garage or in an area screened from public view.

4.13. Mobile Homes and Trailers. No house trailer or mobile home shall be admitted in Apple South at any time, whether used for residential purposes or not.

4.14 Unsightly Conditions And Nuisances. It shall be the responsibility of each Property Owner and tenants thereof to prevent the development of any unclean, unsightly or unkempt conditions of buildings or grounds on the Property which shall tend to substantially decrease the beauty of the community as a whole or as a specific area. No rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of the Property. Nor shall any nuisance or odors be permitted to operate upon or arise from the Property, so as to render any portion thereof unsanitary, unsightly, offensive or detrimental to persons using or occupying any other portions of the Property. Noxious or offensive activities shall not be carried on in any Lot, Dwelling or any part of the Common Areas, and each Owner, his family, tenants, invitees, guests, servants and agents shall refrain from any act or use of a Lot, dwelling or the Common Areas which would cause disorderly, unsightly or unkempt conditions or which would cause embarrassment, discomfort, annoyance or nuisance to the occupants of other portions of the Property or which would result in a cancellation of any insurance from any portion of the Property or which would be in violation of any law, governmental code or regulation. Without limiting the generality of the foregoing conditions, no exterior speakers, horns, whistles, bells, or other sound devices except security and fire alarm devices used exclusively for such purposes shall be located, used, or placed within the Property and discharge of firearms, pellet guns and fireworks is expressly forbidden. Any Owner, or his family, tenants, guests, invitees, servants, or agents, who dumps or places any trash or debris upon any portion of the Property shall be liable to the Association for the actual costs of removal thereof or the sum of $150.00, whichever is greater, and any sum shall be added to and become a part of that portion of the assessment next becoming due to which the Owner and his Lot are subject.

4.15. Lights. The design and location of landscape lighting fixtures shall be subject to the approval of the Architectural Review Committee. Neither these nor any other illumination devices, including but not limited to Christmas ornaments, shall be located anywhere on the structure or grounds of any Lot in such a manner as to adversely illuminate or affect the nighttime environment of any adjoining Property.

4.16 Certain Construction Rights. The Declarant expressly reserves to itself, its successors in title, and assigns and any other provisions of this Declaration notwithstanding, the right to build bridges, walkways, or expanse across any natural or man made canals, creeks, walking trails, paths, or lagoons in the Property. Nothing in this paragraph shall be construed as placing an affirmative obligation to the Declarant to provide or construct any such improvement.

4.17 Certain Controls. (a) To implement effective insect, reptile, and fire ant control, and vegetation and trash control, the Declarant or the Association, and their heirs, successors, assigns and agents, have the right to enter upon any property on which a building or structure has not been constructed and upon which no landscaping plan has been implemented for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth, removing trash or dispensing pesticides on all such property

which in the opinion of the Declarant or the Architectural Review Committee distracts from the overall beauty, setting and safety of the Property. The cost of this vegetation and trash control shall be kept as low as reasonably possible and shall be paid by the respective Property Owner. Such entry shall not be made until thirty (30) days after such Property Owner has been notified in writing for the need of such work and unless such Property Owner fails to perform the work within said thirty (30) day period.

(b) The provisions of this paragraph shall not be construed as an obligation on the part of the Declarant or the Association to mow, clear, cut or prune any property, to provide garbage or trash removal services to perform any grading or landscaping work, construct or maintain erosion prevention devices, or to provide water pollution control on any privately owned property.

(c) Entrance upon Property pursuant to the provisions of this Paragraph 4.17 shall not be deemed trespass. The rights reserved unto the Declarant and the Association in this paragraph shall not be unreasonably employed and shall be used only where necessary to effect the stated intents and purpose of this Declaration.

5. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

5.01. Membership. The Members of the Association shall be and consist of every Person who is or who becomes, an owner of record of the fee title to a Lot and is included in the definition of an Owner under Paragraph 13. When more than one Person owns or holds an interest or interests in a Lot, then all such Persons shall be Members.

5.02. Action by Members. The Association shall have two classes of voting Members. Class A members shall consist of all members, except the Declarant, and Class B members, which shall be the Declarant. Whenever any provision of this Declaration requires a vote of a specified percentage of the voting power of each class of Members, then such provision shall require a separate vote by the specified percentage of the voting power of the Class A Members and by the specified percentage of the voting power of the Class B Members. Whenever any provision of this Declaration requires a vote of a specified percentage of the voting power of the Members, then such provision shall require a vote by the specified percentage of the combined voting power of all Members.

5.03. Members' Voting Rights. Except as otherwise specifically provided in the Charter or the Bylaws, the voting rights of the Members shall be as follows:

(a) Whenever a vote of the Class A Members is required or permitted under this Declaration, the aggregate voting power of all Class A Members shall be equal to the aggregate number of Lots owned by all Class A Members. Class A Members shall be entitled to one vote for each Lot owned by such Class A Members. When more than one Member owns or otherwise holds an interest or interests in a Lot, then the one vote for such Lot shall be exercised as such Members shall determine, but in no event shall more than one vote be cast with respect to any Lot.

(b) The Class B Members shall be the Declarant who shall be entitled to four (4) votes for each Lot owned by the Declarant. The Class B Membership shall cease and be converted to Class A Membership on the happening of either of the following events, whichever occurs earlier: (a) when the total votes

outstanding in the Class A Membership equal the total votes outstanding in the Class B Membership, or (b) on June 1, 2010.

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

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

5.06. Termination and Reinstatement of Class B Members. If on any one or more occasions all Class B memberships should terminate, and if after any such termination the Declarant, by annexation to the Property in accordance with the Declaration, should add additional property to the Property theretofore subject to the Declaration, then on each such occasion the status of the Declarant as a Class B Member shall be fully reinstated, and following each such occasion, the Declarant, or the nominee or nominees, if any, of the Declarant, shall continue to be Class B Members until such time as the total votes outstanding of Class A and Class B Members resulting from the newly added property has been equalized. At such time, the Class B membership resulting from such addition shall cease and be converted to Class A memberships. Following each such reinstatement of the 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.

5.07. Other Voting Provisions. The Charter and/or the Bylaws contain other provisions relating to voting rights of Members with respect to matters or issues unrelated to this Declaration, including, but not limited to, the election of individuals to the Board of Directors.

6. BOARD OF DIRECTORS AND OFFICERS OF THE ASSOCIATION.

6.01. Board of Directors. The Association and the affairs of the Association shall be managed and controlled by the Board of Directors which shall have all the power, authority and duty necessary or appropriate for such management and control. The Board of Directors shall consist of five individuals or such greater number of individuals, not to exceed nine, as may be prescribed in the Bylaws from time to time. Directors are not required to be Members, and shall be appointed by the Declarant or elected by the Members in the manner prescribed in the Bylaws.

6.02. Officers. The Association shall have such officers as are prescribed by the Bylaws. The officers shall conduct affairs of the Association and implement the policies and decisions of the Board of Directors.

7. ASSESSMENTS

7.01. Covenants For Assessments. Each owner by acceptance of a Deed or other conveyance document for such lot, whether or not expressed in any such Deed or other conveyance document shall be deemed to covenant and agree to pay to the Association any maintenance or special assessments which shall be levied by the Association. Each such assessment shall be a charge on the land, and shall be a continuing lien upon each and the personal obligation of the Person who is the owner of the such lot at the time the assessment fell due. No Class A member may become exempt from or otherwise avoid liability for the payment of any assessment by the abandonment of any lot or by the abandonment or release of the member's rights to use, benefit and enjoy the Common Area and/or Common Facilities. The Association acting by and through its Board of Directors shall have the right to levy all assessments described in this Paragraph 7.

7.02. Maintenance Assessments. Except as permitted by Paragraph 7.07, any maintenance Assessments levied by the Association shall be used exclusively (i) to promote the health, safety and welfare of the residents of the Property, including the improvement, maintenance and repair of the Common Areas and/or Common Facilities and (ii) to pay the cost of labor, the purchase or rental of equipment and materials used or required for, and the management, care and supervision of, the Common Areas and/or Common Facilities. The purposes for which the maintenance Assessments may be levied include, but are not limited to, the following purposes:

(a) The amount of all operating expenses of or for the Common Areas and/or Common Facilities and the services furnished or provided to or in connection with the Common Areas and/or Common Facilities, including charges for any services furnished or provided by the Association.

(b) The costs of appropriate or necessary management and administration of the Common Areas.

(c) The amount of all taxes and assessments levied against for the Common Areas.

(d) The costs of fire and extended coverage and liability insurance on the Common Areas and/or Common Facilities and the Association's other assets and the costs of such other insurance with respect to the Common Areas and/or Common Facilities and the Association's other assets and affairs as the Board of Directors considers appropriate.

(e) The costs to maintain, replace, repair and landscape the Common Areas, including but not limited to, the costs (i) to maintain, replace and repair the walking tract, the islands in Apple South Boulevard and such other facilities and improvements as may be added by he Declarant, if any, and (ii) of such equipment as the Board of Directors shall determine to be necessary or appropriate in connection with such maintenance, replacement, repair and landscaping.

(f) The costs to fund all reserves established by the Association, including any appropriate general operating reserve and/or reserve for replacement of assets.

7.03. Annual Maintenance Assessment. Prior to the first day of January in each year the Board of Directors shall adopt a budget estimated by the Board of Directors to be sufficient to meet the cost and expenses described in Paragraph 7.02 hereof and shall fix and levy the Annual Maintenance Assessment at an amount sufficient to meet the budget adopted by the Board of Directors, provided however:

(a) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Five Hundred Dollars ($500.00) per Lot.

(b) From and after January 1 of the year immediately following the conveyance of the fist Lot to an Owner, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.

(c) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 5% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(d) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

7.04. Special Assessments. In addition to the maintenance Assessments authorized in Paragraph 7.01, the Association may levy special Assessments as follows:

(a) In any fiscal year the Association may levy a special Assessment applicable only to that fiscal year (i) for the purpose of paying all or a portion of the costs of any construction, reconstruction, replacement or inordinate repair or maintenance of improvements on the Common Areas, including the fixtures and personal property on or related to the Common Areas and/or Common Facilities, or (ii) for such other purposes as the Board of Directors may consider to be appropriate. Any such Assessment under the provisions of this Paragraph 7.04 (a) shall be approved by a vote of two-thirds of the voting power of each class of the Members.

(b) The Association may levy a special assessment against any Lot and the Owners of any Lot for reimbursement (i) of or for repairs occasioned by the willful or negligent acts of the Owners of such Lot, or (ii) of or for any and all costs, expenses and expenditures made or incurred by the Association with respect to either such Lot, including work or activities performed on such Lot, including, but not limited to, any work required in maintaining and/or mowing any such Lot prior to the construction of a residential dwelling on such Lot pursuant to the provisions of this Declaration, including the discharge or satisfaction of any obligation or duty imposed on such Owners under this Declaration. Any such Assessment under the provisions of this Paragraph 7.04 (b) shall be approved by a majority vote of the Board of Directors of the Association.

7.05. Dwelling and Lawn Maintenance. Generally, this Declaration does not contemplate that the Association shall have any responsibility for the maintenance or repair of any Dwelling or its appurtenances or the maintenance and care of lawn, garden and landscaped areas on any Lot. The Association shall have the responsibility and duty only for the maintenance, repair and care of the Common Areas and Facilities.

7.06. Assessments Are Not Dues. No portion of the annual maintenance and special Assessments provided in or permitted by this Paragraph 7 are intended to be, or shall be construed to be, dues for membership in the Association.

7.07. Meetings to Approve Assessments. If the consent or approval of any class of the Members is required for any action under this Paragraph 7 then the Board of Directors shall call a meeting of the

Members pursuant to the Bylaws for the purpose of considering the consent or approval for such action. All Assessments requiring the consent or approval of the Members must be approved by a vote of two-thirds of the voting power of each class of the Members.

7.08. Uniform Rate for Assessments. All Assessments shall be levied at a uniform rate for each Lot to which Class A membership is appurtenant, except special Assessments under Paragraph 7.04(b). The Board of Directors may change or modify the pro rata obligations of any Lot or the Owners of such Lot for the purposes of levying Assessments, except special Assessments under Paragraph 7.04(b), only if approved by at least two-thirds of the voting power of each class of the Members.

7.09. Commencement of Annual Maintenance Assessment. The annual Assessment provided for herein shall commence as to all lots, except lots owned by the Declarant, on the first day of the month following the conveyance of any of the Common Area to the Association. The first annual Assessment shall be prorated according to the number of months remaining in the calendar year. Payment of such Assessments will be made in advance in monthly, quarterly, semi-annually or annual installments with the due dates being established by the Board of Directors. The Association shall not collect any Assessments from any Member prior to the date of the conveyance of any portion of the Common Area to the Association.

7.10. Assessment of Declarant. Unless required as a matter of law or as otherwise set forth in this Paragraph 7, Declarant shall not, at any time, be subject to the Annual Maintenance Assessment; however, the Declarant hereby agrees that until such time as Declarant ceases to be a Class B member, Declarant will pay to the Association any deficit amounts not covered by the income of the Association which are reasonably necessary to maintain the Common Area and the Lots in a neat, attractive condition. In determining whether such a deficit exists, paper expenses, such as depreciation, shall not be taken into consideration. Any such deficit amount required to be paid by Declarant shall be treated as an Assessment and subject to the provisions of Paragraph 8; provided however, any lien for such an Assessment shall apply only to those Lots owned by the Declarant which are subject to this Declaration and the amount thereof shall be divided equally among all such Lots; and, provided further, that in no event shall the Declarant be required to pay any amounts, specifically including any deficit amount, which would exceed an amount equal to the number of Lots owned by the Declarant and subject to the Declaration at the time Declarant becomes responsible for payment, or the time the deficit is incurred (for purposes of this proviso, "the time the deficit is incurred" means the time in which the expense creating such deficit becomes a binding obligation upon the Association). In addition, and notwithstanding anything to the contrary herein, the Declarant may contribute assessments due from it in services or materials or a combination of services and materials, rather than in money (herein collectively called "in kind contribution"). The amount by which monetary assessments shall be decreased as a result of any in-kind contribution shall be the fair market value of the contribution reasonably determined by the Declarant.

7.11. Exempt Property. No Assessments of any kind or nature shall be levied by the Association against (i) any portion of the Streets and other real property and improvements dedicated and accepted by the local public authority and devoted to public use, (ii) all areas unplatted or reserved for future development by this Declaration of the Plat of the Property, (iii) the Common Areas or Common Facilities.

7.12. Equitable Adjustments. If a Supplement is filed for record which annexes additional property to the property and specifies that a greater or lesser level of use, benefit or enjoyment of the common area or of services shall be available or provided by the Association with respect to any portion of the annexed

additional property, then the supplement may provide a different method or basis for the establishment, determination and calculation of the annual maintenance or special assessments under Paragraph 7.02, Paragraph 7.04 or Paragraph 7.05 with respect to such annexed additional property. In such event, the Association shall have the authority and the duty to make equitable adjustments in and to the procedures described in this Paragraph 7 for the establishment, determination and calculation of the annual maintenance and special assessments to reflect any such different level of use, benefit and enjoyment of the common area or services available or provided by the Association.

8. ENFORCEMENT OF ASSESSMENTS

8.01. Lien of Assessments. Each Assessment with respect to or against a Lot plus such additional amounts as are specified in Paragraph 8.03 shall be (i) a charge on the land, (ii) a continuing lien upon and against the Lot, (iii) binding upon such Lot, and (iv) the continuing joint and several personal obligation and liability of each Person who was an Owner of such Lot when any portion of the Assessment became due and payable, their heirs, devisees, personal representatives, successors and assigns, which shall not be extinguished or diminished by any transfer or conveyance of any Lot.

The personal obligation of each Member to pay all Assessments levied against his Lot shall continue for the full statutory period permitted by law, and a suit to recover a monetary judgment for the non-payment of all or any portion of any Assessment, including any installment, may be commenced and maintained by the Association without the foreclosure or waiver of any lien created under this Declaration to secure the payment of the Assessment. Any judgment may include all amounts specified in Paragraph 8.03. The Association may commence and maintain an action at law against any Member personally obligated or liable to pay any Assessment and/or may foreclose the lien against any Lot in the manner now or hereafter provided in the State of Mississippi for foreclosure of mortgages and other liens on real property containing a power of sale provision. Any such foreclosure by the Association shall be subject to the substantive and procedural requirements prescribed by the laws of the State of Mississippi applicable to the foreclosure of mortgages and other liens on real property containing the power of sale provision.

The Association shall have the right to reject partial payments of an Assessment and to demand the full payment of such Assessment. The lien for unpaid Assessments shall be unaffected by any sale or other transfer or conveyance of the Lot subject to the Assessments, and the lien shall continue in full force and effect. No Member may waive or otherwise avoid or escape personal liability for payment of any Assessment by abandonment of his Lot or by abandonment or release of the Member's rights to the use, benefit and enjoyment of the Common Areas and Facilities.

8.02. Assessment Certificate. Upon five days notice, the Board of Directors shall furnish a certificate signed by an Association officer to any Member liable for the payment of any Assessment or to any other Person having legitimate interest in the payment of such Assessment stating whether or not the Assessment has been paid. The certificate shall be conclusive evidence of the payment of any Assessment stated to have been paid in the certificate. The Board of Directors may require the payment of reasonable charge for the issuance of a certificate.

8.03. Amount of Lien. Upon the default by any Owner of any Lot in the payment of any installment of an Assessment, the entire unpaid balance of all Assessments against the Lot and the Owners of the Lot

the holder of the First Mortgage in possession or the purchaser or assignee at foreclosure or the transferee under any deed, assignment or other proceeding or arrangement in lieu of foreclosure, from any liability for

shall immediately be and become due and payable, unless the Board of Directors shall otherwise direct. In addition to the amount of the unpaid annual maintenance and special Assessments, the following amount shall be considered to be special Assessments against the Lot and the Owners of such Lot and shall be subject to the lien of Assessments provided under Paragraph 8.01:

(a) All reasonable costs and expenses of collection incurred or paid by the Association, including attorneys' fees, court costs and other costs and expenses relating to the collection or enforcement of the lien of Assessments.

(b) Such late payment charges or fees as shall be established by the Board of Directors from time to time.

(c) Such Association overhead charges as shall be established by the Board of Directors from time to time to reimburse or compensate the Association for overhead or indirect costs and expenses incurred to collect unpaid Assessments or to perform or satisfy any obligation or duty imposed upon such Owners under this Declaration.

(d) Interest on or with respect to all amounts specified in this Paragraph 8.03, including the unpaid balance of all Assessments, and such interest shall accrue from the due date until the payment of each such amount until paid in full at the maximum rate of interest permitted by law in the State of Mississippi on loans to the Owners from Persons similar to the Association.

8.04. Priority of Lien. The lien to secure payment of an Assessment against a Lot shall have preference over any other liens, assessments, judgments or charges of whatever nature, except (i) general and special assessments for ad valorem property taxes on or against such Lot, (ii) the lien of any First Mortgage on such Lot made in good faith and for value received and duly recorded prior to the Assessment creating the lien against the Lot, or duly recorded after receipt of a certificate under Paragraph 8.02 stating that payment of the Assessment was current as of the date the First Mortgage was filed for record.

8.05. Subordination to Mortgages. As provided by Paragraph 8.04, the lien against any Lot to secure payment of any Assessment shall be subordinate to the lien of any duly recorded First Mortgage on or against the Lot made in good faith and for value received, and shall not affect the rights of the holder of any First Mortgage. However, the lien shall be subordinate only to Assessments which have become due and payable prior to the sale or other transfer of or conveyance of the Lot pursuant to a foreclosure of any such First Mortgage, or prior to the execution of any deed, assignment or other proceeding or arrangement in lieu of foreclosure. Any such holder of a First Mortgage who acquires possession of such Lot pursuant to a foreclosure or pursuant to the execution of any deed, assignment or other proceeding or arrangement in lieu of foreclosure, and any purchaser or assignee at a foreclosure sale or any transferee under any deed, assignment or other proceeding or arrangement in lieu of foreclosure, shall acquire the Lot free of any claims for unpaid Assessments levied against the Lot which accrued prior to the time such holder acquires possession of the Lot, or prior to foreclosure sale or prior to the execution of any deed, assignment or other proceeding or arrangement in lieu of foreclosure, except for claims for a proportionate share of such unpaid Assessments resulting from a reallocation of such unpaid Assessments among the various Lots. However, such foreclosure, deed, assignment or other proceeding or arrangement in lieu of foreclosure shall not relieve the holder of the First Mortgage in possession or the purchaser or assignee at foreclosure or the transferee under any deed, assignment or other proceeding or arrangement in lieu of foreclosure, from any liability for

payment of any Assessments thereafter becoming due, or from the lien created to secure the payment of such Assessments, and the lien for the payment of such Assessments thereafter becoming due and payable shall have the same effect and shall be enforced in the same manner as provided in this Paragraph 8.

No amendment to this Paragraph 8.05 shall adversely affect the rights of the holder of any First Mortgage on any Lot filed for record prior to the amendment being filed for record of the holder or any indebtedness secured by such First Mortgage, unless such holders execute, approve or consent to the amendment.

In its sole and absolute discretion, the Board of Directors may extend the provisions of this Paragraph 8.05 to Mortgagees not otherwise entitled to the benefits of this Paragraph 8.05.

8.06. Additional Default. Any First Mortgage encumbering a Lot shall provide that any default by the mortgagor in the payment of any Assessment or any installment of an Assessment shall be a default under the First Mortgage. The failure to include such a provision in any First Mortgage shall not affect the validity or priority of the First Mortgage, and the protection extended by Paragraph 8.04 and Paragraph 8.05 to the holder of the First Mortgage or the holder of the indebtedness secured by the First Mortgage shall not be altered, modified or diminished by reason of or as result of such failure.

9. PROPERTY RIGHTS

9.01. Member's Easements of Enjoyment. Every Member shall have a right and easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot, subject to the rights of the Association as described in the Bylaws.

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

10. ENFORCEMENT OF DECLARATION

10.01. Compliance. 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, the provisions of this Declaration. If any structure or other improvement located on any portion of the Property, including any Lot, violates any provision of this Declaration, then the Declarant and/or the Association, jointly or severally, shall have the right, but not the obligation, to enter upon any portion of the Property, including any Lot, to abate or remove such structure or other improvement at the cost and expense of the Owners of the Lot where such structure or improvement is located or who otherwise causes such violation, if the violation is not corrected by such Owners within 30 days after written notice of such violation. Any Person entitled to file or maintain a legal action or proceeding for the actual or threatened violation or breach of this Declaration shall be entitled to recover attorney's fees and other costs and expenses attributable to such action or proceeding, and the Association shall be entitled to recover and receive any other amounts specified in Paragraph 8.03. Any such entry and abatement or removal shall not be or be deemed to be a trespass. The failure by any Person for any period of time to enforce any provision of this Declaration shall not be or be

deemed a waiver of the right to enforce or otherwise bar or affect the enforcement of any and all provisions of this Declaration at any time, including any future time.

10.02. Enforcement. This Declaration shall be enforced by any appropriate proceeding at law or in equity (i) against any Person who breaches or violates or threatens to breach or violate any provision of this Declaration, (ii) to recover damages for any such breach or violation, (iii) to collect any amounts payable by any Owner to the Association under this Declaration, including Assessments, attorneys' fees, costs of collection, late charges, overhead charges or other amounts incurred by the Association to perform or discharge any obligation or duty of an Owner under this Declaration or otherwise specified in this Declaration, including Paragraph 8.03, and (iv) to enforce any lien created by this Declaration. There is hereby created and declared to be a conclusive presumption that any actual or threatened violation or breach of this Declaration cannot be adequately remedied by an action at law exclusively for recovery of monetary damages. The Declarant, the Association and each Owner by acceptance of a deed or other document to a Lot waives and agrees not to assert any claim or defense that injunctive relief or other equitable relief is not an appropriate remedy.

11. GENERAL PROVISIONS

11.01. Duration. This Declaration shall run with and bind the land subject to this Declaration, and shall inure to the benefit of and be enforceable by the Declarant, the Association and the Owners of any land subject to this Declaration, their respective legal representatives, heirs, devisees, successors and assigns, until January 1, 2044. After such date this Declaration shall be automatically extended for successive periods of ten years unless a Supplement signed by a majority of the Owners has been properly filed for record to abolish or terminate all or a substantial portion of this Declaration at least thirty days prior to the effective date of such abolishment or termination.

11.02. Amendments. Notwithstanding Paragraph 11.01, this Declaration may be amended, modified and/or changed either (i) by the Declarant properly filing for record a Supplement prior to January 1, 2006 or (ii) by a Supplement properly filed for record and executed by the Declarant and the owners of at least 51% of the Lots if amended, modified and/or changed while Declarant still owns any of the Property or Additional Property, and thereafter by the Owners of at least fifty-one percent (51%) of the Lots.

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

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

11.05. 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.

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

11.07. Successors of Declarant. All or any portion of any and all rights, reservations, easements, interests, exemptions, privileges and powers of the Declarant under this Declaration may be assigned and transferred exclusively by the Declarant with or without notice to the Association.

11.08. Incorporation by Reference on Resale. In the event any Owner sells of otherwise transfers any Lot, any deed or assignment purporting to such transfer shall contain a provision incorporating the provisions of this Declaration by reference.

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

11.10. Consents of Eligible Mortgage Holders. The Owners, or the Board of Directors, or the Association, by any act or omission, shall not do any of the following things without the prior written consent and approval of the holders of fifty-one percent (51%) of the outstanding first mortgages who have requested notice from the Association of any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders:

(a) Abandon, partition, subdivide, encumber, sell, assign or transfer any of the Common Areas or Common Facilities, but the realignment of boundaries, the granting of rights-of-way, easements and similar rights or interests for utilities or for other purposes consistent with the use of the Common Areas by the Members of the Association shall not be considered to be such an encumbrance, sale, assignment or transfer.

(b) Abandon or terminate this Declaration.

(c) Modify or amend any material or substantive provision of this Declaration or the Bylaws pertaining to the rights of the holders of First Mortgages.

(d) Substantially modify the method of determining and collecting Assessments as provided in this Declaration.

11.11. Notice to and Rights of Eligible Mortgage Holders. The Association shall promptly notify any Eligible Mortgage Holder on any Lot for which any Assessment remains delinquent for at least 60 days, and the Association shall promptly notify the holder of the First Mortgage on any Lot for which there is default by the Owner with respect to performance of any other obligation or duty under this Declaration which remains uncured for at least 60 days following the date of such default. Any failure to give any such notice shall not affect the validity of priority of any First Mortgage on any Lot, and the protection provided in this Declaration to any Eligible Mortgage Holder on any Lot shall not be altered, modified or diminished by reason of such failure, nor shall any such failure affect the validity of the lien of any Assessment or affect any of the priorities for liens as specified in Paragraph 7.

No suit or other proceeding may be brought to foreclosure the lien for any Assessment levied pursuant to this Declaration, except after 10 days written notice to any Eligible Mortgage Holder holding a first mortgage encumbering the Lot which is the subject matter of such suit or proceeding.

Any holder of a First Mortgage of any Lot may pay any taxes, rents, utility charges or other charges levied against the Common Area which are in default and which may or have become a charge or lien against any of the Common Area and may pay any overdue premiums on any hazard or liability insurance policy, or secure new hazard or liability insurance coverage on the lapse of any policy, relating to the Common Area. Any holder of a First Mortgage who advances any such payment shall be due reimbursement of the advanced amount from the Association.

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

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

12. DECLARANT'S RIGHTS AND RESERVATIONS

No provisions in the Charter, the Bylaws, or this Declaration shall limit, and no Owner or the Association shall interfere with, the right of Declarant to subdivide or resubdivide any portions of the Property; to complete or alter improvements or refurbishments to and on the Common Areas and Common Facilities or any portion of the Property owned by Declarant, or alter the construction plans and designs, or construct such additional improvements or add future phases as Declarant deems advisable during development of the Property. Such right shall include, but shall not be limited to, the right to install and maintain such structures, displays, signs, billboards, flags and sales offices as may be reasonably necessary for the conduct of Declarant's business or completion of the work and disposition of the Lots by sale, lease or otherwise. Each Owner by accepting a deed or other conveyance document to a Lot hereby acknowledges that the activities of Declarant may temporarily or permanently constitute an inconvenience or nuisance to the Owners, and each Owner hereby consents to such inconvenience or nuisance. This Declaration shall not limit the right of the Declarant at any time prior to acquisition of title to a Lot by a purchaser from Declarant to establish on that Lot, Common Areas, additional licenses, easements, reservations and rights of way, to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Property. The Declarant need not seek or obtain Board approval of any improvement constructed or placed by Declarant on any portion of the Property. The rights of the Declarant under this Declaration may be assigned by Declarant to any successor and any interest or portion of Declarant's interest in any portion of the Property by a recorded, written assignment. Notwithstanding any other provision of this Declaration, the prior written approval of Declarant will be required before any amendment to this Paragraph 12 shall be effective while Declarant owns a Lot. Declarant shall be entitled to the nonexclusive use of the Common Area, without further cost, for access, egress, ingress, use or enjoyment, in order to show the Property to its prospective purchasers or lessees and dispose of the Property as provided herein. Each Owner hereby grants, by acceptance of the deed to such owner's Lot, an irrevocable, special power of attorney to Declarant to execute and record all documents and maps necessary to allow Declarant to exercise its rights under this Paragraph 12. This Paragraph 12 shall be applicable for so long as the Declarant owns any portion of the Property.

13. DEFINITIONS

1.01. Definitions. For all purposes of this Declaration, the following words and terms shall have the meanings assigned in this Paragraph 13.01 unless otherwise specified or the context requires a different construction.

"Additional Property" shall mean the property described on Exhibit B attached hereto and any other property situated in Section 1, Township 5 South, Range 17 West, Pearl River County, Mississippi, contiguous to said property, owned by the Declarant or its members.

"Architectural Review Committee" shall mean and refer to the committee which shall be appointed by the Declarant or Association's Board of Directors, as set forth herein, to approve exterior and structural improvements, additions, and changes within the Development as provided in Paragraph 2 hereof.

"Assessment" shall mean the share allocated to a Lot and thereby the Owners of such Lot of the Association's (i) maintenance Assessments if elected by the Board of Directors and Class A Members as described under Paragraph 7.02, (ii) Special Assessments under Paragraph 7.03, and (iii) expenses, costs, charges and other amounts incurred with respect to either such Lot or the satisfaction, discharge or compliance with any obligations or duties of the Owners of such Lot as specified in this Declaration.

"Association" shall mean the Homeowners' Association of Apple South Subdivision Phase II, Inc., a Mississippi not for profit corporation, and its successors and assigns.

"Board of Directors" shall mean the Board of Directors of the Association.

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

"Charter" means The Articles of Incorporation of the Association, as amended from time to time.

"Common Areas" shall mean all real property conveyed to the Association by the Declarant or shown and designated on the plat as Common Area and is owned by or otherwise made available to the Association for the common use, benefit and enjoyment of the members.

"Common Expense" shall mean expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations or reserves.

"Common Facilities" shall mean all the buildings and other improvements constructed on any portion of the Common Area for the common use, benefit and enjoyment of the members.

"Declarant" shall mean Robert Applewhite Phase 2, L.L.C., a Mississippi limited liability company, and its successors and assigns.

"Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for Apple South Subdivision Phase II as supplemented from time to time.

"Developer" means the Declarant and each Person who is a successor in title to or acquires a fee simple interest from the Declarant with respect to any Lot, except the Association, and with the Declarant's

permission is engaged in the business of the development, improvement and sale of any Lot, including the construction and sale of a Dwelling and related improvements or appurtenances on any lot.

"Dwelling" shall mean a fully detached residence which is designed and used as a conventional single family home, and which should be designed to maximize views, climatic conditions, and the environmental amenities of the site.

"Eligible Mortgage Holder" shall mean those holders of a First Mortgage on a Lot who have requested, in writing, the Association to notify them on any proposed action that requires the consent of a specified percentage of eligible mortgage holders or of any Assessment or installment thereof, which shall become and remain delinquent for a period in excess of sixty (60) days.

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

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

"Lot" shall mean each subdivided parcel, plot or tract of land constituting a portion of the property which is shown and designated as a numbered lot on any subdivision plat filed for record in the office of the Chancery Clerk of Pearl River County, Mississippi, and is intended to be improved with a Dwelling, but does not include the Common Areas.

"Management Agent" means the Person, if any, employed or retained by the Board of Directors for the purpose of conducting and managing the daily operations of the Association.

"Member" shall mean each Person who holds or has any class of membership in the Association as provided by Paragraph 5.

"Mortgagee" shall mean any Person who owns, holds or is the beneficiary of a mortgage, deed of trust or similar encumbrance creating a lien or encumbrance against any Lot, including, but not limited, to (i) a bank, (ii) a savings and loan association, (iii) a trust company, (iv) an insurance company, (v) a mortgage company, (vi) a trust, (vii) a mortgage insurance company, (viii) a mutual savings bank, (ix) a real estate investment trust, (x) a credit union, (xi) a pension fund, (xii) the Federal National Mortgage Association, (xiii) the Federal Home Loan Mortgage Corporation, (xiv) a recognized institutional type lender or loan correspondent, (xv) any agency or a department of The United States of America or any state, county or municipal government, (xvi) a corporation, or (xvii) an individual.

"Owner" shall mean the record holder, whether one or more Persons, of a fee or undivided fee interest in or to any Lot, including contract sellers, but excluding those Persons who hold an interest in a Lot merely as security for the performance of an obligation or payment of a debt.

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

"Plat" shall mean the subdivision map(s) or plat(s) of the Property which has been or shall be filed for record in the office of the Chancery Clerk of Pearl River County, Mississippi.

"Property" shall mean all real property situated in Pearl River County, Mississippi, which is described in Exhibit A, and all additions thereto which by annexation in accordance with the terms and provisions of this Declaration are subject to the covenants and restrictions of this Declaration.

"Supplement" means any amendment, modification, change or restatement of or to this Declaration.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed by its duly authorized manager, on the date first set forth hereinabove.

Robert Applewhite Phase 2, L.L.C.

By: _____
Robert W. Applewhite

STATE OF MISSISSIPPI

COUNTY OF PEARL RIVER

PERSONALLY appeared before me, the undersigned authority in and for the said county and state, on this the 28th day of October, 2004, within my jurisdiction, the within named Robert W. Applewhite, who acknowledged that he is the Manager of Robert Applewhite Phase 2, L.L.C., a Mississippi limited liability company, and that for and on behalf of said company and as its act and deed, he executed the foregoing instrument of writing after first having been duly authorized by said company so to do.

MICHAEL E. PATTEN NOTARY PUBLIC PEARL RIVER COUNTY, MS

_____
Notary Public

My Commission Expires:

MY COMMISSION EXPIRES:
May 18, 2008

PREPARED BY:
Watkins & Eager PLLC
Post Office Box 650
Jackson, MS 392005

INDEXING INSTRUCTIONS:

A parcel of land situated in the NE1/4, NW1/4, SE1/4 and SW1/4 of Section 1, T5S, R17W, Pearl River County, Mississippi.

EXHIBIT A
THE PROPERTY

All lots and Common Area in Apple South Subdivision Phase II, a subdivision according to a map or plat on file and of record in the Office of the Chancery Clerk of Pearl River County, Mississippi.

Said property also being described as follows:

Commence at the NE corner of the NE1/4 of the NE1/4, Section 1, Township 5 South, Range 17 West, Pearl River County, Mississippi; thence North 89 degrees 04 minutes 34 seconds West, along the North boundary of said Section 1, a distance of 1332.50 feet to a found 1/2 inch iron pipe marking the NW corner of the NE1/4 of the NE1/4 of said Section 1; thence South 00 degrees 50 minutes 37 seconds West, along the West boundary of the NE1/4 of the NE1/4 of said Section 1, a distance of 651.69 feet to a set 1/2 inch rebar; thence South 89 degrees 08 minutes 56 seconds East, a distance of 302.42 feet to a set 1/2 inch rebar; thence South 05 degrees 47 minutes 27 seconds East, a distance of 428.84 feet to a set 1/2 inch rebar for the Point of Beginning; thence South 89 degrees 08 minutes 56 seconds East, a distance of 942.55 feet to a set ½ inch rebar; thence South 00 degrees 51 minutes 04 seconds West, a distance of 334.04 feet to a set ½ inch rebar; thence South 89 degrees 08 minutes 56 seconds East, a distance of 500.00 feet to a set ½ inch rebar; thence South 00 degrees 51 minutes 04 seconds West, a distance of 264.98 feet to a set ½ inch rebar; thence South 89 degrees 08 minutes 56 seconds East, a distance of 297.30 feet to a set ½ inch rebar; thence South 50 degrees 08 minutes 11 seconds East, a distance of 62.42 feet to a set ½ inch rebar; thence South 66 degrees 09 minutes 26 seconds East, a distance of 283.36 feet to a set ½ inch rebar on the Western right-of-way of State Highway 11; thence South 25 degrees 01 minutes 17 seconds West along the Western right-of-way of said State Highway 11, a distance of 829.37 feet to a found concrete marker; thence around a curve along the Western right-of-way of said State Highway 11 to the right through a chord bearing South 31 degrees 11 minutes 50 seconds West, a distance of 1233.39 feet, an arc distance of 1235.84 feet to a found concrete marker; thence South 37 degrees 30 minutes 31 seconds West along the Western right-of-way of said State Highway 11, a distance of 518.64 feet to a set ½ inch rebar; thence North 25 degrees 55 minutes 00 seconds West, a distance of 1368.75 feet to a set ½ inch rebar; thence North 00 degrees 12 minutes 02 seconds East, a distance of 242.83 feet to a set ½ inch rebar; thence North 17 degrees 43 minutes 09 seconds West, a distance of 325.01 feet to a set

1/2 inch rebar; thence North 00 degrees 08 minutes 30 seconds West, a distance of 879.23 feet to a set 1/2 inch rebar; thence North 05 degrees 47 minutes 27 seconds West, a distance of 336.30 feet to the Point of Beginning. The property contains 92.76 acres more or less and is located in the NE1/4 of the NE1/4, SE1/4 of the NE1/4, NE1/4 of the SE1/4, and the SE1/4 of the SE1/4 of said Section 1, and the NW1/4 of the SW1/4 and the SW1/4 of the NW1/4 of said Section 6.

ADDITIONAL PROPERTY

TRACT I:

Begin at NW corner of the NW¼ of NW¼ of Section 6, Township 5 South, Range 16 West, Pearl River County, Mississippi; thence South 89 degrees 08 minutes 56 seconds East along the section line of Section 31 and Section 6, a distance of 1,703.09 feet to a point located on the West right-of-way of State Highway No. 11; thence South 12 degrees 24 minutes 39 seconds West, along said right-of-way, a distance of 174.72 feet to a point; thence around a curve to the right, along said right-of-way, an arc distance of 1,211.72 feet, with a radius of 5,654.58 feet, and a chord bearing of South 18 degrees 49 minutes 52 seconds West, a distance of 1,209.40 feet to a point; thence South 25 degrees 01 minutes 17 seconds West along said right-of-way, a distance of 1,381.18 feet to a point; thence around a curve to the right along said right-of-way, an arc distance of 1,235.84 feet, with a radius of 5,654.58 feet, and a chord bearing of South 31 degrees 11 minutes 50 seconds West a distance of 1,233.39 feet to a point; thence South 37 degrees 30 minutes 31 seconds West along said right-of-way a distance of 2,055.65 feet to a point; thence around a curve to the left, along said right-of-way, an arc distance of 20.86 feet, with a radius of 11,534.16 feet, a chord bearing of South 37 degrees 27 minutes 25 seconds West, with a distance of 20.86 feet to a point on the South boundary line of the SE¼ of the SE¼ of Section 1, Township 5 South, Range 17 West; thence North 89 degrees 32 minutes 58 seconds West along said South boundary line, a distance of 198.18 feet to a point, being the SW corner of the SE¼ of the SE¼ of said Section 1; thence North 00 degrees 50 minutes 37 seconds East along the forty line, a distance of 5,314.92 feet to a point on the North boundary line and being the NW corner of the NE¼ of the NE¼ of said Section 1, Township 5 South, Range 17 West; thence South 89 degrees 04 minutes 33 seconds East along the North boundary line of said Section 1, a distance of 1,332.50 feet to the Point of Beginning. The property contains 229.29 acres, more or less, and is located in the NE¼ of NW¼, NW¼ of NW¼, SW¼ of NW¼, NW¼ of SW¼ of said Section 6, Township 5 South, Range 16 West, and also in the NE¼ of NE¼, SE¼ of NE¼, NE¼ of SE¼, SE¼ of SE¼ of said Section 1, Township 5 South, Range 17 West, Pearl River County, Mississippi.

LESS AND EXCEPT:

Begin at the NE corner of the NE¼ of the NE¼ of Section 1, Township 5 South, Range 17 West, Pearl River County, Mississippi; thence North 89 degrees 04 minutes 34 seconds West, along the North boundary line of said Section 1, a distance of 1,332.50 feet to a point; thence South 00 degrees 50 minutes 37 seconds West, along the West boundary line of the NE¼ of the NE¼, a distance of 651.69 feet to a point; thence South 89 degrees 08 minutes 56 seconds East, a distance of 1,294.57 feet to a point; thence South 00 degrees 51 minutes 04 seconds West, a distance of 760.00 feet to a point; thence South 89 degrees 08 minutes 56 seconds East, a distance of 500.00 feet to a point; thence South 00 degrees 51 minutes 04 seconds West, a distance of 175.00 feet to a point; thence South 89 degrees 08 minutes 56 seconds East, a distance of 335.50 feet to a point located on the West right-of-way of Apple South Drive; thence South 23 degrees 51 minutes 04 seconds West, along said right-of-way, a distance of 89.98 feet to a point; thence South 66 degrees 08 minutes 56 seconds East, a distance of 343.87 feet to a point located on the West right-of-way of State Highway No. 11; thence North 25 degrees 01 minutes 17 seconds East, along said right-of-way, a distance of 526.85 feet to a point; thence around a curve to the left, along said right-of-way, an arc distance of 1,211.73 feet, a radius of 5,654.58 feet and a chord bearing of North 18 degrees 49 minutes 52 seconds East, with a distance of 1,209.40 feet to a point; thence North 12 degrees 24 minutes 39 seconds East, along said right-of-way, a distance of 174.72 feet to a point located on the North boundary line of Section 6, Township 5 South, Range 16 West; thence North 89 degrees 08 minutes 56 seconds West along said boundary line, a distance of 1,703.09 feet to the Point of Beginning. The property contains 74.15 acres, more or less, and is located in the NE¼ of the NE¼ of Section 1, Township 5 South, Range 17 West, and also in the NE¼ of the NW¼, NW¼ of the NW¼, and the SW¼ of the NW¼ of Section 6, Township 5 South, Range 16 West, Pearl River County, Mississippi.

Said property also being described as follows:

Commence at the NE corner of the NE1/4 of the NE1/4, Section 1, Township 5 South, Range 17 West, Pearl River County, Mississippi; thence North 89 degrees 04 minutes 34 seconds West, along the North boundary of said Section 1, a distance of 1332.50 feet to a found 1/2 inch iron pipe marking the NW corner of the NE1/4 of the NE1/4 of said Section 1; thence South 00 degrees 50 minutes 37 seconds West, along the West boundary of the NE1/4 of the NE1/4 of said Section 1, a distance of 651.69 feet to a set 1/2 inch rebar; thence South 89 degrees 08 minutes 56 seconds East, a distance of 302.42 feet to a set 1/2 inch rebar; thence South 05 degrees 47 minutes 27 seconds East, a distance of 428.84 feet to a set 1/2 inch rebar for the Point of Beginning; thence South 89 degrees 08 minutes 56 seconds East, a distance of 942.55 feet to a set ½ inch rebar; thence South 00 degrees 51 minutes 04 seconds West, a distance of 334.04 feet to a set ½ inch rebar; thence South 89 degrees 08 minutes 56 seconds East, a distance of 500.00 feet to a set ½ inch rebar; thence South 00 degrees 51 minutes 04 seconds West, a distance of 264.98 feet to a set ½ inch rebar; thence South 89 degrees 08 minutes 56 seconds East, a distance of 297.30 feet to a set ½ inch rebar; thence South 50 degrees 08 minutes 11 seconds East, a distance of 62.42 feet to a set ½ inch rebar; thence South 66 degrees 09 minutes 26 seconds East, a distance of 283.36 feet to a set ½ inch rebar on the Western right-of-way of State Highway 11; thence South 25 degrees 01 minutes 17 seconds West along the Western right-of-way of said State Highway 11, a distance of 829.37 feet to a found concrete marker; thence around a curve along the Western right-of-way of said State Highway 11 to the right through a chord bearing South 31 degrees 11 minutes 50 seconds West, a distance of 1233.39 feet, an arc distance of 1235.84 feet to a found concrete marker; thence South 37 degrees 30 minutes 31 seconds West along the Western right-of-way of said State Highway 11, a distance of 518.64 feet to a set ½ inch rebar; thence North 25 degrees 55 minutes 00 seconds West, a distance of 1368.75 feet to a set ½ inch rebar; thence North 00 degrees 12 minutes 02 seconds East, a distance of 242.83 feet to a set ½ inch rebar; thence North 17 degrees 43 minutes 09 seconds West, a distance of 325.01 feet to a set 1/2 inch rebar; thence North 00 degrees 08 minutes 30 seconds West, a distance of 879.23 feet to a set 1/2 inch rebar; thence North 05 degrees 47 minutes 27 seconds West, a distance of 336.30 feet to the Point of Beginning. The property contains 92.76 acres more or less and is located in the NE1/4 of the NE1/4, SE1/4 of the NE1/4, NE1/4 of the SE1/4, and the SE1/4 of the SE1/4 of said Section 1, and the NW1/4 of the SW1/4 and the SW1/4 of the NW1/4 of said Section 6.

TRACT II:
Begin at the SE corner of the SE¼ of SE¼ of Section 1, Township 5 South, Range 17 West, Pearl River County, Mississippi; thence North 89 degrees 32 minutes 58 seconds West, along the South boundary line of the SE¼ of the SE¼ of Section 1, Township 5 South, Range 17 West, a distance of 786.58 feet to a point located on the East right-of-way of Southern Railway Systems Railroad; thence North 37 degrees 30 minutes 31 seconds East, along said right-of-way, a distance of 1,317.69 feet to a point; thence South 00 degrees 51 minutes 32 seconds West, along the East boundary line of the SE¼ of the SE¼ of said Section 1, Township 5 South, Range 17 West, a distance of 1,051.57 feet to the Point of Beginning. The property contains 9.49 acres, more or less, and is located in the SE¼ of SE¼ of said Section 1.