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**CORRECTED**

**DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS OF  
MAGNOLIA BAYOU SUBDIVISION, PHASE III, PART TWO**

**THE STATE OF MISSISSIPPI  
COUNTY OF JACKSON**

**THIS DECLARATION**, made on the date hereinafter set forth by Great Southern Development Company, Inc. (hereinafter referred to as “Declarant”), and Declarant being joined herein to the extent herein stated by The Peoples Bank of Biloxi in Biloxi, Mississippi (hereinafter called “Bank”). These Corrected Declaration of Covenants, Conditions & Restrictions of Magnolia Bayou Subdivision, Phase Three are filed in order to correct a scrivener’s error contained in Article II, Section 3, the second sentence, of the original Declaration of Covenants, Conditions & Restrictions of Magnolia Bayou Subdivision, Phase Three, Part Two, dated September 28, 1994, filed in the office of the Chancery Court of Jackson County, Mississippi on September 28, 1994, and recorded on September 30, 1994, in Land Deeds Book Number 1049, Pages 14-27.

**WITNESSETH**

WHEREAS, Declarant is the owner of the tract of land situated in Jackson County, Mississippi, which is more particularly described as:

Lots 103 - 128 inclusive, of Magnolia Bayou Subdivision,  
Phase III, Part Two, Jackson County, Mississippi.

All of said lots being duly platted as Magnolia Bayou Subdivision, Phase Three, Part Two, according to the map or plat thereof recorded in Book 19, page 36, Records of Plats, Jackson County, Mississippi, and Declarant desires to impose upon such properties the restrictions, conditions, and covenants contained herein to run with the land and by execution hereof the Bank evidences its willingness to make its liens subject to the covenants, conditions and restrictions herein set forth.

NOW THEREFORE, Declarant hereby declares that all properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall constitute covenants running with the land, and shall be binding on all parties having any right, title or interest in the described Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I**

**Definitions**

Section 1. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 2. “Properties” shall mean and refer to that certain real property first hereinabove described.

Section 3. “Lot” shall mean and refer to any one of the several parcels into which the Properties shall be divided on the plat of the Properties referred to above.

Section 4. “Declarant” shall mean and refer to not only Great Southern Development Company, Inc., but also to its successors or assigns (whether immediate or remote) as successor developer of all or a substantial portion of the Lots in the undeveloped state, but shall not include any purchaser of one or more developed Lots. For the purposes of this Declaration, “Developed Lot” shall mean a Lot with the street on which it faces opened and improved and with utilities installed and ready to furnish utility service to such Lot, and “Undeveloped Lot” is any Lot which is not a developed Lot.

## ARTICLE II

### Use Restrictions

Section 1. Single Family Residential Construction. No building shall be erected, altered or permitted to remain on any Lot other than one detached single-family residential dwelling not to exceed two (2) stories in height, a private garage for not more than three (3) cars and bona fide servants’ quarters which latter structures shall not exceed the main dwelling in height and which structures may be occupied only by a member of the family occupying the main residence on the building site or by domestic servants employed on the premises. No room(s) in the dwelling and no space in any other structure shall be leased or rented and said structures in their entirety shall be used as a single residence of one family or person. No carports will be allowed without prior Architectural Review Board approval in writing.

Section 2. Approval of Plans. The Architectural Review Board or A.R.B. for Magnolia Bayou Subdivision, Phase III, Part Two, shall consist of a committee of three individuals designated as hereafter provided vested with the power to control the buildings, structures and other improvements placed on each lot, which power is expressly reserved by Declarant, for the purpose of further insuring the development of the Properties as an area of high standards.

The Declarant shall designate annually, three persons to serve as members of the Architectural Review Board, each of whom shall serve for a term of one year from the date of such designation, and until their successors shall be designated. After all Lots in Magnolia Bayou Subdivision, Phase III, Part Two, have been sold by Declarant, all privileges, powers, rights, and authority of the Declarant shall be exercised by and be vested in the owners of a majority of the Lots in said subdivision.

Such Board shall have the power to control the buildings, structures and other improvements placed on each Lot, as well as to make such exceptions to these covenants,

conditions and restrictions as such Board shall deem necessary and proper. Any exceptions so made shall be made in writing and shall take effect only from the date the same are recorded in the office of the Chancery Clerk of Jackson County, Mississippi.

Regardless of whether it is specifically stated in any conveyance of a Lot made by the Declarant, the owner or occupant of each and every Lot, by acceptance of title thereon, or by taking possession thereof, covenants and agrees that no building, wall or other structure shall be placed upon such Lot unless and until the plans and specifications therefor and plot plans have been approved in writing by the Architectural Review Board as hereinafter provided. Each such building, wall, or structure shall be placed on the premises only in accordance with the plans, specifications and plot plan so approved. Refusal of approval of plans, specifications may be based on any ground or grounds, including purely aesthetic grounds, non-conformity with these covenants or the location of buildings with respect to topography and finished ground elevations, which in the sole discretion of the Architectural Review Board shall seem sufficient. No alteration in the exterior appearance of the buildings or structures shall be made without like approval. If no Architectural Review Board exists or if the Board shall fail to approve or disapprove any plans within five (5) days after the same have been submitted, then such approval shall not be required; provided that no building or other structure shall be erected which violates any of the covenants herein contained.

Section 3. Minimum Square Footage Within Improvements. For all lots in Phase III, Part Two, the living area on the ground floor of the main residential structure (exclusive of porches, garages, and servants' quarters) shall be not less than One Thousand Eight Hundred (1,800) square feet for one-story dwellings. The living area of the main residential structure (exclusive of porches, garages and servant's quarters) for a multi-story dwelling shall not be less than 1,800 square feet. The Architectural Review Board, at its sole discretion, is hereby permitted to approve deviations in any building area herein prescribed, which deviations would, in its sole judgment, result in a more common beneficial use. Such approvals must be granted in writing and, when given, will become part of these restrictions to the extent of the particular Lot involved.

Section 4. Building Location. The building locations shall be those as are presently prescribed by the City of Ocean Springs, Mississippi in its Comprehensive Zoning Ordinance, as amended, or as the same shall be hereinafter amended.

Section 4A. Off Street Parking. All lots having a frontage along Magnolia Bayou Boulevard in Magnolia Bayou Subdivision, Phase Three, Part Two, shall provide for off street parking for four vehicles by use of two car driveways and/or by locating buildings and garages farther back than the minimum required setbacks.

Section 4B. On Street Parking. The parking of vehicles, whether permanent or temporary, on Magnolia Bayou Boulevard, shall be prohibited.

Section 5. Composite Building Sites. Any owner of one or more adjoining Lots (or portions thereof) may consolidate such lots or portions into one single-family residential building site, with the privilege of placing or constructing improvements on such site, in which case setback lines shall be measured from the resulting side property

lines rather than from the Lot lines shown on the recorded plat. Any such proposed composite building site(s) must be approved by the Architectural Review Board.

Section 6. Utility Easements. Easements for the installation and maintenance of utilities are reserved as shown and provided for on the recorded plat and no structure of any kind shall be erected upon any of said easements.

Section 7. Prohibition of Trade and Offensive Activities. No activity, whether for profit or not, shall be carried on any Lot which is not related to single-family residential purposes. No noxious or offensive activity of any sort shall be permitted nor shall anything be done on any Lot which may be or become an annoyance or a nuisance to the neighborhood.

Section 8. Use of Temporary Structures. No structures of a temporary character, mobile home, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence. Portable buildings used for accessory or storage purposes shall be limited to not more than eight (8) feet in height and shall be subject to approval of the Architectural Review Board.

Section 9. Storage of Automobiles, Boats, Trailers and Other Vehicles. No boat trailers, boats, travel trailers, inoperative automobiles, campers, or vehicles of any kind shall be semi-permanently or permanently stored in the public street right-of-way or forward of the front building line. Storage of such items and vehicles must be screened from public view, either within the garage or behind a fence which encloses the rear of the Lot.

Section 10. Mineral Operation. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall any wells, tanks, tunnels, mineral excavation, or shafts be permitted upon or in any Lot. No derrick or other structures designed for the use of boring for oil or natural gas shall be erected, maintained, or permitted upon any Lot.

Section 11. Animal Husbandry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except dogs, cats or other common household pets of the domestic variety may be kept provided that they are not kept, bred or maintained for commercial purposes and provided that no more than two (2) animals are kept.

Section 12. Walls, Fences and Hedges. (a) No wall, fence or hedge shall be erected or maintained nearer to the front lot line than the front building line on such Lot, nor on corner Lots nearer to the side Lot line than the building setback line parallel to the side street. No side or rear fence, wall or hedge shall be more than six (6) feet in height. No metal fences of any kind will be permitted on any lot unless first approved by the Architectural Review Board upon written request. Any wall, fence or hedge erected on a Lot by Declarant, or its assigns, shall pass ownership with title to the Lot and it shall be Owner's responsibility to maintain said wall, fence or hedge thereafter.

Section 13. Visual Obstruction at the Intersection of Public Streets. No object or thing which obstructs sight lines at elevations between two (2) and six (6) feet above the

surface of the streets within the triangular area formed by the curb lines of the streets involved and a line running from curb line to curb line at points twenty-five (25) feet from the junction of the street curb lines shall be placed, planted or permitted to remain on any corner Lots.

Section 14. Lot Maintenance. The Owner or occupants of all Lots shall at all times keep all weeds and grass thereon cut in a sanitary, healthful and attractive manner and shall in no event use any Lot for storage of material and equipment except for normal residential requirements or incident to construction of improvements thereon as herein permitted. The accumulation of garbage, trash or rubbish of any kind or the burning (except as permitted by law) of any such materials is prohibited.

Section 15. Visual Screening on Lots. The drying of clothes in public view is prohibited, and the Owner or occupants of any Lots at the intersection of streets or adjacent to parks, playgrounds or other facilities where the rear yard or portion of the Lot is visible to the public shall construct and maintain a drying yard or other suitable enclosure to screen drying clothes from public view. Similarly, all yard equipment, woodpiles or storage piles shall be kept screened by a service yard or other similar facility so as to conceal them from view of neighboring Lots, streets or other property.

Section 16. Signs, Advertisements, Billboards. No signs, advertisements, billboards or advertising structures of any kind shall be placed, maintained or displayed to the public view on any Lot, except one sign for each building site, of not more than five (5) square feet, advertising the property for sale or rent. Declarant, or its assigns, may maintain upon property owned by it in the Magnolia Bayou Subdivision, Phase III, Part Two, such facilities as in its sole discretion may be necessary or convenient, including, but without limitation, offices, storage areas, model units and signs, and Declarant may use, and permit such builders who are at relevant times building and selling houses in the Magnolia Bayou Subdivision, Phase III, Part Two, and/or subsequent sections of Magnolia Bayou Subdivision, to use residential structures, garages or other permitted accessory buildings for sale offices and display purposes, but all rights of Declarant and of any builder acting with Declarant's permission under this sentence shall be operative and in effect only during the construction and initial sales period within the area composed of the Magnolia Bayou Subdivision, Phase III, Part Two, and subsequent sections of Magnolia Bayou Subdivision.

Section 17. Roofing. The roofs of all buildings (including any garage or servants' quarters) shall be constructed or covered with (1) wood shingles or (2) asphalt, fiberglass or composition shingles. No white roofing material shall be permitted on any building. Any other type of roofing material shall be permitted only at the sole discretion of the Architectural Review Board upon written request. Roofs of all buildings shall have a minimum roof Pitch of 7-12.

Section 18. Maximum Height of Antenna. No electronic antenna or device of any type other than an antenna for receiving normal television signals shall be erected, constructed, placed or permitted to remain on any Lot, houses, or buildings. Television antenna may be attached to the house provided however, such antenna must be located to the rear of the roof ridge line, gable or center line of the principal dwelling. Freestanding

antenna must be attached to and located behind the rear wall of the residential structure. No antenna, either freestanding or attached, shall be permitted to extend more than ten (10) feet above the roof of the main residential structure on the Lot, or shall be erected on a wooden pile.

Section 19. Sidewalks. Before the dwelling unit is completed and occupied, the Lot Owner shall construct a concrete sidewalk four (4) feet in width parallel to the street curb two (2) feet back from the boundary lines between the Lot and the street right-of way and/or street curbs in the case of corner Lots. Owners of corner Lots shall install a sidewalk both parallel to the front Lot line and parallel to the side street Lot line. Such sidewalks comply with all Federal, State, County and Municipal regulations respecting construction and/or specifications, if any.

Section 20. Driveways. Driveways shall be constructed of concrete material. Any other type of driveway material must be approved by the Architectural Review Board upon written request.

Section 21. No filling is permitted of any wetlands as defined by the State of Mississippi and the U.S. government.

### **ARTICLE III**

#### **Declaration of Covenants, Conditions & Restrictions of Magnolia Bayou Subdivision, Phase Three, Part Two, Homeowners' Association**

Section 1. Upon the sale of 40 percent (40%) of the lots in Magnolia Bayou Subdivision, Phase III, Part Two, there shall be established a Homeowners Association wherein each lot owner is entitled to a membership in the Homeowners Association. The Homeowners association shall be a Mississippi "Not For Profit" corporation and shall have the duties and benefits conferred herein.

Section 2. Membership in the Homeowners Association shall be mandatory.

Section 3. The Homeowners Association shall have only one class of voting membership which will include all members, and each member shall be entitled to one vote for each lot owned.

Section 4. Except for the maintenance requirements herein imposed upon the association, the Homeowners Association shall have no other duty to maintain any portion of the subdivision. The Homeowners Association shall, however, maintain all medians and the brick work protecting trees and shall keep same in a neat, orderly and repaired condition.

Section 5. The Homeowners Association shall have the power to promulgate rules and regulations consistent with this declaration of covenants, conditions and restrictions in order to implement the requirements contained herein.

Section 6. The Homeowners Association may charge reasonable dues, fees or assessments to accomplish its intended purposes. Unpaid dues, fees or assessments shall become a lien on the land of a property owner as may be more fully set forth in the Homeowners Association bylaws. The liens for dues, fees and assessments shall always be subordinate to the lien of a purchase money mortgage or deed of trust.

## **ARTICLE IV**

### **General Provisions**

Section 1. Enforcement. Any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods for ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by those Owners owning no less than ninety percent (90%) of the Lots within Magnolia Bayou Subdivision, Phase III, Part Two, and thereafter by an instrument signed by those Owners owning not less than seventy-five percent (75%) of the Lots within Magnolia Bayou Subdivision, Phase III, Part Two. No person shall be charged with notice of or inquiry with respect to any amendment until and unless it has been filed for record in the official Public Records of Real Property of Jackson County, Mississippi.